PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

29 May 2002

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WEDNESDAY, 29 MAY 2002

Wednesday, 29 May 2002

The PRESIDENT (Hon. B. A. Chamberlain) took the chair at 10.02 a.m. and read the prayer.

QUESTIONS WITHOUT NOTICE

Minister for Youth Affairs: adviser

Hon. BILL FORWOOD (Templestowe) — I refer to the story on the front page of today's *Herald Sun* headed 'Taxpayers' drug joke'. I make the point that we will be moving a take-note motion on this issue, and I invite the Minister for Youth Affairs to hang around and defend herself and her adviser. I ask the minister: will she detail to the house when and how she first became aware that her youth adviser, David Henderson, had publicly advocated the illegal use of drugs, and what action she took on receiving that information?

Hon. M. M. GOULD (Minister for Youth Affairs) — When David Henderson started work with me six weeks ago, it was brought to my office's attention that he had written an article in the university newspaper. One of my staff members raised that with David, and he explained that he never seriously advocated the taking of drugs of any sort — that it was a tongue-in-cheek comment that was never intended to be taken seriously. He explained that, and I accepted his explanation. He was employed in my office based on being the best applicant. I have accepted that. I will judge his performance, and I have no problems with his explanation or his performance.

Supplementary question

Hon. BILL FORWOOD (Templestowe) — I note that an article on page 4 of today's *Herald Sun* reports:

> Ms Gould said she believed Mr Henderson was being set up.

I ask the Minister for Youth Affairs: is it not true that when her office was warned of Mr Henderson's activities in this area she dismissed the warnings because it was part of an internal factional Labor brawl?

Hon. M. M. GOULD (Minister for Youth Affairs) — I did not go to university, but I think the honourable member on the other side did, and I am not sure whether he got involved in student politics. I am led to believe it can be a very interesting pastime and can sometimes get a bit overenthusiastic.

As I indicated in my previous answer, the matter was drawn to my attention, and I accepted Mr Henderson's explanation that the university newspaper article was tongue in cheek. It was never intended to be taken seriously, and I believe he has accepted that it was immature. Mr Henderson has accepted — everyone in this chamber and outside is in agreement — that it was inappropriate, but he should not he precluded from employment because of statements he made four years ago at university.

Gas: supply security

Hon. G. D. ROMANES (Melbourne) — Can the Minister for Energy and Resources advise of recent approvals that build on the Bracks government's commitment to strengthening Victoria's security of supply for gas?

Hon. C. C. BROAD (Minister for Energy and Resources) — I thank the honourable member for her question. I am always very pleased to remind the house that under the Bracks government exploration levels are currently at unprecedented levels and that we are committed as a government to seeing that this situation continues well into the future.

The project to develop the Minerva gas field, discovered some 11 kilometres offshore of the coast of Port Campbell, is strongly supported by the Bracks government. This project represents a $250 million investment in gas infrastructure in this state.

The government is very pleased to welcome the announcement last week that BHP Billiton confirmed the corporate approval for this major project by any standard. BHP Billiton has signed a 10-year gas sales agreement to supply the Pelican Point power plant in South Australia as part of the arrangements for the project.

This project will increase Victoria's options for gas supply. It will connect to the Victorian system through the proposed onshore gas processing plant and to TXU's gas storage facility at Iona, near Port Campbell.

It also provides significant impetus to the Bracks government's vision for the emergence of a south-eastern gas transmission network. Of course, investments like this happen because of the environment of confidence in minerals and petroleum exploration and development as well as the highly competitive business environment that the Bracks government has created in Victoria.

The government is providing some $7.5 million to promote responsible exploration and improve industry regulations, with some $4 million of that to extend the Victorian initiative for minerals and petroleum. These

funds are being used to upgrade Victoria's regional geological database and to build upon industry-acquired data. This work will encourage further exploration.

Through other Bracks government initiatives such as the recent *Building Tomorrow's Businesses Today* statement we are encouraging an environment where Victoria is a great place to do business.

The Bracks government's actions in these areas create the environment where announcements like that of the Minerva project become possible. It is expected that by 2004 Victoria will have three gas processing plants: the existing plant at Longford, the Patricia Baleen site and the Minerva plant.

These plants, along with the interstate pipeline projects, fit in with our commitment to enhance the options as well as the security of the supply for Victoria, and indeed the whole south-eastern region of Australia. The project also fits in with the Bracks government's strategy to build sustainability and environmental integrity into everything we do.

For instance, the shore crossing required to pipe the gas at Minerva to the plant will be constructed under the Port Campbell National Park using horizontal directional drilling. The drilling will be from a site north of the park boundary over some 2 kilometres to a point outside of the zone.

The Bracks government is turning things around for minerals and petroleum exploration in Victoria, and last week's announcement is further evidence of this increased confidence.

Minister for Youth Affairs: adviser

Hon. A. P. OLEXANDER (Silvan) — I direct my question to the Minister for Youth Affairs. Does the minister personally condone the public promotion of the use of illegal and deadly drugs, even if such promotion was intended, as the minister and Mr Henderson both claim, as a university prank?

Hon. M. M. GOULD (Minister for Youth Affairs) — As I have indicated in response to previous questions, the explanation that David gave me was that he acknowledged that they were immature comments. I am sure a number of members in this chamber would regret something they may have said or done in their younger days. I am sure there are a number of honourable members who may have said in their younger days something they now regret.

As I have said, everyone is in agreement that the article was inappropriate, and David has indicated that he never intended it to be taken seriously. He respects and supports the government's policy on the difficulties we have in the community with drugs. He supports the government's campaign against illicit drugs. Some comments that he made four years ago should not be held against him, and as the Minister for Youth Affairs I am prepared to give him a chance. I believe he has explained himself appropriately and adequately.

Supplementary question

Hon. A. P. OLEXANDER (Silvan) — I thank the minister for her answer. Does the minister believe personally that it is a legitimate political tactic to advocate the use of deadly drugs in order to, in her words, 'catch the attention of potential voters', and through that gain electoral advantage? Will this sort of behaviour be condoned in her ministerial office in the future?

Hon. M. M. GOULD (Minister for Youth Affairs) — As I have indicated, David accepts and admits that his article was immature, that it was not an appropriate thing to do. I do not support it, and it was on that basis that, when the article that was written by him four years ago when he was 21 and at university was drawn to my attention, he acknowledged it was immature and that it was not appropriate. He has explained to me what the situation was at that time, and I accepted that explanation.

Sport and recreation: funding

Hon. JENNY MIKAKOS (Jika Jika) — My question is to the Minister for Sport and Recreation, and I ask: what steps has he taken to ensure that the Bracks government's delivery of sport and recreation opportunities in Victoria occurs in a strategic manner?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I thank the honourable member for her question. As I outlined yesterday, in recent weeks I have had the good fortune to make significant announcements in relation to community facilities funding.

One of the most significant areas is the major Community Facilities Funding program, and this year the government has delivered further real outcomes as it has done in previous years. I remind the house that one of the things that the government has done is change the ratios for funding, and that has ensured that rural and regional Victoria and interface councils are able to access more funding than they could under the former government.

Of the 81 applications made to government 57 have been funded through this program. Forty-six projects are in the planning category. Planning is everything when it comes to major facilities in local communities, not only because it gives the communities ownership of the project but because they help develop the project and are consulted on the development. But as well it ensures that the centres are feasible and viable. Eleven projects have been approved.

Some of the significant projects include $500 000 for the Queen Elizabeth Oval in Bendigo, on top of the $250 000 already provided as part of the Labor Party's election commitment to ensure that a significant regional facility is enhanced and developed in Bendigo. The Walter J. Tuck Reserve clubrooms development in Gippsland has received $100 000. This contributes to a total project cost of $275 000. In Cardinia shire $108 000 has been given towards a total project cost of $329 000 for a baseball development; and $148 000 has been given for the Ray Bastin playground in the City of Casey to a total project cost of $445 000. The other noteworthy project is $394 000 for the Goldsworthy Athletics Reserve in Geelong. This has come about in particular as a result of the significant endorsement of Labor members in the Geelong region.

This is great news for Victoria, reinforcing that while the opposition is divided it stands for nothing. The government and the community know that while the opposition pretends to care, it does not care. We are a strong and decent government growing the whole of the state and governing for all Victorians.

Minister for Youth Affairs: adviser

Hon. I. J. COVER (Geelong) — I refer the Minister for Youth Affairs to the front-page story of today's *Herald Sun* and its continuation on page 4, which says:

> The *Herald Sun* was barred from speaking with Mr Henderson …

Why did the minister gag Mr Henderson?

Hon. M. M. GOULD (Minister for Youth Affairs) — My adviser David Henderson is at home today. He is upset about the article in today's paper. This is his first job since leaving university last year and, as I have indicated, he accepts that his comments were immature and misguided. It is not his position as an adviser to speak to the media. I accept his explanation and I am prepared to give him a chance. He made the statements four years ago at university. This government believes that young people make mistakes, but they move on from them. I am prepared to judge him on his performance.

Supplementary question

Hon. I. J. COVER (Geelong) — My first question was quite clear in asking the minister why she had gagged Mr Henderson. I understand he is not with us today, he is at home. I ask my supplementary question because I think Victorians would like to hear from Mr Henderson himself, not just from the minister. I ask the minister when Mr Henderson may speak to either the *Herald Sun* or the people of Victoria?

Hon. M. M. GOULD (Minister for Youth Affairs) — I have indicated that David is an adviser. He has given an explanation to me and as minister I have accepted his explanation. I have made public today on the radio, in the media and in this house that I accept his explanation. I believe that he should be given a chance and should not be judged on comments made at university that could preclude him from having a job for the rest of his life.

Information and communications technology: government initiatives

Hon. KAYE DARVENIZA (Melbourne West) — Will the Minister for Information and Communication Technology inform the house of any recent indication of Victoria's performance in the information and communications technology industry?

Hon. M. R. THOMSON (Minister for Information and Communication Technology) — I thank the honourable member for her question. A benchmark study has been undertaken by Pricewaterhousecoopers in relation to the information and communications technology (ICT) sector in Victoria and how it compares to international competitors. It found that Victoria was well positioned to attract investments that would contribute to a knowledge-based economy.

The study looked at the factors that are crucial to investment decisions, such as the availability and cost of staff, the cost of land, access to telecommunications and transport infrastructure and the cost of utilities. The ICT sector was looked at in three specific areas: specialist software development, telecommunications research and development, and microelectronics design. The report found that Victoria was highly competitive and offered a best value proposition in all three areas. It also found that Victoria was highly competitive against rival countries in Asia and Europe and in North America.

One of the key strengths of the Victorian industry is the clusters that exist within Victoria in this sector. The Bracks government is very keen to promote and nurture

these clusters and has announced under Next Wave the assistance we will be giving to emerging clusters.

The other issue of importance to this sector is having the skilled employees — those who can go into the jobs that come from this sector. That is one of Victoria's major strengths. We produce more ICT graduates here in Victoria than anywhere else in Australia. The Bracks government is encouraging and has a range of initiatives to encourage more students to look at the ICT skills they need to provide for the future needs not just of this sector but of an innovative industry sector, because all industry sectors will require ICT skills to succeed in the new economy.

The Chipskills program, which is the first Australian course for masters in microelectronic engineering, has been developed at the Victoria University. This is unique to Australia.

The ICT sector here in Victoria is well positioned for the future and is globally competitive, and the Bracks government will be working with this sector to ensure that Victoria's future is innovative and competitive and that it has the connected economy that it needs for the future development of this state.

Minister for Youth Affairs: adviser

Hon. BILL FORWOOD (Templestowe) — My question is to the Minister for Youth Affairs. Has she discussed this issue with the Premier or his office?

The PRESIDENT — Order! Presumably that is the issue of David Henderson?

Hon. BILL FORWOOD — Yes.

Hon. M. M. GOULD (Minister for Youth Affairs) — I think honourable members would be aware that not only the Premier but ministers and the whole community know about this issue since they read the front page of the *Herald Sun* today.

As I have said, it was brought to my office's attention in the early stages of David Henderson's employment. It was raised by him. His explanation was acceptable, and I accepted that. This questioning from the opposition is pathetic. It is not even prepared to give a young person a go. It is not prepared to accept that young people make mistakes, admit that they make mistakes, admit that it was immature, and move on. It was four years ago. He was a young uni student. He accepts he made a mistake. He accepts it was inappropriate. He accepts it was an immature comment. I am prepared to give him a chance and judge him on his performance while he is employed with me.

Supplementary question

Hon. BILL FORWOOD (Templestowe) — I make the point at the outset that the Minister for Youth Affairs came nowhere near answering the question I asked, which was whether the matter had been discussed with the Premier. The issue is: does the Premier support the minister's decision in this case to protect Mr Henderson? Has she discussed the matter with him?

Hon. M. M. GOULD (Minister for Youth Affairs) — Protect Mr Henderson?

Hon. Gavin Jennings interjected.

Hon. M. M. GOULD — And equal opportunity and discrimination laws. It is applicable to all in this state.

Honourable members interjecting.

The PRESIDENT — Order! The Leader of the Opposition asked a supplementary question of the Leader of the Government. The Leader of the Government should be allowed to articulate her answer.

Hon. M. M. GOULD — As I have indicated on numerous occasions today, I support David Henderson. I support David Henderson in my office, and I have the support of my Premier and my ministerial colleagues in that support, based on David Henderson's performance as an adviser to me, and I will continue to judge him on his performance since his employment with me. I have accepted his explanation of something he said four years ago.

Belmont High School

Hon. E. C. CARBINES (Geelong) — I refer my question to the Minister for Education Services. The minister has previously advised the house of how the Bracks government's massive investment in education will impact on her portfolio areas. Can the minister now advise how the money targeted for capital works has been used to improve learning environments in the Geelong region?

Hon. M. M. GOULD (Minister for Education Services) — I thank the honourable member for her question. Education is a key priority of this government. A massive investment has been made to ensure that our schools provide fantastic learning environments. We have put over $2.75 billion back into education, allocating $822 million to build better schools and TAFE facilities in this state. That is double the average that was provided in the last two years of the Kennett government. It is double the average of

what the opposition put in when it was in government. Unlike the previous government, which wanted to destroy our education system, we are putting investment back into education in this state. We are investing in our young people.

One example of this is major upgrade that has taken place at the Belmont High School. One of the honourable members for Geelong Province, Mrs Carbines, was at the opening of these new facilities. I have to acknowledge that the honourable member for South Barwon in the other place was also at the opening of this new facility. Belmont High School is part of the pilot study for the development of the hub for computers for the government. The school has a great new facility for its woodwork, arts, IT and technology. This government has invested over $2 million to provide the school with a science wing and an art wing. This building project is one of many that have been funded by this government throughout Victoria to ensure that schools can deliver innovative programs in modern facilities, because the facilities were left to rot by the opposition when it was in government.

We are delivering education for Victorian schools and their communities. We have a vision for our education system. It is fantastic to see that vision coming to reality with this upgrade at Belmont High School. I know the Honourable Elaine Carbines was delighted to be there and to be involved in that school.

The Bracks government is turning the education system around and turning the state around to ensure that our young people get to go to school in an environment that is suitable for learning and that assists with their retention rates. It is a great investment for our young for the future.

Rail: Mildura–Portland line

Hon. B. W. BISHOP (North Western) — My question is directed to the Minister for Energy and Resources. Given the minister's interest in this area and her recent announcements on rail projects linked to her responsibilities and due to the huge logistical planning effort required by the major users of the Mildura rail line to cope with the rail standardisation upgrades, can the minister give me a firm time line for that work to be undertaken? Just tell me when it's going to be done — just tell me that.

Hon. C. C. BROAD (Minister for Energy and Resources) — I welcome the question from the honourable member on this very important initiative by the Bracks government. As I believe I have already indicated in the house, the timetable is for works to commence in the last quarter of this year and to be completed, in relation to the Mildura part of this much larger project, in the first part of 2003.

Supplementary question

Hon. B. W. BISHOP (North Western) — Minister, that is a most disappointing answer and I can explain why. The fact of the matter is that the front part of the year is the heaviest use period for that particular railway line. We find Freight Australia moving huge amounts of grain during the early part of the year; we find Wakefield Transport doubles its container traffic on rail during the February, March, April, May period and that could go from 40 to 100 containers a day, mainly due to the table grape industry going full blast at that time of year. I am advised that Wakefields have already committed themselves to the October, November, December timetable which was announced earlier by the government. In fact they have hired 40 semitrailers to cope with that. So will the government ensure that the standardisation and upgrade be done in October, November, December this year to avoid the extra costs and huge logistical problems — —

The PRESIDENT — Time!

Hon. C. C. BROAD (Minister for Energy and Resources) — In response, I can well appreciate that, given the some 100 years of failure to standardise rail gauges and the problems that that has created for producers, for a whole range of industries and for competitiveness of those industries, honourable members as well as the government might wish to see this happen as a matter of urgency.

Unlike the previous Kennett government, this government has acted to put in place this important initiative and to put up the funding — with no help from the federal government — to rectify this problem of history, and I have outlined the timetable which the government intends to follow.

Marine safety: funding

Hon. D. G. HADDEN (Ballarat) — The Minister for Ports would be well aware of how much Victorians value their volunteer marine search and rescue services. Can the minister inform the house about what the Bracks government is currently doing to ensure these important services continue to be delivered to all Victorians and how the government intends to build on these initiatives?

Hon. C. C. BROAD (Minister for Energy and Resources) — I thank the honourable member for her

question. The Bracks government recognises the valuable contribution that volunteer marine rescue groups provide to the boating community, as they are often called upon by the police to provide the first response in an emergency. I take this opportunity on behalf of the government and honourable members on both sides of the house to thank those volunteers for their efforts. Their contribution to Victoria and the way of life that Victorians — particularly those who go boating — enjoy cannot be overstated.

As part of delivering on the government's objective to strengthen marine safety, the Bracks government has significantly boosted funding to further support volunteer marine search and rescue capabilities. This is in marked contrast to the lack of support provided by the previous Kennett government, notwithstanding representations, again from both sides of the house. This government has acted to support this very important area.

Through the boating safety funding program, the Bracks government's support for volunteer search and rescue groups to date includes a major funding increase from $180 000 to $410 000 for replacement search and rescue vessels and equipment. This funding boost will enable the replacement of up to four major rescue vessels. Large search and rescue boats, which attract government funding support, are now being constructed to commercial standards and operated by certified operators.

I can also advise the house that the government has trebled the amount of funding allocated to reimburse search and rescue organisations for their fuel costs when undertaking activities at the request of the police — a significant cost which they have to meet. As well as that, a grant of $100 000 has been made to the Southern Peninsula Helicopter Rescue Service to assist this important service to meet its ongoing operational costs.

These initiatives have been widely welcomed, and the Bracks government will continue to deliver support to volunteer groups to ensure that they remain a viable part of the state's marine search and rescue service. The Bracks government will in the very near future build on these initiatives by announcing the successful recipients of further grants from a range of community applicants. This funding is part, of course, of the $15.9 million over five years that the Bracks government has allocated from the funds raised from recreational boat operator licences — another initiative by the Bracks government.

The next instalment of $3 million was allocated in the 2002 budget, Investing for our Future — and what better way to invest than in boating safety. So the boating community can look forward to even greater support from the Bracks government for marine safety with new initiatives that build on those which have already been delivered. The allocation in the 2002 budget will, of course, be distributed in the next round of grants. These initiatives are a direct result of funds raised from the recreational boat operator licences.

I am disappointed that this important achievement for improved marine safety continues to attract negative, carping criticism from some opposition members — even if they are not paying attention at this moment. Mr President, through these initiatives the Bracks government is continuing to turn things around for marine safety.

MOTIONS TO TAKE NOTE OF ANSWERS

Minister for Youth Affairs: adviser

Hon. BILL FORWOOD (Templestowe) — I move:

> That the Council take note of the answers given by the Minister for Youth Affairs to questions without notice asked by members relating to statements made by Mr David Henderson, adviser to the Minister for Youth Affairs.

The Minister for Youth Affairs is absent — she fled the chamber at the very instant question time finished.

Honourable members interjecting.

Hon. BILL FORWOOD — Look at the vacant seat! We have a minister, a minister, a minister and then a vacant seat, because she will not come in here and defend her own actions. It is an extraordinary performance.

In an article in today's *Herald Sun* Australian Drug Foundation chief executive Bill Stronach warned that ecstasy was unsafe for any user. The article states:

> He said young Victorians should be left in no doubt that problems could arise from even casual use of the drug.

This is a very important issue. It is an issue of public policy, youth behaviour and youth safety. It is an important issue that should not be treated in a light-hearted manner. The interesting issue that arose from the minister's answers today was that she was prepared to say, 'Give Mr Henderson a chance', but she was not prepared to say how he was appointed in the first place and whether or not there were other jobs in

the government that he could have been appointed to. Why was he appointed as the youth adviser?

Hon. Gavin Jennings — He was appointed on merit.

Hon. BILL FORWOOD — He was appointed on merit?

Hon. Gavin Jennings — That is what she said.

Hon. BILL FORWOOD — Mr Jennings says he was appointed on merit. The question the people of Victoria are entitled to ask is: was the government aware at the time it appointed Mr Henderson on merit that in a university newspaper he had publicly advocated the use of ecstasy and other drugs? What became clear today was that in the government's attempt to run its particular line it was prepared to go to extraordinary lengths to avoid answering any questions at all. As a result of question time today we still do not know, and the people of Victoria do not know, whether the government knew of this fact before Mr Henderson was appointed.

I am very reliably informed that, as the Minister for Youth Affairs is quoted as saying in today's paper, she believed Mr Henderson was being set up. This is an issue of internal behaviour in the Labor Party. We cannot set him up — how could we set him up? All we are doing is responding to the information that has come forward that when he was running for a position in student politics he ran on a campaign as outlined in today's *Herald Sun*.

Hon. Gavin Jennings — It was a stupid campaign.

Hon. BILL FORWOOD — Thank you, Mr Jennings — it was a stupid campaign — and a dangerous campaign?

Hon. Gavin Jennings — A potentially dangerous campaign.

Hon. BILL FORWOOD — At least the government is now accepting that it was potentially dangerous as well.

Hon. Gavin Jennings — Student politics is potentially dangerous.

Hon. BILL FORWOOD — Let us say that taking ecstasy and advocating the use of ecstasy is potentially dangerous. But the issue is: at the time the government appointed Mr Henderson did it know that he advocated the use of ecstasy in this way? Did the government know? To date, we do not know the answers. The government has gagged Mr Henderson from coming out and telling his story, and it will not confirm whether this issue was discussed with the Premier. To every question that we asked today about this issue we got the same line. The people of Victoria are entitled to know if, when the government appointed Mr Henderson, it knew of this issue. If it did not know, why did it not know? What was the process that was followed for the appointment of Mr Henderson?

I am happy for Mr Henderson to work in the government; I do not have a problem with that. I believe young people should be given chances, but I do think in circumstances such as this for the government to hide in the way it is hiding from addressing the real issues and not come clean with the people of Victoria about the circumstances is absolutely reprehensible.

Hon. GAVIN JENNINGS (Melbourne) — This is an extraordinary debate. The nature of this issue is that David Henderson did a stupid thing in 1998, and the opposition is making him pay for it today. Members opposite intend to maximise the punishment they mete out to this young man. For something a foolish young man did in 1998, which was not illegal, opposition members are encouraging illegal behaviour because they are advocating this young man gets sacked, not on the basis of his performance or whether he satisfies the criteria of his job, but on the basis of a foolish act that occurred four years prior to his employment. What would be the criteria on which the minister could or should sack this young man? Not one piece of evidence has been put on the public record by the opposition, by the *Herald Sun* or by anybody in the Victorian community to indicate that this young man has not satisfied the requirements of his obligations to the minister. Not one person — —

Hon. Bill Forwood — Did he tell the minister?

Hon. GAVIN JENNINGS — Today in the house the minister indicated that she had been made aware of this foolish act at about the time of Mr Henderson's engagement and that he had received some counselling on the subject. The minister and her office had received assurances that what had been reported and commented on in relation to these foolish comments made in an election campaign in his university days were views that he does not currently hold. They are positions he would not advocate either publicly or privately. In fact, that undertaking was clearly given to the minister, and the answer to the minister in the house today reaffirms that it is her expectation that those values will be rejected privately and publicly by her adviser, and they certainly were rejected publicly by the minister today. There can be no doubt about that matter.

Ridiculous things happen in student elections. I remember during my time at Monash University I was surrounded by people who I thought were extremely juvenile and adolescent in their behaviour.

Hon. Bill Forwood interjected.

Hon. GAVIN JENNINGS — You know that is not true, Mr Forwood; I was not an active participant in student politics because I thought the standard of behaviour was infantile and juvenile. Who were the people at Monash at that time? The absent Mr Birrell, Peter Costello and the Kroger brothers — they were a complete joke. They played games through their student politics and would surely be ashamed to admit their involvement in student politics today.

Should we measure anybody's political career on the basis of the stupid things they did during their younger years? Is there anybody in this chamber or in public life who would want to have their whole career determined on the basis of the most stupid thing they did as a young person?

What Mr Henderson did must fall into the category of the most stupid thing because he put into print issues that have come back and bedevilled his life. I am saying on behalf of the government that those values are not acceptable. They will not be acceptable to the minister and they will not be acceptable to be publicly or privately advocated by anybody who works for the minister.

We say that people have the right to reconsider their position on certain issues. In 1996 Jeff Kennett took a position to the electorate which indicated he was interested in drug law reform. He indicated to the people that he was interested in winding back laws with regard to marijuana and heroin use.

The Honourable Jeff Kennett took that issue to the people in the same way that this young man foolishly put to the students at the University of Melbourne a position on drug use. That position was never adopted by the Kennett government and then Premier Kennett retracted those views immediately upon being elected. We do not condemn him for the comments he made about drug issues during the election campaign, and neither should we condemn this young man on the actions he took in 1998.

Hon. I. J. COVER (Geelong) — I join the take-note debate as the shadow minister responsible for youth affairs for the Liberal Party. The Liberal Party takes this issue very seriously. The Honourable Gavin Jennings concluded his remarks by talking about an issue the former Premier, the Honourable Jeff Kennett, took to the people at the election in 1996. He took a lot of issues to the people, as we all do, at that election and he put them in a serious manner. It was not a joke or a prank, which is at the heart of this issue today.

This issue involves an adviser appointed to work for the Minister for Youth Affairs who, while running for office at Melbourne University, wrote an article as part of a campaign which we now discover is described as a joke or prank. The minister has said that she accepted Mr Henderson's explanation and that the views that he may have held in the past have changed. The question remains whether the people of Victoria accept the minister accepting that, particularly those people who are parents of young children and are concerned about the exposure their children will have to drugs, especially drugs as serious as ecstasy.

The use of ecstasy among young people came to most prominence in the Australian community in 1995 when a 15-year-old New South Wales schoolgirl, Anna Wood, died following taking ecstasy at a rave party. Mr Henderson's statements were made four years ago, in 1998, which is even closer to 1995 when this issue was a public issue. I do not think anyone should have been making jokes about the use of ecstasy at any stage, but particularly so when it had come to the fore only a short time before then.

As the Minister for Youth Affairs, the minister clearly has an obligation to address the issue of drug taking, particularly of ecstasy, among young people. While it is laudable that young people are given a second chance and the chance to work, I am still concerned, and I am sure the people of Victoria are concerned, that the minister has made an appointment perhaps without checking the background of this young person and without going through a process that would satisfy the appropriateness of the person appointed to that position.

Many questions have been raised today, including the minister's process in appointing an adviser. We hear the end result of accepting the explanation — that is, giving someone a second chance — but the opposition still wants to know whether the minister was informed of this person's views and whether she would have had a different view if she had been informed before the appointment was made? What questions were asked by the minister or her office as part of the selection process? The minister has an obligation and responsibility to the young people of Victoria to address this issue. In seeking an adviser who will be giving advice on this area, it is appropriate that her department goes through a process that acknowledges, understands and takes the issue seriously at all times.

In referring to young people and their exposure to drugs, the views held by Mr Henderson, published in *Farrago* at the time and described as a university joke or prank, were circulated widely because that newspaper is read by many impressionable secondary school children who may not have known whether those comments were a joke. They were exposed to someone writing about ecstasy, and we are concerned about the impression that may have had on the young people of Victoria.

Hon. KAYE DARVENIZA (Melbourne West) — I am pleased to have the opportunity to contribute to this debate. What is blatantly obvious when the Liberal Party is divided is that it plays the man because it stands for nothing; it has nothing to say on any issue. It is absolutely divided, so it picks up comments made by an adviser and picks on that adviser, even though the comments were made many years ago. The *Herald Sun* refers to a campaign that was run during student council elections in 1998 at Melbourne University. The article was clearly written tongue in cheek and was part of what we would all agree are the colourful antics that take place during university council elections.

It was written at a time when this person was young and immature. More importantly, the allegations are about events that took place before he became an adviser to the minister, before he started to work for the government. The comments were made four years ago. There is no suggestion of any improper conduct by Mr David Henderson since he took up his position as an adviser. There is no suggestion of any problems with his work performance. As already outlined by the Honourable Gavin Jennings, it is proper to assess people on the basis of the work they perform and the work they undertake during their working life. The adviser never meant for the article to be taken seriously; it was written tongue in cheek. It was an immature and foolish article, and this young person is well past that immature stage. He has gained maturity and would not find such statements humorous now. It would be unfair to deprive this young person of his job on the basis of something he did so many years ago.

I contrast the position taken by the opposition when in government and that taken by the Bracks Labor government on drug and alcohol services, particularly for young people. Mr Cover mentioned the unfortunate death in 1995 of a young woman after taking ecstasy. In 1995 the opposition was in government, and what did it do about drug services? What did it do about health issues?

Honourable members interjecting.

Hon. KAYE DARVENIZA — I am talking about what the coalition government did. It got rid of 2000 nurses. It closed Pleasant View alcohol and drug centre; it closed the Smith Street clinic. That is what it did. I know the then government closed those alcohol and drug services.

The opposition got rid of 2000 nurses, including nurses who worked in alcohol and drug services, by giving them voluntary departure packages. We saw the Smith Street clinic close, Pleasant View close and other alcohol and drug services close, as well as hospitals which provided detoxification services to these clients because they were left in almost bankrupt situations.

As a government we have injected funds, opened hundreds of beds, re-employed nurses and reinvigorated our health system and our community.

The PRESIDENT — Time!

Hon. A. P. OLEXANDER (Silvan) — This is a sad debate, and the saddest thing about it is not Ms Darveniza's contribution, although that comes very close. The saddest thing about the debate is that the minister responsible for youth affairs has washed her hands of the matter and walked out of this chamber. She should be here; she should be accountable; and she should take responsibility for her decisions. She is unprepared to do so; she wrings her hands like Pontius Pilate and walks out because she will not be accountable for this issue. Young people in Victoria are used to the government and the minister behaving in that way.

That is the saddest thing about this debate, and no matter how much government members try to pull the line and convince us that this is about what an immature young man did four years ago, it is not. The government has completely missed the point, and that is very sad too.

This is about public policy, process and standards in government; how governments operate; and the messages that governments send to young people in this state. Those are the highest responsibilities that the government should address in the debate and that it has completely failed to talk about.

Let's talk about message. What message does it send to young Victorians when they hear the Minister for Youth Affairs say, 'Well, it was a prank. I'm quite happy to have these standards in my office because all the person was doing was advocating in an election campaign that people should take ecstasy. All he was trying to do was attract votes so that's okay because he didn't really mean it'. It may be the case that he did not

really mean it — we do not know if he meant it or not because the government has closed him down; it will not let him talk to anybody.

That is another sad thing about the debate. The government has closed down this fellow. He cannot talk to the media; he cannot explain in his own words what he meant and what he means today. If he has had a conversion on the way to the minister's office, let him tell us about it. Maybe that would be a positive message for young Victorians. But no, Mr Jennings and other honourable members on the government side will not allow him to do so. That is another very sad part of the debate.

Honourable members interjecting.

The PRESIDENT — Order! This is by necessity a robust debate, but we are still entitled to hear what the honourable member is saying. Would others who wish to intervene do so at a reasonable level?

Hon. A. P. OLEXANDER — This is a debate about messages to young people; it is about process; it is about openness and accountability; it is about leadership — leadership that, sadly, this minister is incapable of expressing and that she cannot and will not demonstrate. It is a very sad day for youth affairs in this state.

What the government fails to understand is that in this situation there are always arguments about the motivations of people. There are also questions about what the motivations are today and what are acceptable standards of behaviour today. I take it that when Mr Henderson was interviewed by the minister, or people in her office, he did not disclose to the minister or to the government that he had undertaken this — as the government describes it — very stupid and dangerous activity when he was at university.

You have to look at that and ask: why did he not disclose it? Did he feel that the minister might have been concerned about it? Why would he have felt that the minister might have been concerned about that? We know why: because the message it would send to young Victorians is appalling.

Government members stand by their minister, who washes her hands and walks out of here, and they say, 'That's okay'. They try to bring the debate back to an immature young man four years ago in a university. It will not wash. This is about standards in government; about openness and accountability; about the message we send to our young people, and on all counts the government fails and the minister fails. Mr Henderson should be sacked, and if the minister will not sack him she should be sacked by the Premier.

Motion agreed to.

Rail: Mildura–Portland line

Hon. B. W. BISHOP (North Western) — I move:

> That the Council take note of the answer given by the Minister for Energy and Resources to a question without notice asked by the Honourable B. W. Bishop relating to the upgrade of the Mildura railway line.

Firstly, I put on record that the standardisation of the rail lines throughout Victoria, particularly the Mildura line, is an excellent idea, and I congratulate the government on its move towards that end. This had been done to gain access into the port of Portland, particularly for the mineral sands industry. I raise the issue today with no intention of scoring points. I simply want to get the job done in the best time for all of the industries and, I hope, the government. We must have the upgrade done at the same time to gain the rewards out of that, and I understand $8 million has been set aside to do the upgrade. The government is not showing any practical commonsense unless it does the work in the off period. I am not sure what compensatory arrangements are in place between the government and Freight Australia, Wakefields Transport and others, because it is a huge task to standardise the line and get the products down to the destinations while the project is taking place.

I am talking about operators who want to use rail, who want to increase the work and also want to have the fewest possible impediments to their operation as the work is done.

It is quite clear to me as an observer that it will cost much more if the work is not done during the October–December period this year. Whilst you never know what the grain season might end up being at the end of this year and what the volume might be — the crops are being sown now — let's be positive and hope it is a good year and that the grain transport system is running hard early next year. If it is not finished before then it will impinge on operations.

We may find that the Australian Wheat Board has an early shipping program and will want to operate early next year to catch good prices or reduce storage costs. It may be shuttling trains down to the port even at harvest time during December and the end of November. For example, the fast rail loading facility at Carwarp where the grain is delivered goes straight into the rail wagons and straight to port. That area certainly would gain from heavy operations in the front part of the year. It has

been reported to me that Wakefield Transport's normal operations are about 40 containers a day on the rail, while during the busy period — the table grape period at the front part of the year — its operations can go up to 100 containers a day. That is a lot of containers on the rail. It is a lot of containers to manage, in fact, if you have to have them on the road. As I have reported before, it is my understanding that Wakefield Transport has already hired 40 semitrailers, and is committed to the October–December time line — in fact, the government clearly stated that that was when the work would be done. It is a huge cost for that particular organisation, which has acted in good faith and certainly maximised the use of rail transport.

I am not too sure of the time required to do the standardisation and upgrade. I know it has been reported that the standardisation process may well be able to be done in a period as short as six weeks — and that is from Maryborough to Mildura. Access is clear from the Mildura line until the process goes north from Maryborough. It would seem to me that it would be a concentrated effort if it were able to be done in that time. Certainly we do not know at all where the work on the upgrade is at present. Again, we have noted that there is approximately $8 million set aside for that, and we need that to ensure that the savings are in place.

Wakefield Transport was very clear in the advice it gave to me — that is, October–December is the preferred time. I hope that Freight Australia has been consulted fully on this particular issue and not treated as badly as it has been in the past when bills relevant to it have come before this house and Freight Australia has not even been advised of them.

To conclude, I would urge the government to put into place the October–December time line for the standardisation and upgrade program on that train line so this essential job can be done with minimum interference to the businesses of the operators who are absolutely dedicated to rail.

Motion agreed to.

QUESTIONS ON NOTICE

Answers

Hon. M. R. THOMSON (Minister for Small Business) — I have answers for questions on notice 2494, 2528, 2534–7, 2539, 2541, 2543, 2545, 2547–9, 2552, 2553, 2555, 2559, 2560, 2562 2565, 2568, 2574–7, 2579, 2581, 2583, 2585–9, 2592, 2593, 2595, 2599, 2600, 2602, 2605, 2739, 2761, 2820, 2821–3.

DRUGS AND CRIME PREVENTION COMMITTEE

Crime trends

Hon. S. M. NGUYEN (Melbourne West) presented report, together with appendices.

Laid on table.

Ordered to be printed.

Hon. S. M. NGUYEN (Melbourne West) — I move:

That the Council take note of the report.

It is a great honour to speak on behalf of the Drugs and Crime Prevention Committee of which the Honourable Cameron Boardman and I are members, with honourable members from the other place.

Crime is an issue of concern to the community. There are 450 000 individual crimes recorded by the Victoria Police each year, not counting traffic, parking and other regulatory infringements. The Victorian parliamentary Drugs and Crime Prevention Committee has been required to inquire into, consider and report on the incidence of crime in Victoria and to report every six months to the Parliament on levels of crime, areas of emerging concern and, where suitable, options for crime reduction or control. The committee has tabled three reports; this is its fourth report to the Parliament.

The committee's primary goal is to answer the first question: is the level of crime in Victoria increasing? Part B of the report relates to how crime statistics in Victoria are compiled and details some of the key features of the scope, definition and counting rules that bear on how we interpret crime statistics.

Part C provides a brief overview of the level and rates of each type of crime and the main findings of the analysis of crime trends between July 1996 and June 2001. There are a lot of tables in this part. Table 1 shows the number of crimes recorded in each of the 27 categories over the last five years. The first group of crimes is referred to as crime against the person, where one in 12 crimes are reported to the police. Nearly two-thirds are non-sexual assault of some kind, and about one-quarter are sexual assault.

The second group, crime against property, represents 80 per cent of the crimes recorded by police each year, mainly involving theft of or damage to property, including burglary, theft and fraudulent offences.

The third group is drug crime. There are two categories: one is providers who are involved in the growing, manufacturing or selling of drugs; the second is consumers.

The fourth group covers public places, people involved in prostitution and public drunkenness, people failing to appear at court, being unlawfully in possession of weapons, explosives or housebreaking equipment, and some other things.

Part D examines in detail each of the 27 crime types used by the Victoria Police in statistics. The report describes how the number of crimes recorded each year has changed over the period between 1996–97 and 2000–01. For each crime two tests are applied: a test for short-term trends for the last two years, and a test for long-term trends over the last five years.

Part E covers seasonal variation in crime rates. This part of the report examines the relative importance of seasonal variation compared with other factors that bring about change in crime rates, such as assault, motor vehicle theft and drug consumer offences.

The last part is part F which makes recommendations on how crime statistics should be collected and presented to Parliament.

The ACTING PRESIDENT (Hon. C. A. Strong) — Order! The honourable member's time has expired.

Hon. B. C. BOARDMAN (Chelsea) — I thank my colleague the Honourable Sang Nguyen for tabling the report this morning and for his contribution to the committee. He briefly went through the structure of the report but unfortunately did not refer to any findings in the report, which I will now do. In doing so I point out that it is important for anyone interpreting any information contained in this report to understand the basic premise that is applied to collating and publicising information and what rules need to be equally applied in trying to interpret it.

The committee attempted to identify and answer the question of whether crime in Victoria is in fact increasing. A number of tests can be applied to try to determine if that is the case. Irrespective of which test you apply you may get a right or wrong answer. You might get different answers, and that is the unfortunate part of the robust political environment where politicians will use these statistics to their advantage.

If a raw statistical analysis is done, as the committee has done in collating over the past five financial years available to it, the statistics indicate that crime has increased in Victoria, and in some specific offences it has increased quite dramatically. Equally it has decreased in other offences.

A simple explanation is that the interpreter or the person reading the report would not be availing themselves of some of the issues that definitely need to be considered to be able to make a value judgment. Not all changes in the crime rate are important, and that is because some changes are the result of real upward or downward trends, while others might be simply reacting to random variation in the environment. For example, if police have an operation in a specific area where they are targeting a specific offence, of course they will detect more offences, and that will result in a rise in crime statistics. It might not necessarily be that there is a rise in crime for that area but it shows that a variation needs to be considered to make a real interpretation.

Three types of variations need to be considered for that purpose. The first is the regular trend variation. If you apply a basic trend analysis to these types of statistics you can determine whether that has occurred. The second is cyclical or seasonal changes, and the committee goes into some detail to explain whether that is appropriate for certain offence categories. Of course an irregular variation needs to be considered as well.

The committee decided to print the offences on a basic reporting schedule between the financial years of 1996–97 and 2000–01, and also published the rates of crime on a per capita basis. The findings are: offences of homicide, robbery, assault, abduction or kidnapping, burglary, including aggravated burglary, theft from motor vehicle, theft of motor car, justice procedures and weapons offences all increased over that time. That is what the raw data says. However, offences such as rape, other sex offences, arson, deception and drug offences over the equal period decreased. What does that mean? Does it mean that is an accurate depiction of the crime rate in Victoria?

In order to determine that the Drugs and Crime Prevention Committee applied a statistical test on a short-term basis and also a long term basis — the short-term being two years, the long-term being five years — to determine whether that variation is accurate.

For most of the offences there were slight increases and decreases, as I have identified. The offence of robbery, for example, recorded a 27 per cent short-term increase over the two-year period and a 24 per cent long-term increase over the five-year period. The offence of aggravated burglary — although there cannot be any trend estimate for the five-year period because of the

definition and legislative issues — recorded a 45 per cent increase over that period. The same applied with theft of motor vehicle: 15 per cent over two years and 8 per cent over five years.

If we look at drug crimes — and I do this by way of comparison — we find over the short-term period of two years there was a decrease to 14 per cent and the total drug crime decreased 12 per cent.

That incorporates consumer and trafficable drug crime. I do not have sufficient time to go through in great detail some of the reasons why those variations may occur. Needless to say, we analysed seasonal variations of three offences — assaults, theft of motor vehicles and drug consumer crimes — and found very different reasons as to why those types of offences may increase from one period to another. I encourage honourable members to read the report.

It is important to place on the record my sincere thanks and gratitude to the staff of the Drugs and Crime Prevention Committee, Sandy Cook, Michelle Heane, Chantel Churchus and in particular Dr Stuart Ross, who, as a consultant, was instrumental in enabling the committee to present the report. It is a good read, and I encourage honourable members to read it.

Motion agreed to.

ECONOMIC DEVELOPMENT COMMITTEE

Structural changes in Victorian economy

Hon. N. B. LUCAS (Eumemmerring) presented report, together with appendices and minutes of evidence.

Laid on table.

Ordered to be printed.

Hon. N. B. LUCAS (Eumemmerring) — I move:

That the Council take note of the report.

I place on the record first and foremost the gratitude of all the members of the committee to the staff of the Economic Development Committee, led by Richard Willis, executive officer, Karen Ellingford, senior research officer and Tania Esposito, office manager and research assistant, all of whom during this inquiry have done a fantastic job involving not only the investigations and drafting of the report but the hard slog we have had in investigating this matter for the Parliament.

The organisation of the hearings and the arrangements for us to travel around seeing organisations and interviewing members of the community has been efficient. I know all members of the committee will join with me in placing on the record our thanks and gratitude to those officers.

Secondly I should record the fact that this is a report that has been agreed to by all members of the committee in a tripartite manner. There is no minority report. It is a report we have all agreed to and it is worth while. It covers a wide-ranging set of issues to do with banking, postal communications, municipal services, public transport, employment services and information technology and communications.

The committee travelled around Victoria and interviewed a wide range of people and organisations. In the chairman's foreword I have noted a few comments about the situation country Victoria finds itself in:

> Rural communities acknowledge that there will never be a return to the days of old. Rapid technological advancement and globalisation have forever changed the way in which services are delivered. It is no longer economically viable for all of these small rural towns to have a wide range of commercial premises including several banks and a local municipal office in their area.

That is a fact. There are in the order of 70 findings in the document and more than 50 recommendations are made for the consideration of Parliament. In the challenges ahead the greatest challenge confronting small towns is their ability to deal with and get over the problem of maintaining essential services in the light of declining population levels.

This is a real challenge. In many country towns, however, people have made a difference. It was interesting, and is noted at page 247 of the report, to see what some towns have done to make a difference. At the hearing in Tongala the committee spoke to Ms Sue Curtis, a lady who has been involved in having a go, shall we say. She said:

> Despite great difficulties the senior citizens got to work, purchased a building, refurbished it, and it was opened officially by Jeanette Powell on 4 September.

They needed a building and did something about it. She also said:

> … the impact is totally relevant to the attitude and determination of the community. A positive community will grow no matter what you throw against it.

That is an attitude we saw throughout Victoria. It was exciting to see citizens establishing community banks, getting involved with rural transaction centres and

having a worthwhile go. The point made to us was that if the community is willing to get together to make a difference they can succeed no matter how big the town, no matter how many difficulties they have before them.

I hope the report will be given serious consideration because its recommendations and findings certainly provide ideas for people. I put on record my gratitude to all the members of the committee from all sides of Parliament who participated in what has been a very worthwhile exercise.

Hon. R. A. BEST (North Western) — It gives me pleasure to comment on this report. All members from each of the political parties represented on the committee have not only worked together to compile the report but have also travelled throughout country Victoria to hear the evidence first hand. I urge the government to look seriously at the findings and the committee's recommendations because unquestionably a range of issues impact on the structure and fabric of country communities. It does not matter whether it is telecommunications, postal services, transport services or even the delivery of municipal services, a number of the report's recommendations can improve the life of people in their local communities and the way they work within those communities.

It is particularly gratifying as a member of a parliamentary committee to get agreement in a report. One of the things that can occur in Parliament, despite its adversarial nature, is that at times political views are put aside for the greater community good. Mr Theophanous, Mr McQuilten and Ms Darveniza from the Labor Party, Mr Lucas, Mr Craige and Mrs Coote from the Liberal Party, and I have had the opportunity to put politics aside and look not only at what is needed to enable country communities to take their place in a modern society but also at the way they do their business, at the way their transport linkages connect to the major regional centres through to the metropolitan area and at the inadequacies of some of the services provided.

Unfortunately we are going through a transition period throughout the world where technology is very much a requirement of today's society. Some of the recommendations regarding access to telecommunications and modern technology are important for our country communities. The committee found that there is very much a boom-bust mentality among country communities. Many country towns are enjoying enormous growth because of horticultural production or because of the opportunity to grow particular crops that are meeting world demand, while unfortunately

other communities are not enjoying growth at this time. That is especially true of broadacre farming communities. We are seeing a polarisation of the population towards regional centres at the expense of many small communities.

One of the things the committee identified is the need to ensure that the very fabric of those communities can still be assisted, and that is the objective of the report's recommendations.

One of the major concerns we have, which was unanimous across party lines, was the role that the major banks have played in withdrawing services from country communities. All of us are particularly concerned that so many bank branches are closing across country Victoria. On the positive side, we have seen a bank that I am closely associated with but not a shareholder of — the Bendigo Bank — taking a positive and proactive role in empowering the local community to think wider than just where they do their banking. It is looking at the way it can provide economic benefit to the local community and, hopefully, in the future attract investment, greater competition and spending power to the community. It was interesting to identify some of the statistics associated with where bank branches had closed and the withdrawal of spending power within those towns.

This is a good report; its recommendations give the government a real opportunity to take positive action to assist the very fabric of many of the country communities across our state.

Hon. ANDREA COOTE (Monash) — I have great pleasure in unexpectedly being able to speak on the motion because the Honourable Theo Theophanous is not able to do so, and I thank the government for giving me this opportunity.

I had great pleasure in being involved with this report. I too would like to put on record my thanks and gratitude to the Economic Development Committee staff, Richard Willis, Tania Esposito and Karen Ellingford. They did a professional job and it was an interesting and enlightening committee to be on.

As an inner-city member of Parliament it is difficult for me to understand some of the complex issues affecting rural and regional Victoria, and being involved with this report gave me an opportunity to see some of the issues first hand. The committee went from Gippsland right up to Mildura and saw much of what was going on. I am really impressed by what I see in rural

Victoria. There is enthusiasm, excitement and some wonderful things are happening.

I pay special attention to the town of Nhill, which is in Mr Hallam's electorate. Nhill has taken the opportunity to develop two industries that are doing extremely well. One is Lowan Whole Foods, the muesli and health food product maker, and the other is Luv-a-Duck, the head office of which is in my electorate. Unemployment in Nhill is zilch — they have to import people from South Africa to help increase the productivity of those two industries — and housing is at a premium. This is a small town that has taken an initiative and put itself on the map, and that is just one example. Others include Edenhope, Traralgon, and the list goes on.

It was fascinating to see first hand the impact of the closure of banks. In Lancefield the bank disappeared and shopkeepers in particular had to travel quite a way on a round trip just to get money to be able to offer EFTPOS services to their customers. The townspeople were very concerned and got together and developed a community bank, and the vitality of the town came back. As the people themselves said, it was even difficult to get parking in Lancefield once the bank was back; the whole dynamics of the town changed. One of the aspects of the lack of the bank was leadership. Once the staff of the bank went there was no-one to coach the football team or be involved with community groups. Those were the side effects experienced when an institution like the bank disappeared.

One of the surprises was to see how postal services have improved; access is better than it has ever been before. Another was the rural transaction centres, the infrastructure for which is being provided by the federal government. In Welshpool the committee saw a shop which developed its infrastructure through federal funding. The community has developed a progressive centre and is to be congratulated for it. The rural transaction centre has a Medibank facility and a bank facility and includes a spot where people can go to access the services they want. For example a jeweller comes once a week, as does a person who does shoe repairs. It is a vital area which has been developed for the community by the community and is to be commended.

Those things are happening all over the state, and I feel proud to be a Victorian. I gained a great deal from the whole process and I now have a much greater understanding of what some of the issues are. I encourage everyone in the house to read the report.

Motion agreed to.

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Victorian Auditor-General's Office

Hon. R. M. HALLAM (Western) presented report on 2001 performance audit.

Laid on table.

Ordered to be printed.

Hon. R. M. HALLAM (Western) — I move:

That the Council take note of the report.

There is a statutory requirement that a review of the Victorian Auditor-General's office be undertaken every three years by an independent auditor appointed by the Public Accounts and Estimates Committee. That requirement is designed to ensure that the Auditor-General remains accountable to the Victorian Parliament and through the Parliament to the people of Victoria, and that the work of his or her office is of the highest standard.

The report that I table today represents the committee's reasoned response to the independent performance audit as produced by Stuart Alford, who was commissioned by this Parliament to undertake that task. It is a quite unremarkable report, and that is good because Stuart Alford's performance review by and large is a resounding tick for the Auditor-General's role and performance. Sure, there are some instances cited in the report in which operational improvements are discussed, and the committee most certainly would not want to dismiss those, but we should also acknowledge that they are at the margin. They are more housekeeping than anything else, and we do not believe they go to matters of substance in respect to the Attorney-General's performance.

The report is structured to have the reader see Mr Alford's suggestions for improvement with the Auditor-General's response to each, and then they are overlaid with the committee's response to both the suggestion and the response.

We should be reassured by the report because it is a clinical assessment of the Auditor-General's office and performance, and it is a very good report card. There are two stand-out issues canvassed in the report that I would particularly bring to the attention of honourable members. The first of those is covered in chapter 3, which goes to the frequency of performance audits of the Victorian Auditor-General's office.

Hon. Bill Forwood — Too many, too often!

Hon. R. M. HALLAM — Thank you, Mr Forwood.

In 1998 the previous performance auditor recommended that the period be reduced from five years to three years, and that recommendation was rejected by the government. Again, in the performance audit covered by this report we see a similar recommendation. Again, the committee is not persuaded. The reasoning for the stance taken by the committee is set out on page 62. I invite members, including Mr Forwood, to refer to the response by the committee. But we do not think that a consistent, clean bill of health is a good reason to defer the check-up. Nor are we persuaded on the cost factor because we see there is some value in confirming that all is well rather than simply hoping or presuming that to be the case.

In chapter 4 we go to the question of who qualifies as an auditor to undertake the performance audit of the Auditor-General's office and the assumption under the Audit Act that that person must be a qualified accountant. That raises a number of quite serious issues.

The first of those is that it is quite hard to find an accountant of sufficient experience and seniority who does not have an existing relationship with the Auditor-General. In those circumstances we run into at least the inference of a potential conflict of interest.

Secondly, it is our view that, in any event, the performance audit process is more about a strategy management review of the Auditor-General's office and that this goes to issues of accountability rather than those associated with a traditional financial audit.

It is on those grounds that the committee sees real advantage in expanding the qualifications of those deemed eligible to undertake this performance review and suggests quite seriously that the law be amended to remove the existing narrow qualifications.

Our arguments are set out in the report. I refer honourable members to chapter 4. I certainly commend those arguments to the government.

This is a good report in that it confirms our presumption that the Auditor-General is fulfilling his role as the public watchdog. I thank Mr Alford for a very professional job in the review, and I thank the members of the committee for what I consider to be a very worthwhile report.

Motion agreed to.

PAPERS

Laid on table by Clerk:

Melbourne City Link Act 1995 —

City Link and Extension Projects Integration and Facilitation Agreement Eighth Amending Deed, 24 May 2002, pursuant to section 15B(5) of the Act.

Melbourne City Link Sixteenth Amending Deed, 24 May 2002, pursuant to section 15(2).

SELECT COMMITTEE ON THE URBAN AND REGIONAL LAND CORPORATION MANAGING DIRECTOR

Terms of reference

Hon. BILL FORWOOD (Templestowe) — I move:

That paragraph (j) of the resolution of the Council of 5 December 2001 appointing the Select Committee on the Urban and Regional Land Corporation Managing Director be amended so as to now require the committee to present its final report to the Council on or before 30 September 2002.

On 5 December, in response to considerable interest throughout Victoria, the Legislative Council resolved to establish a select committee to inquire into the appointment of Mr Reeves as the managing director of the Urban and Regional Land Corporation.

Paragraph (j) of that motion states:

That reports of the committee may be presented to the Council from time to time …

And I make the point that two have so far been presented —

… and that the committee presents its final report to the Council on or before 31 May 2002.

The motion before the house today seeks to extend that period to 30 September 2002. It is narrow in its focus, just dealing with the issue of the extension of time. Today is not a day when we intend to canvass in detail issues that have come to the fore in either of the two interim reports or in the stacks of evidence that have been taken by the committee to date.

On moving the motion on 5 December I made some comments about the right of the people of Victoria to know. That was the purpose of the inquiry being established at that time. At that time I believed that a period of nearly six months, from 5 December to 31 May, would be sufficient time for the work to be done properly in the interests of all Victorians. I make

the point that at that time my recollection is that the government moved an amendment, which was defeated in this chamber, that the length of time be limited to six weeks, and that obviously would not have been long enough for the task to be done.

The committee, it is apparent to all, has worked hard. It first met on 7 December. It has to my count had at least eight public hearings and taken evidence from, I think, over 20 witnesses. As I said earlier, transcripts of those hearings are available for people who are interested in the information that has come from them. The committee has by my count had at least five or six deliberative meetings as well. It is apparent that because of some actions by the executive government, in particular as reported in the two interim reports, the committee has not been able to complete its work. We discovered yesterday, on the tabling of the Frankston report — Mr Wren's report — that upper house committees have their uses, and it is entirely appropriate that committees have the opportunity to complete their work and not be rapidly brought to a halt before outstanding issues have been addressed. It is my belief that it is in the interests of the people of Victoria that the inquiry into the appointment of the Urban and Regional Land Corporation managing director be extended through to 30 September, which will give the committee the chance to complete its work and report to the Parliament.

Hon. GAVIN JENNINGS (Melbourne) — Time and time again, despite the fact that honourable members of this chamber try to make out that it is a contemporary chamber, that it brings accountability to the Parliament and the executive government in the name of protecting the public interest and pursuing proper administration in this state and purports to be a modern chamber, the way we operate harks back to yesteryear.

My response to this motion, when I saw what was on the notice paper as I was whiling away the wee small hours of the morning contemplating today's activities in the chamber, was to be reminded of the old days and those Bob Hope and Bing Crosby 'Road to' movies. What came to my mind was that when they closed up shop as they embarked on those endeavours they would leave a sign on the door saying, 'Gone fishin''.

That is exactly what this resolution proposes: leaving a sign saying, — 'We've gone fishin' over the winter break'. In fact, we've been out there, stranded in exotic places for the last few months. Neil and Gordon and Roger, Theo and I have been doing our impersonation of Bob and Bing, on an exotic desert island, fishin'. We have been desperately trying to land a big fish. In fact I put it to the committee that we have been spectacular failures. We have actually thrown out many lines and nets; we have gone deep-sea trawling — we have actually tried all the devices known to the fishing industry. In fact, on some occasions when we could not actually land a fish, we have tried to take pot shots at the fish. We have not been able to land the big fish that would warrant this select committee concluding its deliberations and it certainly does not warrant that the fishing expedition be continued over the winter break.

The government opposes the motion today on the basis that there is substantial evidence about to say that we will not land a fish, that despite taking pot shots at those fish we are trying to land, we will not get the silver bullet that lands any one of them. I encourage the committee to call it quits, give up on our fishing expedition and come back and let's do some productive work. The sooner the committee concludes its work and makes its report — the government is ready, willing and able to conclude the report based on the substantial body of evidence that has come before us. As Mr Forwood has said in his contribution, we have had public hearings including 20 witnesses, some of whom have been on the witness stand almost to the state of exhaustion.

Hon. N. B. Lucas — That was your questioning!

Hon. GAVIN JENNINGS — It was rigorous questioning, as Mr Lucas clearly appreciates. There was ample — voluminous — documentary evidence that the committee has been required to examine and still, through two interim reports, we have not been able to provide information to the Council which would warrant concern in the public domain or the extension of the terms of reference of this committee.

On behalf of the government I say that the government opposes the motion. It remains ready, willing and able to conclude our report and provide a full report to the Council. I look forward to any substantial piece of evidence that this committee obtains between now and the time that it reports because I have confidence that the weight of evidence accumulated through the committee's previous and future inquiries will lead to support for the proposition that the select committee was not warranted in the first place and certainly will not add to the net value of this Parliament's consideration. So bring on the final report as quickly as possible.

I oppose the resolution. Let's give up on this wasted exercise which is a monumental fishing expedition.

Hon. P. R. HALL (Gippsland) — Mr President, I am not sure whether the Honourable Gavin Jennings was serious in his attempt to provide the house with 5 minutes of comedy this morning or whether he was just being totally frivolous in his comments. The latter is probably closer to the case.

Hon. R. M. Hallam — Many a true word is spoken in jest.

Hon. P. R. HALL — It was certainly not a serious contribution from the Honourable Gavin Jennings. It was a totally irrelevant contribution that failed to address any of the substantial issues that were encompassed by the motion and foreshadowed in the comments by the Leader of the Opposition in putting this motion before the house today.

The Select Committee of the Legislative Council on the Urban and Regional Land Corporation Managing Director was established on 5 December last year. It is worth while reflecting on why that committee was established. At that time, and certainly still today, there was significant public concern with the process that led to the appointment of Mr Jim Reeves as managing director of the Urban and Regional Land Corporation (URLC). The air needed to be cleared, and those words were used frequently in the contributions to the debate which established this committee. So this committee was established. It has been diligently pursuing the task assigned to it since its first meeting on 7 December, and it has reported to the Parliament on two occasions, in March and May of this year.

I commend the committee on the work it has undertaken and also for the way it has reported back to the Parliament. Its reports have been concise, factual and, more importantly, they have been to the point. They have not been padded out with extraneous material; they have been direct and to the point, and I commend the committee for that. As I said when I supported the establishment of the committee, the air needed to be cleared, but unfortunately, if we read the two reports that the committee has so far presented to the Parliament, the air is far from being cleared; it is in fact more polluted now. That veil of secrecy over the whole affair seems to have become heavier.

The hole seems to be getting deeper for the government, and as confirmation of that a casual reader may need to look at only the subheadings in the two reports that have been presented to the Parliament at this time. In the first interim report the subheadings include 'Intervention of the Honourable R. J. Hulls, MP, Attorney-General', 'Delay in the provision of information', 'Ministerial breach of summons', 'Ministerial advisers' breach of summons', 'Failure to provide transcripts', and 'Pre-emptive ministerial responses'.

In the most recent brief report, tabled in Parliament just this month, the subheadings include 'Intervention of the Honourable Alex Andrianopoulos, MP, Speaker of the Legislative Assembly'. I can understand why members of the committee feel so frustrated in this matter because it appears that there has been a cover-up on this issue from day 1 and it continues.

In the second report to Parliament earlier this month the committee pleads with this house to assist it in trying to resolve these matters. The final point in the report says:

> The committee therefore formally reports to the Legislative Council its dissatisfaction at these matters and seeks direction from the house on how the committee might now fully discharge the responsibilities conferred on it under the terms of reference.

I cannot give the committee any learned advice about how it can pursue the matter further and try to get to the truth. I do not know. The very least we can do is give the committee more time to consider these matters. In the two interim reports presented to this Parliament we have seen ample evidence that, given more time, the committee may get closer to finding the whole truth regarding the appointment of the managing director of the Urban and Regional Land Corporation.

From the point of view of the National Party, we wish to see this house and its committees function properly. It will therefore be extremely helpful to give that committee the extra time. The National Party wholeheartedly supports this resolution. We can only hope the government becomes more cooperative and assists with this inquiry, and gets to the bottom of the whole matter.

House divided on motion:

Ayes, 27

Ashman, Mr	Furletti, Mr
Baxter, Mr	Hall, Mr
Best, Mr	Hallam, Mr
Birrell, Mr	Katsambanis, Mr (*Teller*)
Bishop, Mr	Lucas, Mr
Boardman, Mr	Luckins, Ms
Bowden, Mr	Olexander, Mr
Brideson, Mr	Powell, Mrs (*Teller*)
Coote, Mrs	Rich-Phillips, Mr
Cover, Mr	Smith, Mr K. M.
Craige, Mr	Smith, Ms
Davis, Mr D. McL.	Stoney, Mr
Davis, Mr P. R.	Strong, Mr
Forwood, Mr	

Noes, 12

Broad, Ms	McQuilten, Mr
Carbines, Mrs	Madden, Mr
Darveniza, Ms (*Teller*)	Mikakos, Ms
Gould, Ms	Nguyen, Mr (*Teller*)
Hadden, Ms	Romanes, Ms
Jennings, Mr	Thomson, Ms

Pairs

Atkinson,Mr	Theophanous, Mr
Ross, Dr	R. F. Smith, Mr

Motion agreed to.

ADVENTURE ACTIVITIES PROTECTION BILL

Second reading

Debate resumed from 15 May; motion of Hon. BILL FORWOOD (Templestowe).

Hon. JENNY MIKAKOS (Jika Jika) — In the absence of the Honourable Theo Theophanous I am pleased to make a contribution on behalf of the government in respect of the Adventure Activities Protection Bill. The Bracks Labor government regards the problem facing the adventure tourism industry as very serious. It has been precipitated by the significant escalation in the cost of public liability insurance in recent times.

There are numerous reasons for this escalation in the cost of public liability insurance. Unfortunately, the debate so far has not fully canvassed all these reasons. They relate to issues concerning the failure of the market; the failure of adequate numbers of underwriters prepared to offer affordable public liability insurance to enter the Australian insurance industry; the collapse of the HIH corporation; and the terrorist attacks in New York in September last year. One of the many reasons we are experiencing a significant increase in premiums for public liability insurance at the present time relates to the claim of a so-called increase in claims in recent years.

The government is prepared to look at this very important issue. I know that the honourable member for Benalla in the other place, Ms Allen, is working tirelessly with the community in the Mansfield region and with the adventure tourism industry in the state to come up with workable solutions to this problem.

The government is prepared to tackle this issue, which is the reason why it has played a leadership role in this issue. The Minister for Finance, the Honourable John Lenders, has made a number of important announcements regarding the government's approach to public liability insurance and insurance in general. The government has a number of concerns regarding the bill the Liberal Party has brought before the house and I will outline those concerns shortly.

Debate interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! I welcome to our gallery the President of the Bundesrat, Mr Klaus Wowereit, who is also the governing mayor of Berlin, and his delegation. I am delighted to have you in our Parliament. I was fortunate to be a guest of your Parliament early in 1999. I can recommend such a visit to all of my colleagues.

Honourable members applauding.

The PRESIDENT — Order! I look forward to speaking with you personally shortly. Welcome.

ADVENTURE ACTIVITIES PROTECTION BILL

Second reading

Debate resumed.

Hon. JENNY MIKAKOS (Jika Jika) — As I was saying, during my contribution I will be seeking to outline the government's concerns about the bill brought before the house by the Liberal Party. I understand the Leader of the Opposition has been provided with a letter from the Minister for Finance in the other place in which the government's position is outlined, but I will seek to elaborate on the concerns outlined in that correspondence.

Hon. Bill Forwood — Tell us what time I got the letter!

Hon. JENNY MIKAKOS — Let me say that you probably got it before I did. The bill has not been before the chamber for a long time. There have been discussions between the Mansfield tourism operators, the Victorian Tourism Operators Association and the Victorian government for some time. The government is concerned about the problems being experienced by Victorian tourism operators. However, during this debate it is important I indicate the very genuine commitment the government has to finding a workable solution to the problems. Unfortunately, this piece of

legislation does not offer a workable solution to the crisis being experienced by adventure tourism operators in this state at the present time.

The government regards the legislation as seriously flawed, as having a number of serious drafting problems, but apart from that, it is conceptually problematic. It is for that reason that I am indicating to the house that later in my contribution I will move a reasoned amendment that will outline the government's position in respect of this piece of legislation.

In his correspondence to the Leader of the Opposition, the Minister for Finance indicates that the government appreciates the efforts made by the Mansfield public liability task force to seek solutions to the current problems being experienced by the adventure tourism industry. The minister also acknowledges the contribution, as I indicated earlier, made by the honourable member for Benalla who has been working hard to come up with workable solutions.

The government has a number of concerns about this legislation and I note that in the correspondence to the Leader of the Opposition the government has also provided him with legal advice provided to it by the Victorian Government Solicitor's Office. I will allude to those legal concerns in a moment. The public policy issue that needs to be grappled with is whether, as a community, we think it acceptable that we remove people's rights to seek compensation under common law — rights that they currently have — and require them to seek reliance solely on the social security and Medicare systems as a means of financial redress. That is the public policy issue we need to grapple with because what the bill seeks to do is preclude people from seeking access to compensation under common law if their level of injury does not meet the 30 per cent impairment test — a test honourable members will be familiar with as it operates under the transport accident compensation and Workcover legislation.

The fundamental difference here is that under the Transport Accident Commission and Workcover people who fall below the 30 per cent impairment test have access to compensation for loss of earnings, medical expenses and so on. Under the bill these people will have no redress to compensation for loss of earnings, pain and suffering or medical or other expenses they may incur or their families may face. They will be forced to rely solely on the Medicare system or the social security system, and ultimately the cost will be borne by the Australian taxpayer.

I challenge the policy thinking that has gone into the bill as indicated in the objects of the proposed legislation set out in clause 4(c):

> to reduce the social and economic costs to the Victorian community of compensation for injuries arising out of or in the course of adventure activities …

If what we are doing is shifting the burden away from the insurance industry to the taxpayer, then I would argue that is not reducing the social and economic costs to the Victorian community. What is happening here is cost shifting, and ultimately someone will pay the cost — and that person will be the Victorian taxpayer.

The advice provided by the Minister for Finance to the Leader of the Opposition is detailed, and I note that the government has given serious consideration to the proposed legislation and has found it to be wanting. We are very determined to come up with a workable solution. The government has had discussions with other state, territory and commonwealth governments on the issue, and there has been an attempt to adopt a national approach to solving what is essentially a national issue.

The insurance industry is regulated by the national government and by federal legislation. It has been the failure by the Howard government to properly regulate the industry that has led to the severe problems we are currently experiencing. It will be interesting to see what comes out of the royal commission into the collapse of the HIH Insurance corporation — the biggest corporate collapse in Australian history — and to learn what recommendations that royal commission makes about the role of the Australian Prudential Regulatory Authority, the body that oversees the Australian insurance industry. It is clear that the federal government fell asleep at the wheel when it came to regulating the insurance industry in this country.

Hon. W. I. Smith interjected.

Hon. JENNY MIKAKOS — It has failed to keep proper checks on levels of debt and the exposure of companies such as HIH Insurance, and that is having a serious impact on public liability insurance premiums in this state.

I take up the interjection of the Honourable Wendy Smith. This government has taken the lead in offering solutions to the HIH Insurance collapse, and I find it outrageous and extraordinary that Ms Smith seeks to raise the issue given it is her party in this chamber that is holding up legislation that will provide compensation to home owners affected by the HIH collapse.

Hon. Bill Forwood — On a point of order, Mr Deputy President, the bill before the house today is specific and relates to adventure tourism. It is quite legitimate for the honourable member to bring in the collapse of HIH Insurance as she did at the beginning in relation to adventure tourism, but to now start referring to other pieces of legislation that have nothing to do with the bill is completely out of order, and I invite you to so rule.

Hon. JENNY MIKAKOS — On the point of order, Mr Deputy President, I was responding to an interjection from the Honourable Wendy Smith. I appreciate that is disorderly. I will come back to the bill, but in my contribution I am talking about insurance as a whole and the government's position on insurance.

The DEPUTY PRESIDENT — Order! On the point of order, responding to interjections is not orderly. I am sure that the honourable member is building her case, and I am certain she will come back to the bill immediately.

Hon. JENNY MIKAKOS — The legislation has a number of problems. The advice given to the Leader of the Opposition by the Minister for Finance indicates that there are problems in requiring the relevant insurer to conduct a detailed assessment of the level of impairment of a claimant. The letter states:

> The application of an AMA impairment assessment is a scientific and complex procedure that is not currently undertaken by insurers. It is a test that is capable of challenge in the courts and so requires a high degree of expertise in its administration. There is no evidence that insurers are capable, interested or willing to perform this type of assessment. There is no evidence that the costs associated with this new regime have been assessed or cleared with insurers. Unlike Workcover, it appears that the bill will allow AMA assessments to be reviewed by the courts; this will increase the degree of litigation in this area, not contain it.

That is one of the fundamental problems with the bill: it puts the onus for assessing the level of impairment back on the insurance industry.

My understanding is that the Insurance Council of Australia has not come out and supported the legislation. The Liberal Party has bolted ahead trying to pre-empt the government response on this important issue, trying to claim political credit by seeking to sponsor into the Parliament a bill it did not even draft. I think Peter Clark, SC, has drafted it in consultation with the operators in Mansfield.

The insurance industry has not indicated that this legislation is workable — that they are prepared to become involved in assessing levels of impairment. Without that level of commitment, this legislation is just not going to work, because that is the way this bill is premised. It says that a level of impairment has to be assessed by an insurer or, where there is no insurer, by the operator. I am sure that a great number of tourism operators out there would want to get involved in assessing levels of impairment and get into medical issues that they know nothing about and are probably not particularly interested in!

Other problems with the legislation relate to the fact that the second-reading speech makes quite an extraordinary, and in my view completely unjustified, claim that:

> Actuarial advice received by the task force —

being the Mansfield public liability task force —

> is that operators could look forward to substantial premium relief if insurers were not at risk for minor claims.

I look forward to the members of the opposition providing that actuarial advice, because it has not been forthcoming to date.

Hon. Bill Forwood — It was given by Denise Allen to the Minister for Finance!

Hon. JENNY MIKAKOS — That is not the case, Mr Forwood — —

Hon. Bill Forwood — Absolutely!

The DEPUTY PRESIDENT — Order! Through the Chair, Ms Mikakos. Mr Forwood!

Hon. JENNY MIKAKOS — I actually have a bit of paper here that was provided by the Mansfield task force to the honourable member for Benalla. The document says:

> No written calculations were commissioned on a specific database because of budgetary constraints.
>
> However, two actuaries offered rough calculations on the summarised VTOA —

being the Victorian Tourism Operators Association —

> claims for the last five years. Those calculations revealed a probability of future claims being reduced in the range 0 per cent–50 per cent. In other words, this bill would break the spiral of increase, and a reduction of 50 per cent could result.

I find it quite preposterous that members of the opposition are seeking to hang their hats on this bit of paper — that they are seeking to rely on rough calculations by actuaries that are seeking to claim potential reductions of somewhere between zero per cent and 50 per cent. Well, that is a pretty broad range, and it says here that there were no written calculations

because of budgetary constraints. So no written advice has come to the government setting out what the actual reduction in premiums will be.

The insurance industry has been asked to provide the government with these types of assurances. It has not been prepared to provide the government with them because it has plucked them out of the air.

I do not know whether Mr Stoney has something he is prepared to share with us, but we certainly have not seen any actuarial advice to date that sets out any justification for the assertion in the second-reading speech.

Hon. Bill Forwood — We did not use it because you wrote it. I will get it.

Hon. JENNY MIKAKOS — Looking forward to it, Mr Forwood.

If the Liberal Party is seeking to make those types of assertions in the second-reading speech, which is the premise on which it has based the introduction of this legislation — it claims that limiting people's ability to sue will conclusively lead to a reduction in premiums — then we want to see the evidence.

Hon. C. A. Furletti — You are a liar.

Hon. JENNY MIKAKOS — You have not provided the evidence as yet, have you, Mr Furletti? You are seeking to rely on wild claims of a possible reduction in premiums of zero to 50 per cent. By contrast, I have received a copy of actuarial advice prepared by Cumpston Sarjeant Pty Ltd and provided to the Australian Plaintiff Lawyers Association on 14 May this year. That actuarial advice, which I am happy to provide to opposition members, gives an overview of the performance of the Australian insurance industry over the past 20 years. It says:

> … insurer profits averaged about 18 per cent over the 20 years to 1996–97.
>
> … their substantial losses in the four years to 2000–01 may reflect a more pessimistic view of outstanding claims, as well as premium cutting by HIH.

It goes on to assert:

> … our projections suggest that insurers will make a loss of about 4 per cent in 2001–02 and a profit of about 17 per cent in 2002–03, without any changes to legislation.

I am not seeking to assert that Cumpston Sarjeant are the sole experts in the field and that we should take their advice as gospel, but they are one actuarial group that have been around for a number of years and provide advice to the insurance industry. That company is prepared to assert that in 2002–03 the insurance industry in this country will turn a profit without any need for legislation.

It is important that when we are going down the road of removing people's rights to sue we have a fully informed debate about the current crisis facing the Australian insurance industry, including the reasons for those problems and the possible solutions, taking into account the cyclical nature of the insurance industry and the fact that at least one participant in the industry takes the view that it is on the way out of that trough, as part of this cycle, and that the industry will be heading towards a profit in the near future.

The other concerns the government has relate to the proposed mechanism whereby the legislation is seeking to make the Minister for Tourism the body that will register and give accreditation to adventure tourism operators in this state. An expansive list of activities is set out in the schedule as being inherently risky. I note activities such as flying in light planes and ultra light planes are listed. I should be interested to know whether the opposition has had discussions with the aviation industry about the impact of that provision, given that the bill seeks to define activities to stipulate whether someone receives consideration.

I note that a 'participant' is defined in clause 3 to be a person:

> … whether or not the person provides any consideration to the Operator in exchange for his or her participation in the activity …

That means, for example, that if there were an accident when an aeroplane spraying a family farm with pesticides had a family member on board the situation could come within the scope of the legislation.

I do not believe that would have been intended by the opposition. However, the way the legislation is drafted, it could apply to those types of scenarios. My understanding is that the legislation was intended to cover commercial operators, but the definition of 'participant' is extremely broad.

The proposed legislation seeks to commence on 1 July. We all share the concern of the industry that a solution must be found quickly, but the bill seeks to establish a whole new bureaucratic structure under the Minister for Tourism to conduct inspections and develop risk management plans together with tourism operators and so on. There are complex technical issues to do with assessing risks on the part of tourism operators. All of that would need to happen in a short period. The bill

does not give adequate consideration to the framework that would need to be established to make it workable.

The other major problem with the proposed legislation arises as a result of clause 5, which states:

> … this Act applies (notwithstanding anything to the contrary in any other Act or law) …

The constitutional parameters under which we operate specify that commonwealth law overrides state law. In fact the Trade Practices Act would override any provisions in the bill, which would effectively mean that where a person was injured at an impairment level of under 30 per cent they would seek recourse under the Trade Practices Act. Rather than reducing litigation and the costs of the insurance sector and adventure tourism operators we would see an increase in litigation because aggrieved parties would seek recourse under section 52 of the Trade Practices Act.

Hon. Bill Forwood — Wrong.

Hon. JENNY MIKAKOS — I look forward to Mr Forwood explaining why it is wrong.

That is why the government sought at the national ministerial meetings to encourage the federal government to move amendments to the federal Trade Practices Act. Without those changes to, for example, section 68A of the Trade Practices Act, state governments are precluded from passing legislation that, for example, allows tourism operators to get consumers to sign waivers if they want to participate in a high-risk activity.

Apart from the increase in litigation under the Trade Practices Act, we also anticipate that if the bill were passed there would be increased litigation relating to the assessment of a level of impairment.

The bill itself does not have any internal review or appeal mechanism, unlike the Transport Accident Commission legislation for example, which allows disputes on the level of impairment to go to the Victorian Civil and Administrative Tribunal, or the Workcover legislation, which allows disputes to be assessed by medical panels and ultimately to go to court if there are disputes on questions of law. The Liberal Party is fond of taking away people's rights to appeal, but this bill has a serious flaw. Injured persons who miss out on compensation under this system will seek to challenge in the courts the basis on which the insurer made the decision. We will see an escalation in litigation.

The government is not seeking to give false hope to the adventure tourism industry, which it believes the legislation is seeking to do because it does not offer any solution to the current problems. In fact, it will create more problems and increase costs to the industry.

The test adopted in the legislation which relates to a 30 per cent level of impairment is a very high threshold. I note the advice given by the Minister for Finance to the Leader of the Opposition, which states that the bill:

> … denies any compensation, medical, loss of earnings as general damages, to persons injured through the negligence of an operator where the injury could be as serious as loss of vision in an eye, amputation of a leg below the knee, hip replacement. It is not apparent that the community would support such a radical denial of all benefits to these types of claims.

By imposing a 30 per cent level of impairment without providing any recourse to statutory compensation schemes or some other redress, the opposition is throwing onto the social security system people who will potentially have suffered very serious injuries. Injuries below the 30 per cent impairment level can be quite serious in nature, and we have had these debates before when we discussed Workcover legislation. The loss of an eye is a very serious injury as is an amputation, yet these people will have no recourse if the 30 per cent level of impairment is adopted unless they seek to pursue compensation under the Trade Practices Act, which is what they will do.

The second-reading speech states:

> Participants will be able, at their own expense, to take out personal accident insurance to cover any minor injury, offered at the farm gate, and envisaged to be part of the operator accreditation and approval process.

That may well be what is envisaged, however the bill does not make it compulsory. There is no mandatory requirement in the legislation requiring a tourism operator to have public liability insurance themselves, to make the consumer aware of the inherent risks of the activity or to get the consumer to sign up to their own personal cover.

Hon. Bill Forwood — Did you read the bill?

Hon. JENNY MIKAKOS — There is no mandatory requirement, Mr Forwood. Clause 9(1)(a) allows a minister to specify terms and conditions. Clause 9 (6) states that the operator approval can take effect from the date on which the applicant obtains public liability insurance, but that is not a mandatory requirement for tourism operators to take out insurance.

The approval process set up by the bill gives approval for five years unless it is revoked earlier. However, this long period for approval means that it is possible for an operator to have public liability insurance in year one but lose it for some reason in year two. The bill allows the minister to revoke approval at a later date. However, there is no compulsion on the operator to inform the minister that they have lost their public liability insurance or that their circumstances have changed. So you might end up with a scenario where an operator gets the approval in year one and for some reason — perhaps they are not doing so well financially and their standards drop over time — lose their insurance in year two. Most insurance policies are only offered on an annual basis, however, the approval would be for five years. So there are problems with monitoring whether tourism operators have public liability insurance and making it a prescribed condition of their approval.

There are also problems with part 3 of the bill, which relates to the assessment of the level of injuries for the purposes of obtaining access to compensation.

As I indicated earlier, the whole basis of this legislation is that it requires the insurer to assess the level of impairment. There are requirements here, for example, that the insurer provide a medical examination to the participant — that is, the consumer — and under clause 15(5) the insurer can refuse to make a determination if the insurer is not satisfied that the participant's injury has stabilised. So in this particular case we could see aggrieved consumers going to court and arguing that their injuries have in fact stabilised, disagreeing with the view of the insurer in order to access compensation. Again, we are seeing the potential there for an increase in litigation.

As I indicated earlier, there is no review or appeal mechanism against the initial impairment assessment. Clause 15(9) merely provides an aggrieved party with the ability to rebut material within 28 days of decision. That is a pretty extraordinary review mechanism — one that I am not aware is replicated in any other piece of legislation or statutory compensation scheme — because it is putting the review back on the insurer. There is no provision for an independent third party to assess the dispute or the medical information; the aggrieved party merely goes back to the insurer and argues it out with the insurer. Again, we are going to see people, as the only way of getting their particular cases reviewed, going off to the court.

Hon. E. G. Stoney interjected.

Hon. JENNY MIKAKOS — That does happen now, Mr Stoney, but under the Transport Accident Commission legislation, people go off to the Victorian Civil and Administrative Tribunal. There are cheaper mechanisms for review. We have in VCAT, for example, people who are specialised to hear these particular types of disputes.

The legal advice that has been provided from the government to the Leader of the Opposition also indicates that there are a number of technical drafting problems with the legislation as it relates to the shifting of the risk onto the insurance industry. I wish to quote here, because this is quite an important point:

> 5. A substantial flaw is the fact that it is proposed private insurers will carry the risk. The complex injury assessment provisions in the TAC or ACA work because there is a government-backed monopoly insurer to undertake the assessment task. It is virtually impossible to conceive how such an exercise could be carried out satisfactorily and with some consistency if this is left to multiple private insurers of variable standard and substance.
>
> 6. The expectation is that public liability insurance cover would be required as a condition of registering an adventure tourism operator. It should be borne in mind that policies can vary and the cover under some policies might be cheap but limited.
>
> 7. It cannot be presumed that private insurers would be prepared/able to carry out the injury assessment function or that they would be prepared to undertake the insurance of the serious injury risk at substantially lower premiums than at present. The profit motive may lead to some insurers being reluctant to classify an injury as 'serious' and this could make the regime litigious.

There are many other concerns that the government has with this legislation. I am sure the Deputy Leader of the Government will indicate some of those in his contribution.

It is important to put on the record that this government is very serious about this particular problem. Earlier this year it provided a $100 000 package to the adventure tourism operators to enable them to prepare risk management strategies to make their activities safer and to reduce the number and value of claims.

In addition to that particular risk management program funding, the government has taken the lead in developing a low-cost insurance scheme for community groups. This scheme will commence on 1 June of this year. The government is continuing to discuss the important issues that are being experienced with the industry and the insurance industry — unlike the Liberal Party, which has not had the insurance industry

agree to participate in this proposal that they have put up here today.

I indicated earlier that I will be moving a reasoned amendment. Therefore, I move:

> That all the words after 'That' be omitted with the view of inserting in place thereof 'in light of legal advice that the government has obtained and made available to the parties in the Council, this house declines to read this bill a second time until major amendments can be drafted or an alternative bill can be introduced.

Hon. Bill Forwood — This is the do-nothing amendment!

Hon. JENNY MIKAKOS — We are happy to have discussions with all political parties, the tourism industry and the insurance industry, in order to come up with a workable solution to this problem. The opposition's bill does not come up with a workable solution.

Hon. P. R. HALL (Gippsland) — I welcome the opportunity to put the National Party's point of view in respect to this private member's bill, the Adventure Activities Protection Bill, and also make comment on the reasoned amendment which has appeared in the dying seconds of the previous member's contribution. I notice that in that she is suggesting that the bill be withdrawn 'in light of legal advice that the government has obtained and made available to the parties in the Council'. Made available to us 5 minutes before debate on this bill started! It is pretty rich when this bill has been in the house for two weeks that the minister and the Minister for Finance have finally found time to respond five minutes before the debate on the bill started. It hardly gives members of the opposition — —

Hon. Bill Forwood — And dated 6 May!

Hon. P. R. HALL — Dated 6 May — incredible! The date today is 29 May! Because the Minister for Small Business has sat on this response until the last minute, it makes it extremely difficult for members of the Liberal Party and the National Party to give fair consideration — —

Hon. D. G. Hadden interjected.

Hon. P. R. HALL — For the benefit of the Honourable Dianne Hadden, she asks, 'Where is the date?'. The document we are referring to — —

Hon. D. G. Hadden interjected.

Hon. P. R. HALL — No, I did not. I said the date on the advice in the response handed to the opposition parties is 6 May.

Hon. E. G. Stoney — The advice, not the letter.

Hon. P. R. HALL — To start with, I want to compliment the opposition on having a go at tackling a really difficult problem — that is, the increasing premiums in respect to public liability insurance. I also indicate that the National Party is having a go at this issue as well. We have already given notice in the other house that we seek leave to bring in a bill to protect volunteers from civil liability for damages. That bill, if the government allows it, will be second read this week and debated next week, if the government wants to allow it.

In stark contrast to what the government is doing, the Liberal Party and the National Party are having a go at tackling this serious problem. The government has been dragged kicking, screaming and scratching to the altar to try to address this particular problem.

It has not put in place any initiatives on its own account. I heard the Minister for Finance on the radio yesterday claiming that the government has taken a major step forward in conjunction with the Municipal Association of Victoria which has proposed a scheme whereby some community groups can get cheaper public liability insurance. The people of Victoria should know that that scheme has been in place since the start of the month and it was an initiative of the MAV, not of the government, and here we have the government, at the last hour and because of the pressure being put upon it by the Liberal and National parties with their respective private members bills, trying to claim some sort of credit for an MAV initiative — to jump on the bandwagon, as the Honourable Graeme Stoney said. As I said, the Liberal Party and the National Party are having a red-hot go at this issue and it is the government that is sitting on its hands.

I also make the point that even the New South Wales Labor government is having a go at this as well, and I heard the Premier of New South Wales, the Honourable Bob Carr, also in the media yesterday saying his government was trying to tackle the rising public liability issue, unlike this Victorian Labor government. Nobody denies that this is not an easy problem to resolve. We also say that legislation to address this matter is necessarily going to be complicated and will require a lot of thought and perhaps refinement from the first go that we have at it. Neither the Liberal Party nor the National Party claims to have all the answers in respect to this. Quite frankly I do not think this legislation is perfect. There are things that need to be addressed in that way but rather than address them in the negative way that the Honourable Jenny Mikakos has, we in the National Party intend to put our views

and suggestions in a very positive way and trust that all parties will take on board our constructive suggestions and deal with those matters during the passage of the bill between houses.

Sitting suspended 1.00 p.m. to 2.02 p.m.

Hon. P. R. HALL — Before the luncheon break I was outlining the great difficulties everybody is having in addressing this problem of increasing premiums for public liability insurance. I complimented the opposition on its efforts in trying to tackle the problem with this bill, and I also recognised the efforts of the National Party in introducing in another place its bill which addresses another sector of our community that is facing problems with rising premiums for public liability insurance. I made the comment that I do not believe we have found the ideal solution, and I was just starting to say that this bill is not perfect in every way at all. In the rest of my contribution I intend to point out exactly what the National Party thinks and pass on those comments for the opposition to consider while the bill is between houses.

First of all I can indicate that the National Party is going to support this bill and will oppose the reasoned amendment. I will explain why we are opposing the amendment later in my contribution. We will support the bill, even though we do not think it is perfect and that it needs to be refined in some regard. In this contribution I will outline some of the concerns we have and make some suggestions in a positive way as to how the bill may be improved. Unlike the previous speaker from the government, those suggestions will be put positively with no direct criticism of the opposition for putting this forward, particularly since I started my contribution by commending the opposition for having a go at tackling this very tough problem.

From the outset it is hoped that the ultimate flow-on effect of this bill will be to reduce public liability insurance premiums for businesses involved in adventure tourism activities. That is the hope of everybody with regard to this bill. The great difficulty with any such legislation is that this outcome cannot be guaranteed; the insurance companies need to pass on the reduced risk of claims in the form of lower premiums. It would be nice to have the insurance companies commit to these but, unfortunately, at this point of time — and it does not matter whether it concerns adventure tourism or any other community organisation — the insurance industry has been reluctant to commit to passing on lower premiums, so we all have a challenge there.

To ensure that lower premiums are in fact passed on to people in adventure tourism and or other businesses which might be the subject of similar legislation, I take on board the comments that I heard on the radio yesterday made by the Premier of New South Wales, the Honourable Bob Carr, that perhaps there is a role for the Australian Competition and Consumer Commission (ACCC) in monitoring the impact of legislative change such as this on insurance premiums.

There is some sense in that. We need a watchdog to ensure that the efforts being made by various governments and political parties around the country through the introduction of legislation achieve what they set out to achieve. In that regard it may be appropriate to consider using the ACCC as a watchdog. No doubt pressure needs to be applied to insurance companies. We cannot let them off the hook; we cannot find a solution by ourselves. We seek a commitment from insurance companies to work with governments and political parties right across the country in assisting to resolve this very serious problem. That being said, I turn to the bill.

Essentially the bill does two things: firstly, it puts in place an extensive system of government regulation of adventure activity operators through an approval process, as set out in part 2 of the bill. Activities are limited to those described in the schedule attached to the bill. Secondly, part 3 of the bill sets out the mechanisms for actions for damages on the part of those suffering injury or death, based broadly around the Transport Accident Commission (TAC) model.

I will make a couple of comments on some of those aspects. Although the National Party does not oppose it, it has some trepidation about the government becoming a regulator of adventure tourism activities. There is some potential for the government to play a heavy hand and put onerous requirements on businesses seeking approval. Indeed, it is the minister who has that ultimate sanction of whether to grant an approval or not. We plead with the minister to show a great deal of commonsense in approaching this matter and in drawing up the regulations associated with the approval aspect. The minister must not place tasks that are too onerous or levies that are too high on tourism activity businesses, thus making the requirements impossible for them to achieve. The National Party has some concerns about the government becoming a regulator. Nevertheless, if this is the only solution that can be found we see it as a necessary step.

As an example of our concerns about this matter I turn to clause 9(3)(c) of the bill. Clause 9 sets out the process and the issues a minister needs to take into

account when considering approval or otherwise of a business. Clause 9(3) states:

> (3) In determining whether it is appropriate to grant a person an Operator approval, the Minister shall have regard to the following matters —

and it sets out a number of matters. Subclause (c) sets out the following matters:

> (c) whether the proposed adventure activity involves inherent risk of injury to the participant in respect of, but not limited to —
>
> (i) the forces of nature; and
>
> (ii) the behaviour of animals; and
>
> (iii) the terrain, location or environment in which the activity is to be conducted; and
>
> (iv) the physical ability of the participant; and
>
> (v) the equipment to be used by the participant —

and it then sets out a number of other criteria.

The problem is that one set of criteria does not fit all; individuals are all different. While the criteria listed may be reasonable for a person of average age and fitness, they may not be reasonable and the inherent risk may be higher for younger people, older people or people with disabilities. The minister will have some difficulty with it and will need to use a great deal of subjective judgment in deciding whether particular tourism activities can fit the criteria or are to be given approval with restrictions on the types of people who can meet the approval criteria and participate in an activity. The minister will need to use subjective judgment, and we can see some difficulties and perhaps some delays in the assessment of the criteria for approval.

Clause 9(7)(b) is another area that the parties should consider when the bill is between houses to see if some refinement is needed. It sets out that an approval, once given, is for five years and five years only. It seems the bill contains no mechanism to make any interim assessments of whether an operator continues to meet the approval criteria during the course of those five years. I contrast that with the Workcover system where Worksafe inspectors are consistently on site monitoring the process and ensuring that appropriate notices are given where necessary. I believe consideration should be given to ensuring that some performance assessment mechanism is in the legislation so that operators who are given five-year licences continue to meet the criteria for that entire period.

I turn to part 3 of the bill, which deals with damages in respect of death or serious injury. I wish to raise a couple of issues for consideration of the parties when the bill is between houses. I will do so not with a great deal of criticism because I respect that the opposition is having a real go at putting this in place. However some thought needs to be given to some of these other issues.

Firstly I refer to clause 14, which provides that any person seeking damages for injuries suffered during an adventure activity must comply with the provisions of this part. In other words, the days of writing a letter or negotiating early and getting rid of a claim are gone. Anybody who wants to have a go will need to go through the protracted process set out under this part. The National Party believes that where an injury has been suffered there should be a mechanism by which the matter can be resolved without having to go to the courts and having to seek a certificate of serious injury. We believe the bill would be improved if it contained some mechanism to resolve claims before they got to the court process, just as there is under the Workcover system.

I will also talk about the requirement to obtain a serious injury certificate. Compensation can be gained if a person reaches the status of being seriously injured. Basically the definition of 'serious injury' is that provided in the Transport Accident Commission Act. The bill sets out that approvals for serious injuries certificates are to be provided either by the operator or the insurer. We believe there is a valid argument for somebody other than the operator or the insurer to be able to provide a certificate for serious injury. After all, it is an extremely onerous task, and an operator may not have the knowledge to determine whether the criteria for a certificate of serious injury are met, and the insurer may be reluctant to do so. Insurers want to protect their funds, and we know from other experience that insurers are not always willing to accede to granting certificates of serious injury. Although the TAC is also subject to criticism in this regard, at least it can be seen in part to be independent of the operator and of the insurer in granting serious injury certificates. The alternative is that if you cannot get a serious injury certificate you can go to a court to get it, but that can be a difficult task.

I also want to comment on the position set out in the second-reading speech that it is possible for a client to obtain at the gate a personal insurance policy which will provide levels of benefit up to nominal degrees.

However, cheap insurance policies — if that is what they are intended to be: reasonably cheap, affordable insurance policies — of course do not carry great

coverage. It might be insurance for a couple of weeks of lost employment or for coverage of minor medical costs, but there is a big gap between what might be covered under a $10 personal accident liability insurance as opposed to what one may get under a serious injury category. The National Party does not have an easy answer to that but it is something we need to think about as the bill proceeds between the houses.

The bill provides through clause 16 that if the operator or insurer refuses to provide a serious injury certificate, then the person can go to court to seek such a certificate. The bill does not nominate which court is to hear the matter. The National Party believes that it needs to be better defined as to which court a person who is injured can go to.

I want to make a brief comment about mention that was made of the Trade Practices Act. I am not a lawyer and I certainly do not profess to be full bottle on this issue, but I suggest there are some issues which the opposition, as the mover of the bill, might perhaps like to respond to and give us some assurance that the Trade Practices Act does not limit the effects of this bill. I hope that will be covered in future contributions.

It has been suggested to the National Party that it is likely that only adventure tourism operators not operating as a company would have the benefit of this act, whereas those operating as a corporation are caught by the provisions of section 74 of the Trade Practices Act. I am not saying that that is certain, but members of the National Party would welcome some comment on that from the opposition. We are aware that there has been no higher court decision on such matters and it has never really been tested in the courts to date. I just make those comments as a note of warning. It is something that needs to be considered and taken on board as the bill progresses through Parliament.

There are a couple of points that the National Party offers for potential amendment, and they are to clauses 9(2) and 11(4). Both those clauses require amendment. Both are concerned with the 28-day period nominated whereby, in one case, a certificate of approval is either granted or refused and, in the other case, there is a variation.

In the case of clause 9, it is an approval. If it is not granted or refused within the 28 days, what happens to it? The bill does not make clear the status of that approval. If the minister has not responded in 28 days to the application for approval, is that approval therefore automatically granted or is it automatically refused or does it sit in limbo? We are not sure and we do not consider that the bill makes that clear. That is also the case with clause 11: is the variation granted, refused, or does it sit in limbo? We have those concerns and there needs to be clarification in the act.

That is an outline of some of the concerns of members of the National Party in respect to the bill. As I said, in no way do we raise them as direct criticism. As I said right from the outset, we believe it is great that the legislation is in here and that the opposition is having a go at tackling this very serious problem of increasing public liability insurance premiums. It is a sad fact of life that now many of our community groups have already hit the wall and made the decision to pull out of their activities because of the increasing costs of public liability insurance. Governments and all political parties should be making every effort to try to resolve the problem.

As I also said at the outset, the Victorian government has sat on its hands for too long, and pressure is being applied by the Liberal and National parties. We have suggested a number of things that could and should be done to address public liability premium increases but the government has not acted on them at all. It is only with insistence from the opposition parties that we are at last seeing some action.

I understand there is a national summit tomorrow to try to look at the issue of public liability insurance, and I hope that there will be a resolution and some outcomes from that. Perhaps there will be outcomes which can contribute to making this a better bill.

The reasoned amendment is not necessary. The passage of any legislation is considered while it is between houses; it has to be discussed by both houses of Parliament, and today's is the first debate we have had on the bill. We hope some suggestions will be taken on board by the opposition and that the bill can be refined and improved in some way. The National Party has offered those suggestions with a genuine sense of goodwill to try to make the bill better. It is worth persisting with and there is no logical reason for withdrawing the bill now and letting the government off the hook.

The National and Liberal parties will keep the pressure on this government until it has done everything it can to assist our community groups to tackle this very serious problem. Members of the National Party do not support the reasoned amendment. We commend the Liberal Party for having a go with the bill in respect to this issue as it affects adventure tourism operators, and in due course I expect the Liberal Party to support the National Party in its endeavours to protect community volunteer groups as well. Together we can do it, but if

we have divisions between oppositions and governments then it will make this problem particularly hard.

I call on the government to work with the Liberal and National parties to try to resolve these particular issues. This is the first of a number of areas, on adventure tourism activities, and we hope resolution on this very important matter can be reached.

Hon. E. G. STONEY (Central Highlands) — Before I make my contribution I need to make a couple of things perfectly clear because of my family's involvement in adventure tourism activities. I hold a standard business liability insurance on my house and farm. My broker tells me this is a form of public liability insurance, and I just need to make that clear. It has nothing to do with adventure tourism as such. My family holds a licence and public liability insurance on their adventure tourism activities, and they have been affected by this crisis. However, they will not be affected for long because on Saturday they are having a monster clearing sale and they will be selling the horses, vehicles, camp ovens and everything that goes with such a company, including the camp-out gear. The 20-year-old company will be wound up.

It is the end of a company that was formed by me and two friends in about 1981 or 1982. We offered backcountry skiing, fishing and four-wheel driving. Later my son bought into the company and we decided to include and concentrate on horses. When I got into Parliament I sold my shares in the company to my children, and I have no financial interest in the company. After Saturday, the company will be closed.

I would like to make a few points about the contribution of the Honourable Jenny Mikakos and just bring the house up to date with where we are with the bill and what we are trying to do. As Mr Hall said, we are trying to have a go, as is the National Party. I congratulate Mr Hall and thank him for his support and his constructive and helpful comments. While the bill is between houses, we look forward to you, Mr Hall, assisting us to hopefully get the bill through and to the Governor for assent.

The points I want to make are as follows: firstly, the government had the bill before Easter but it was given to us a bit later; secondly, we waited; thirdly, the government made no response; fourthly, the clock was ticking; and fifthly, it became evident that we had to act to protect the industry.

The bill has to be passed in this chamber today so it can go to the lower house next week if it is to become law this financial year. We had no idea what the government was thinking. We heard rumours — there were a lot of rumours about. We heard that the government was bringing in its own bill; we heard that the government was going to defeat our bill; we heard the government was going to support our bill; and we heard that the government does not know what to do. Well, that is true.

We learnt that the government would like another state to go first. We heard that the Minister for Finance likes our bill, that the Premier likes our bill but that the Attorney-General hates our bill. We heard that the Attorney-General hates the bill because the plaintiff lawyers hate it, so honourable members can draw their own conclusions from that.

We did not know what the government was doing. I did not know until I received a letter at 11.25 a.m. today addressed to Mr Forwood. The letter asks the opposition to pull the bill. In the normal course of opposition business we would have been well into the debate on this bill prior to receiving the letter. It just so happened that another opposition matter held up debate on this bill, otherwise we would have been debating it when the letter arrived. That is not a good thing and is certainly not helpful or constructive, and it certainly is not assisting the industry in a bipartisan way. The letter arrived too late for the opposition parties to give a reasoned, balanced, accurate or thoughtful response. In the light of that we suggest that the bill be passed today and next week, while it is between houses, we all sit down and in a bipartisan manner thrash out where the government and the National Party can add weight to our bill. We may ask Peter Clark, in light of the debate today, to give some more advice as to how we can improve the bill. I point out that it has to happen by next week.

Hon. M. M. Gould interjected.

Hon. E. G. STONEY — If we support the reasoned amendment the bill will be buried and nothing will happen until the spring sitting. You know it and I know it.

The Honourable Jenny Mikakos proved today that it is a lot easier to tear down someone else's constructive work than put forward something constructive of one's own. The government has seriously offended the Mansfield task force, the tourism industry, the senior counsel, Peter Clark — —

Hon. Bill Forwood — And me.

Hon. E. G. STONEY — Mr Forwood was seriously upset earlier and bounced out of the chamber like a

two-year-old! The government has proved today that it does not know what to do to assist with the bill. It does not know what to do and is waiting for other states and the federal government to show a lead tomorrow so that there is some light at the end of the tunnel.

The Honourable Jenny Mikakos said that the bill does not offer a workable solution and that it has serious drafting problems and serious faults. She mentioned the work the honourable member for Benalla in the other place has done on this issue. A lot of politicians on all sides of politics have done a lot of work on this bill for no glory or political kudos, but only to achieve an outcome. If Ms Mikakos had a bipartisan approach to this issue she would have said that everyone in the Parliament says they are trying to help the industry, but only some are actually doing something about it. I believe the briefing note has got it right. The briefing note was attached to the letter from the Minister for Finance to Mr Forwood, the Leader of the Opposition in this place. It states:

> Sensibly, policy is set before the legislation is drafted. Drafting the legislation before policy achieves little — other than perhaps to put pressure on the government to react.

They got that right. The government has had a plan for four months, and has had the bill for two months. It did not suggest any alternatives today. Ms Mikakos said the government wants actuarial evidence and advice. I point out that the government has its own advice. The opposition has its own verbal advice, which I will address. We had and still have some written advice from the insurance industry, and the government heavied the company that provided the advice and it was withdrawn. By agreement the opposition decided not to produce that advice, yet Ms Mikakos whacked us for not having advice. That is not helpful; it is appalling behaviour.

As I said earlier, the opposition received a letter from the Minister for Finance addressed to Mr Forwood, which I was handed at 11.25 a.m. It states:

> I refer to your letter of 21 May 2002 regarding the Adventure Activities Protection Bill that was second read in the Council last week.

The letter went on to ask us to withdraw the bill.

In a letter to the minister dated 21 May Mr Forwood said:

> I write seeking the government's assistance with the handling, and hopefully passage, of the Adventure Activities Protection Bill 2002, which was second read in the Council last week.

This is the critical part of Mr Forwood's letter:

> I realise that this bill can only be dealt with this session with the active participation of the government.
>
> To my mind this matter is purely about outcomes. The Liberal Party would be delighted to work with you urgently on this current bill, or something similar, in an effort to achieve the best possible outcome for the adventure tourism industry and the regions in which it operates.

Mr Forwood sent that letter to the Minister for Finance on 21 May 2002. This morning when I got to work, which was early, as is always the case, I found that the *Australian Financial Review* had had a leak about what may happen tomorrow. I was heartened by the report of the leak and the thrust of what may happen tomorrow, because it is in line with the bill being debated today.

The paper's report on this issue, headed 'Plan to block insurance claims', states:

> If approved by tomorrow's summit meeting of state and federal ministers in Melbourne, the scheme would introduce a national accreditation system for inherently risky activities that would allow registered organisations to escape liability at common law for killing or injuring people as a result of breaching the normal law of negligence.

That is very much our scheme. Our bill is industry specific. It is designed by the industry for an industry in crisis. It can stand alone. Anything else done with community groups and volunteers can fit around the bill. We are happy to include other ideas agreed to tomorrow at the national meeting in Melbourne. I hope that takes place while the bill is between houses.

Last Saturday night I went down to the family camp fire where we stood around with 50 or so guests. It was a frosty night and the moon was blazing. In the high country you can read a book by the moon. It was a very subdued night. Normally there are jokes, a guitar and singing, and people really enjoy the evening. On Saturday night there was none of that — people were subdued because they knew it was the last campfire and that on Sunday morning they would be getting on the horses and riding out of the high country forever and the horses would be going under the auctioneer's hammer. That business is gone; 60 other businesses throughout Victoria are gone. By 30 June a further 300 businesses will have to reapply for their premiums.

Mansfield, Bright and towns in the electorate of the Honourable Philip Davis and the Honourable Peter Hall rely on the image of the mountain cattlemen. They rely on the image of the outdoors, for rafting, rock climbing and other outdoor pursuits that the adventure activities provide. The image of the horse and the horseman is one of those strong, evocative images for people who may even just come to the Merrijig pub to rub shoulders with someone in a hat and may never ride a

horse because it is lovely to know the opportunity is there. It is a bit like the Wilderness Shop — no one ever goes into it, but it is lovely to know it is there. Mansfield, Gippsland and the north-east rely on that evocative image of the horseman, the cattlemen and the hat.

Hon. P. R. Hall — And the tradition.

Hon. E. G. STONEY — Yes, and the tradition. That is what attracts people to the area. We are in danger of losing all that. I have to say in case the government thinks we are blaming it, that we are not. This crisis is not the fault of the government, but it is the government's fault that it has not reacted quickly enough. It has been given several good ideas by members of the National Party, the Liberal Party, the Mansfield task force and the honourable member for Box Hill in the other place, who put up a good idea about insurance and how the government could assist people in community groups and other users of Crown land.

I regret that in this case the government is a follower; it is not a leader. With this bill there is a chance to redeem itself, to get on board, and we will all go forward together to achieve an outcome.

As I said earlier, members of the opposition wanted the government to pick up the bill from the Mansfield task force. We wanted to sit back and let the government have the glory, let the government work with the industry and achieve an outcome. We waited and went carefully through all our processes. We put the document under the scrutiny of our party. We applied the blowtorch to this bill. We really gave it the once-over because we were waiting for the government. We had two sessions with Peter Clark, SC, and the task force, and we really put the blowtorch to the philosophy behind the bill. It withstood every test we gave it.

I pay tribute to the chairman of the Mansfield task force, Mr Sandy Tod, the Shire of Delatite, the members of the task force and especially to the learned, clever and articulate Peter Clark, SC. The work done by the group is first rate. It has created a bill which can change the culture and the way Australians think, and we are very happy to build on that proposed legislation while the bill is between houses. We are open to all suggestions, the only proviso being that the industry is happy with the additions.

The bill encourages people to take responsibility for their own actions. It recognises that if a person voluntarily pays money to go on a scheduled adventure, that person assumes some of the risk for that activity. The important thing is that if a person is seriously injured they are covered. The operators' insurance covers them in exactly the same way as it does now. Under this bill if people want full protection, as some do even for minor injuries, the operator is able to provide that insurance at the farm gate. You could liken it to the way people take out insurance on a hire car before they drive the car — they pay so much a day.

We know the bill is not the answer to every public liability problem. It specifically assists adventure and educational activities and adventure tour operators. I am most pleased that it picks up pony clubs because of the educational aspect.

The bill had its genesis in a document prepared by the Mansfield task force. The document is called 'The Mansfield proposal: public liability insurance crisis, seeking solutions', and the executive summary states:

> The Mansfield public liability task force was created to develop and assist with implementing a strategy to arrest the unsustainable increases in insurance premiums that businesses are being forced to pay or close down.
>
> Success or otherwise hinges on state government passing complementing legislation. This would then formalise the platforms on which collective initiatives could be enacted.

By the look of it the government will not play ball, and after the contribution today by the Honourable Jenny Mikakos I am very depressed about the future of the bill.

As I said, the Mansfield task force and Peter Clark, SC, produced this bill. I have said before and I will say again: if there are genuine deficiencies, tell us. Let us work together.

Hon. Jenny Mikakos — I just told you!

Hon. E. G. STONEY — I have to say the critique and reasons for adding to the bill or deferring the bill would have to be much better than those expressed today.

Hon. P. R. Hall — We can work together as long as you do it my way!

Hon. E. G. STONEY — That is correct. 'Do it my way or not at all', and 'I did not think of it, so I do not like it'.

I make a plea to the government: please do not cut the guts out of the bill. Please do not play politics. Let us get on and do it while the proposed legislation is between the houses. We only have one week left. I assume that next Wednesday in the other place if the

bill does not go through and become law it sinks until the spring, and with it probably 300 businesses.

This is about saving the economic fabric of rural Victoria. As we said before, time is not on our side, and the Victorian Tourism Operators Association reports that 60 operators have gone and another 300 will go.

The Parliament should embrace the bill and throw its weight behind it. It is a very specific and positive proposal. There are no other proposals around that are so specific in assisting adventure activities.

Ms Mikakos could have put up something today but the honourable member proposed nothing except to drag down a thoughtful and specific bill drafted not by us but by the industry. New South Wales, Queensland and Western Australia have legislation floating around. Our advice is that that legislation will not assist the adventure industry because the bills are too wide and adventure activities will not benefit in the short term, if at all, by any reduction in premiums flowing from them.

I again make the point that the industry asked the government to bring in the bill it drafted. Members of the Liberal Party are proud to introduce it, and we ask the government to work with us.

The second-reading speech clearly outlines the philosophy and lists quite a few figures that speak for themselves. It states:

> The bill is built around the principle that people voluntarily undertaking inherently risky activities should not be able to sue for damages if something 'minor' goes wrong, but should have unfettered rights in cases of serious injury.

This is the basic premise of the bill: that if it is a serious injury it is the same as it is now and people have absolute access to the full weight of the law.

The second-reading speech goes to outline the claims histories, showing that 81 per cent of the claims are minor — less than $50 000 — but that 87 per cent of the dollar value of claims is absorbed by this 81 per cent of claims. It talks about actuarial advice and I think, as has been mentioned by other speakers, that the key part of the bill is the power given to the Minister for Tourism to approve every adventure operator. The minister can delegate a peak body to put in place an accreditation process. I take on board Mr Hall's concerns about the minister having too many powers and having a draconian set of rules for adventure operators — a very valid point, and I venture to say that a minister in this government especially might do such a thing, not understanding business as this government does not.

The second-reading speech refers to the accreditation process that the minister can delegate to a peak body, and says:

> Obviously, the accreditation and approval process must be rigorous to ensure that appropriate safety regimes are in place, staff possess the appropriate experience, training and qualifications and that risk management issues have been addressed.

I think that is very important. It also refers to minor and serious injuries, and further states, referring to the bill:

> Part 3, damages in respect of death or serious injury, adopts the TAC model as to the entitlement of a participant to recover damages in respect of an injury suffered whilst participating in an approved adventure activity.

It then goes on to talk about how the court can give leave for proceedings if the injury is serious. This is quite important, and I refer to Ms Mikakos's comment about serious injury and the debate about whether the loss of an eye is a serious injury. According to the bill, 'serious injury' means:

> (a) a serious long-term impairment or loss of a body function

I am advised that the loss of an eye or a leg comes under the heading of a serious injury, so I could not quite pick up Ms Mikakos's argument. I just could not follow it because, I think point 6 of the letter from the Minister for Finance is just plainly wrong. The definition of 'serious injury' in the bill continues:

> (b) permanent serious disfigurement; or
>
> (c) severe long-term mental or severe long-term behavioural disturbance or disorder; or
>
> (d) loss of a foetus.
>
> (4) For the avoidance of doubt it is hereby declared that all the provisions of this Part contain matters that are substantive law and are not procedural in nature.

So the fundamental philosophy behind this bill is that voluntary participants in activities which have an inherent risk of injury should bear the burden of a minor injury but should certainly be entitled to claim when injury is serious.

I would like to explain — and I have tried to put it in simple terms — what the bill means, to try to allay some of the concerns of the government and explain to people everywhere what this means. It is really important, when you have a bill like this, to try to reduce it to simple terms, firstly so the public can understand it, and quite frankly so I can understand it, so I have attempted to put this in simple terms.

This is the way the process will work under our bill: if a client of an adventure activity operator is injured they will seek medical attention in the same way as if they were ill. If they had taken out personal accident insurance at the farm gate, they would then make a claim for out-of-pocket expenses and anything else that policy covered. If the client wanted to make a claim for compensation, they would probably consult a solicitor — this is what happens now. If the solicitor, after consultation with the client, thought the injury was serious, the solicitor would write a letter of demand to the operator.

The operator would forward the letter to the insurer and the matter would be dealt with in exactly the same way it is dealt with now. The client's solicitor would then make an application to the insurer for a determination as to the degree of the impairment suffered. If the impairment is assessed at 30 per cent, then the injury is deemed to be a serious injury and the client can bring proceedings claiming damages for compensation for all their out-of-pocket expenses, loss of income and so on.

This is the critical matter: if the insurer determines that the level of impairment is less than 30 per cent and the client is unhappy, the client can go to court for leave to bring proceedings, and the court will decide whether the client can bring proceedings and that the injury is a serious one.

The only question that remains is: will all this reduce public liability insurance? Ms Mikakos was almost offensive in her comments about the work the Mansfield task force has done, given that it is a community group and does not have the resources of government. She criticised the task force for not obtaining written actuarial advice.

Hon. Jenny Mikakos — You brought this bill into the house, you put out a second-reading speech and made all sorts of claims. Where is your justification? We are still waiting for your actuarial advice.

Hon. E. G. STONEY — You are waiting for the actuarial advice? You have not been prepared to provide actuarial advice.

The DEPUTY PRESIDENT — Order! Through the Chair, Mr Stoney.

Hon. E. G. STONEY — The government has not offered to pay for any advice. The government is seriously criticising a community group and an industry that are trying to put a proposition and have been given verbal advice.

Hon. Jenny Mikakos — I did not criticise the group; I criticised you.

Hon. E. G. STONEY — Coupled with that, the Mansfield task force received a letter from the industry and the government heavied it into withdrawing its comments. I think that is an appalling situation, and the government then criticises the Mansfield task force and the industry for not providing advice. The government could have used its money and got that advice. That is an appalling approach to a very important problem.

Hon. Jenny Mikakos — We are working with the task force to get a solution. This is a political stunt.

Hon. E. G. STONEY — Actuaries verbally advised the Mansfield task force that the acceptance of, say, the first $50 000 of risk would serve to reduce premium levels. No written calculations were commissioned because of a lack of money. The actuaries provided verbal opinions at no charge. Their calculations reveal the probability of future claims being reduced in the range of zero to 50 per cent — in other words, this bill could result in breaking the increase spiral and reducing premiums by up to 50 per cent.

I say again that the government could easily have commissioned actuaries to provide a written opinion, and I am happy to provide the names of those actuaries. I admit, and everybody knows, that it is up to the insurance companies to reduce their premiums, but there is a strong belief that commercial principles will apply. If one insurer does not pick up the opportunity that is presented by the bill it is strongly believed, and the industry advice is, that a commercial opportunity will exist and another insurer will pick it up.

Today there has been discussion about the bill and the Trade Practices Act. I think Mr Hall mentioned it, which I missed, but certainly Ms Mikakos mentioned it. I make it clear, and I have advice to this effect, that the Trade Practices Act does not require amendment because the participant retains the right to sue for breach of contract. They cannot recover damages for personal injury unless they are assessed as seriously injured. The principle of transfer of acceptance of risk is supported by the Insurance Council of Australia as one means of reducing the spiralling costs of insurance.

I have an example where a company has assumed some of the risk. It is demonstrated by one large Mansfield operator, whom I will not name. The operator assumed an additional $30 000 risk as excess, which is exactly what the bill contemplates, and the premium was reduced from $590 000 to $290 000, a reduction of $300 000, which is more than 50 per cent. There could

be no clearer demonstration to put your mind at rest about what we are saying than that example.

It is heartening to see the support of the Insurance Council of Australia for the thrust of the bill. The *Weekly Times* of 22 May states:

> The Insurance Council of Australia has backed a Liberal Party bill that could bring insurance relief to hundreds of horse industry and adventure tourism operators.
>
> Insurance Council of Australia spokesman Peter Jamvold said the bill was a good start on the path to reducing premiums.
>
> 'It seriously looks at costs and how to reduce them by passing the risk from operators to participants', Mr Jamvold said.

I make the point, although anecdotally, while talking about insurance companies — and this is the time to make it — that it is common knowledge that most insurance companies try to quickly get rid of small claims. They find it easier and cheaper to pay up rather than fight. There are many anecdotes in the adventure tourism industry about someone who gets slightly hurt on, say, a trail ride. They go home, speak to their solicitor, the solicitor writes a letter of demand, nothing happens for a couple of months, and $20 000 arrives in the mail. This might be a good business decision for an individual case, but, given the large number of small claims, this practice has probably sown the seeds within the insurance industry that we are reaping today.

Individually it may be good business practice, but we cannot prove it because we cannot get to see the insurance companies' books and the figures to give us the overall picture, but there is a strong suspicion that by paying out on small claims without challenging them and without taking each one to court the insurance companies sowed the seeds of what we are faced with today.

I have been talking about Mansfield a lot, so I thought I would widen the area of reaction to the Liberal Party's introduction of the bill, which is supported and was developed by the industry. I have a letter from Mr Cyril Marriner of Bimbi Park, Cape Otway. It is addressed to the Honourable Bruce Chamberlain at Hamilton, Victoria, and states:

> I read in the *Colac Herald* this week that the Liberal Party has a bill before Parliament to limit compensation to adventure tourism activities …
>
> I have been in the horse trail riding business for 30 years and am one of the longest surviving operators in the business … from July, no insurance is available at all.
>
> … My business has also been accredited and I have had a risk management plan.

Mr Marriner sums up the bill well when he says:

> Horseriding establishments will have to have a risk management plan, be inspected and accredited to prove they are responsible operators. On the other side, patrons wishing to pursue adventure activities have to accept some responsibility for inherent risk.

Mr Marriner refers to a rally that will take place next Saturday throughout Australia and here in Melbourne. He says:

> Next Saturday, 1 June, I and many of my supporters will be marching to Parliament House in Melbourne … to bring to your attention the need for legislation to curb the destructive legal litigation in our society today.
>
> I commend the Liberal Party for bringing forward the Adventure Activities Protection Bill and that your leadership will give us hope; hope that we can go forward and continue to give people the adventure they want knowing that they have to accept a fair measure of risk that was the norm and should be the norm in our society today.

That letter says it all.

I am sure Mr Phil Davis, Mr Hall and many others in this chamber could quote 100 such letters and representations to their offices, and I know Mr Davis will list some of those he has received in his area, if there is time. Everyone knows the problem; there is no point in my going on further with it and I will leave that to other speakers. We want solutions; this bill provides solutions, and we should act on it.

I mentioned earlier the Walk for Cover rally in Melbourne on Saturday. A handout points out that it is virtually impossible for people conducting horse activities in Australia to get insurance. It states:

> Be part of a national action plan.
>
> Join us … on foot from Melbourne Exhibition Centre …
>
> Saturday 1 June
>
> 11.00 a.m. — 1.00 p.m.

There is also a rally in Mansfield at 9.00 a.m. on the same day, and I will be attending it.

Part of the campaign being pushed by the rally is a list of points people can make in letters to the Honourable Steve Bracks and the responsible federal minister, Senator Helen Coonan. The suggestions include the words:

> As my elected representative I urge you to support the passage of the adventure activities protection bill through Parliament.

You cannot get any more specific than that.

Today's *High Country Times* contains a long letter from Mr Jamie Beckingsale, which I do not propose to

read. It is an open letter to the Premier imploring him to show some leadership on the problem and explore the real issues. Mr Beckingsale supports the adventure activities bill, but he also raises the issues of dog clubs, cricket clubs, show societies and footy clubs, and he says the list could go on and on.

Today's *Weekly Times* says that the Bracks government is desperately trying to find underwriters to cover the adventure, tourism and horse industries before 30 June. The Victorian Tour Operators Association (VTOA) is quoted as saying:

> 'We're trying to work with the government to find an underwriter, but all our negotiations, so far, seem to collapse at the 11th hour', Mr von Saldern said.

VTOA received a grant of $100 000 to develop a risk management plan. The missing link is that the government cannot offer a bill which is part of that risk management plan. If the government had picked up the bill back in March and had it in place together with the risk management plans, the problem would almost have been solved today.

In conclusion, the opposition opposes the amendment and supports the bill. I will close with a quote from the mayor of the Shire of Delatite, Cr Don Cummins. The Honourable Bill Forwood, the honourable member for Brighton in the other place and I attended a public meeting a couple of weeks ago to which the honourable member for Benalla in the other place was also invited in a bipartisan act. She chose not to attend, and we are still expecting her apology in the mail any day!

Hon. Jenny Mikakos interjected.

Hon. E. G. STONEY — Well, Ms Mikakos, I would not have thrown that in except that you kept promoting the honourable member for Benalla and ignoring the fact that many people are working on this problem without looking for any glory at all.

At the meeting the mayor said:

> We are desperate and when you are desperate you have to move quickly. We don't want to annoy any government but on the other hand we must have a solution.

I make a plea to the government: help us to get this bill through both houses. It will be the first small step in a longer series of actions to sustainably rebuild the adventure tourism industry in Victoria and Australia. I want our children to be able to extend themselves; I want our children and our children's children to learn about adventure and adventure activities. In Australia we take responsibility for our own destiny when things get really tough. I believe this is a watershed, and unless legislators such as us bite the bullet, we are going to sink along with the adventure operators out in the bush. Our children will never be able to rock climb, raft or ride a horse. They will never stand around a camp fire in the high country in the frost with the moon beaming down so brightly that they can read a book, talking about the horse they are going to ride tomorrow. The moon will still blaze down, but there will be no-one underneath to enjoy the horses and the adventure activities, and to learn and grow from the experiences. I support the bill.

Hon. GAVIN JENNINGS (Melbourne) — Often when members of this Parliament rise to support a motion before the house in the name of bipartisanship they are about to dump a bucket on the other side. I want to start my contribution by indicating that there are no buckets in my hand. I intend to respond to the challenge that has been outlined. The government and opposition parties in this place should try, if at all possible, to deal with this matter in a bipartisan fashion and satisfactorily resolve a serious concern in the Victorian community relating to public liability issues as they affect the adventure activities industry.

I remind the house that the government shares the intention of the bill, which is to regulate the compensation of persons who die or suffer injury arising out of or in the course of their voluntary participation in adventure activities which, by their nature, involve inherent risk of injury to participants, particularly where the physical or environmental challenge or the element of risk form part of the participant's enjoyment of the activity.

We are talking about the broad issue of public liability that has been the concern of the Victorian and Australian communities over the last year. To a degree it has led to a crisis in confidence within any number of recreational activities in the community sector. We have seen a crisis with the insurance sector as a whole which has led to a reduction in the pursuit of recreational, cultural, sporting and community activities within this state and across the nation.

Yes, I am very pleased to be part of a government that recognises the concern of the community and recognises and applauds, where it is appropriate, the concerns of opposition parties in this matter. We should work within the spirit of bipartisanship to deliver a result.

The government has identified difficulties in this piece of legislation and we are moving a reasoned amendment today to say, 'Let's not, despite the urgency of the need and the acute concerns in the community,

add to our set of problems by adopting a piece of legislation that the government believes does not satisfy its very laudable objectives'. The government has been advised that, by the way the bill has been constructed and put together — despite the best intentions of the people who have contributed to its construction — it will not achieve that result. The government is saying that, after careful consideration the approach it would like to take is to say, 'Hold on. We want to have an opportunity to work constructively with you to find means by which it can be effectively implemented in the context of the broad public liability problems that our community confronts'.

That is the nature of the division and that will be the tone of my contribution — nothing more, nothing less. Allegations of a do-nothing government may be hurled in my direction, but I will respond to them, if they are so made, to indicate that last year, following the demise of the HIH Insurance scheme, the government moved to introduce a scheme in relation to domestic building. Despite the best endeavours of a number of people, including members of the National Party in particular, and the government to get a resolution on this matter, not 1 cent has yet been paid to a scheme that has been in operation for almost a year, because there were problems with the interpretation of how that law applies. A loophole was found, which was not the intention of the government in the first instance. It led to a series of claims that the government believes should not have been included within the scope of the bill.

That bill has sat on the notice paper in this place for many months in terms of trying to find a resolution. I am very pleased to say that finally we may be able to find a resolution to this matter. That is with the best endeavours of a number of people within this chamber to patch up a piece of legislation which was shown to have loopholes in it. Despite the best intentions and advice that came to the government at the time, through bitter experience we have discovered the problems we may have about stepping into the field of warranties and insurance. We are acutely concerned about the introduction of a piece of legislation on which we have received advice before it has even been debated which indicates to us that there are serious problems with its construction.

Let me just briefly outline to the house the progress of activities that have taken place over the last few months within the tourism industry, relating particularly to the adventure tourism sector within Victoria. In February this year, in response to urgent concern being expressed in the community and the number of operators who were doing it very hard because their premiums were going through the roof and the insurance industry was indicating it was not prepared to provide them with adequate cover, the government announced a package of $100 000 to assist adventure tourism operators to prepare risk management strategies to make their activities safer for consumers and to reduce the number and value of claims that they were subjected to and ultimately contain future premium increases.

That scheme was adopted in March, when the first of that funding package was made available to the Victorian Tourism Operators Association to manage the program with the assistance and guidance of Tourism Victoria.

Hon. P. R. Hall — Has it worked?

Hon. GAVIN JENNINGS — No. The work is still ongoing, Mr Hall. We do not dispute the urgency of this matter. I am indicating for the public record what has actually taken place.

Hon. P. R. Hall interjected.

Hon. GAVIN JENNINGS — In April an organisation was charged with the responsibility of guiding that program. It worked extensively with the sector and the affected operators. It started to prepare, on behalf of the sector, risk management strategies right down to assisting operators to adopt specific risk management plans. The brief through this program was to establish programs that support the development and delivery of training and to assist in the ongoing risk monitoring and promotion.

These elements have not delivered the goods as yet, but they are critical. If you bore down into the mechanics of the bill before the house today, you can see that unless they are satisfactorily achieved and in place and that analysis forms the basis of the contract that is signed between the operator and the person using the service which underpins the contract, which is the basis of the insurance scheme proposed within this bill — unless all those things are clearly bedded down and the position is as successfully outlined within the terms of that contract — then claims would be unsuccessful before the courts. It is the capacity within the sector, particularly the capacity within the ministerial responsibility of the Minister for Tourism, who is the responsible minister under this proposed bill, to be able to provide that level of expertise in the area of risk management and that expertise in relation to medical assessments which become critical.

A major deficiency of the legislation before the Parliament today is what administrative arrangements or capacity there would be within the ministerial

responsibilities of the Minister for Tourism to successfully make those risk assessments and successfully monitor the medical consequences of injury that may take place through the operation of the legislation.

To draw a parallel in this exercise, honourable members spent many hours in committee about the changes to Workcover legislation. The government was subjected to some ridicule subsequent to the committee stage of the Workcover legislation on the basis of those critical medical tests and the way they would be enforced by the Workcover authority which has been in place for many years, has many hundreds of employees and has capacity in this field over the best part of 20 years in various forms of the Workcover authority. Still, in terms of satisfying the opposition's claims about how we understood how the Workcover system was arranged — hour after hour there was questioning by opposition parties about the mechanics of the Workcover bill, a pre-existing organisation and operation of significant magnitude within this state, and about risk assessments and medical assessment.

The Minister for Tourism has no capacity to undertake those requirements under the rubric of this piece of legislation — none. There has been not one proposition put forward by any member of the opposition parties in their consideration to this point in time about how those medical assessments would be undertaken.

We were told that serious injury — as defined under the act, which may include an injury to a person's eye or the loss of a leg below the knee — those things are taken as given before the courts. That is not how the world works. The courts will rely upon the thresholds being determined through a rigorous medical assessment.

Who does that? Unfortunately, the bill is silent on that question. Fundamentally these are the major reasons why the government says, 'Hang on. You need to have a look at the exposure in a legal sense of insurance claims, but you have to look at fundamental questions about risk assessment and medical assessment which are crucial in terms of insurance claims and their proceedings before the court'. This bill is silent on those matters.

It is important for the proponents of this bill to be able to indicate to the Parliament how they believe that should be achieved. Again, this is not to ridicule or undermine the integrity of anybody who has been associated with the development of this bill, but on administering it in a way that satisfies the legal requirements of the courts of this land its proponents are fundamentally silent. Those are the types of issues the government believes need to be assessed and incorporated in the legislative regime that operates in this field.

The take-up of future insurers has been deafening in its silence and has been tardy, and again major alarm bells have rung throughout this community and this sector, but nothing in the material presented by the opposition in support of this legislation indicates that there will be an appropriate take-up. No evidence has been put on the public record that supports the proposition that there is a fundamental connection between the restriction of the threshold and the cap of claims that can be made under tort law. Indeed, the current Labor Premier of New South Wales is desperately scrambling to find such a connection to justify his tort law changes in relation to public liability issues. Unfortunately for him — and fortunately for the Leader of the National Party in the other place, who I understand is very alive to this issue — he has not had the satisfaction of finding evidence to support the proposition that premiums would fall.

Despite allegations about his tardiness, my colleague the Minister for Finance has played a prominent role in bringing together the relevant ministers across the various state jurisdictions to discuss these matters, and as soon as Thursday this week we will be convening a meeting of those ministers to address issues of public liability across all aspects of community life. We will be looking at the broadest possible canvas to make adjustments to tax collection, assumption of risk, capping of payments, changes to insurance premium legislation, and data and tax collection. So the minister is not baulking at any of the range of activities, but, as even a lay person in the community would understand, the insurance sector is based on the management of risk across a range of portfolios or activities with a variant risk applied to different sectors.

The way in which an insurer would manage its portfolio or finances would be to try to have an appropriate balance of high-risk and low-risk activities and to balance premiums across all the sectors so as to apply the lowest premium right across the board. That is the nature of risk management that an insurer would bring to bear. The difficulty the government has in dealing with any one sector in advance of that cross-sector analysis is that by achieving a desired outcome in one sector alone you may be prejudicing the outcome in other sectors. You might get preferential premiums applying in one sector with a financial disadvantage for premiums for other activities across the risk profile of the insurer, and that is something we are particularly concerned about.

In terms of what has happened before the Parliament today, from the government's perspective it has tried to place on the public record and in the hand of the parties its best advice at this time and its recommendation on how we can resolve these matters. It has been thrown at us that the notification arrived late — but it arrived — and the government wants to work as productively as possible from here on to the conclusion of this important matter.

I have briefly outlined the situation to the house and will conclude my contribution by indicating the range of concerns the Minister for Finance identified in his letter to the Honourable Bill Forwood today. He indicates from the beginning that the Bracks government appreciates the efforts of the Mansfield public liability task force to seek solutions for the current problems that the adventure tourism industry faces with public liability insurance.

He goes on to say that the government would seek:

> … to have the bill withdrawn to enable workable provisions to be redrafted and incorporated into the package of measures the government will bring to the Parliament after this week's national summit of governments that is attempting to get a national solution to the issues of public liability insurance.
>
> Advice of the Victorian Government Solicitor and other expert commentators shows that the bill:
>
> 1. will require the relevant insurer to conduct a detailed TAC or Workcover-type impairment assessment of a claimant. The application of an AMA impairment assessment is a scientific and complex procedure that is not currently undertaken by insurers. It is a test that is capable of challenge in the courts and so requires a high degree of expertise in its administration.

The letter goes on:

> Unlike Workcover, it appears that the bill will allow AMA assessments to be reviewed by the courts, this will increase the degree of litigation in this area not contain it.

Point 2 states:

> 2. does not guarantee the reduction of premiums in the short … term.

Further, it states:

> It is worth noting that Mr Ryan, Leader of the National Party, and Mr Carr, Premier of NSW, have had similar difficulties getting the insurance industry to attest to the actual impacts of tort and compensation reforms …

Point 3 states:

> 3. will have little or no effect on a whole raft of other industries that also face dramatically increasing public liability insurance …
>
> 4. will impose substantial new risk mitigation and monitoring structures for one industry (the adventure tourism industry) …
>
> 5. is vulnerable to being bypassed through Trade Practices Act actions in the Federal Court …

It goes on to say:

> Unless the commonwealth government amends relevant sections of the Trade Practices Act to match the provisions contained within the bill, it will not have the promised effect.
>
> 6. denies any compensation, medical, loss of earnings as general damages, to persons injured through the negligence of an operator where the injury could be as serious as: loss of vision in an eye, amputation of a leg below the knee, hip replacement …

It concludes:

> Consequently we seek to have the bill withdrawn to enable workable provisions to be redrafted and incorporated into the package of measures the government will bring to the Parliament after this week's national summit of governments that is attempting to get a national solution to the issues of public liability insurance.

That is the offer the government has made; that is its intention. We would like to resolve this matter as quickly as possible. On Thursday the minister is convening a meeting of relevant ministers from other jurisdictions across the country, where it is intended these issues will be worked through.

The government hopes it may address this issue with a whole-of-Parliament approach and achieve the desired results. I would not appreciate members continuing their tit-for-tat contributions about the roles of various people in this argument.

Clearly the government has supported the work of the Mansfield Public Liability Insurance Task Force. As recently as yesterday the honourable member for Benalla in the other place congratulated that task force on its work. We support those who have worked cooperatively with the task force to find a resolution to this matter and an appropriate legislative base that will enable insurers to be introduced into this sector and the operators to continue to play a very positive, constructive and, in the words of Mr Stoney, enriching role in the life of Victorians.

I urge the chamber to agree to the reasoned amendment to enable the government to do the substantial work required in order for this bill to satisfy its objective.

Hon. W. I. SMITH (Silvan) — I would like to enter the debate for a short time because this is a very

important issue for small businesses. While the Honourable Gavin Jennings said that the government is doing its best, the reality is and the record shows that the government has done very little. It has had a lot of press conferences and summits and made a lot of announcements and reannouncements, but it has in fact delivered very little in this area.

At the moment one of the greatest difficulties facing business is accessing affordable insurance for public liability. The public liability insurance crisis requires urgent action to enable small businesses and community organisations to continue to operate. The 30 June deadline is fast approaching, and currently there is very little in place in Victoria. Given the urgency, the Liberal Party has taken the lead by introducing a private member's bill. I support the bill and reject the reasoned amendment which has been moved. The bill will give adventure tourism businesses some certainty in the industry, show the way, and provide some leadership — on which the Bracks government is certainly way behind.

I will give some examples of how badly this situation is impacting on small business. The Australian Industry Group conducted a survey of what has happened to small businesses hit by the insurance premiums after 11 September. It found that the average industry premiums were expected to rise by 41 per cent; smaller companies with 25 or fewer employees faced increases averaging 65 per cent; 92 per cent of respondents of the survey reported actual or anticipated premium increases; 28 per cent reported increases in their policy excesses; insurers insisted on policy exclusions for acts of terrorism; and increases were being imposed, despite the fact that 95 per cent of companies have not made higher claims over the past year.

The adventure tourism industry in Victoria is the hardest hit. Already over 60 businesses have closed, and the Victorian Tourism Operators Association has said it is essential to seek a solution as quickly as possible because many adventure tourism operators are affected by price rises of up to 1000 per cent for public liability insurance. The Liberal Party has looked at finding a way, has consulted with the people involved at Mansfield, and has put together this piece of legislation. It is very important to take some action, to get some debate on this issue happening and to get something in place.

The Adventure Activities Protection Bill recognises that voluntary participants in many adventure and leisure activities undertake those activities in the knowledge that there is an inherent risk of injury. The bill provides that these participants should bear the consequences of minor injuries while retaining the right to seek damages where their injuries are serious. If they wish, participants would, at their own expense, be able to take out personal accident insurance to cover any minor injury.

The bill also adopts the Transport Accident Commission (TAC) model as to the entitlement of a participant to recover damages for an injury suffered while participating in an approved adventure activity. It provides for the court to give leave for proceedings if it is satisfied the injury is serious, even if the insurer has rejected the claim.

While the government says how very difficult this issue is and talks about how hard it is to solve and about having consultations, forums, announcements and reannouncements, New South Wales and Queensland have been acknowledged by the *Australian Financial Review* and many other forums in the media as leading the way and trying to tackle this issue. This is a state issue and states have to take responsibility for it. New South Wales in particular has looked at a range of issues, and Queensland is following the lead. However, quite frankly, the Bracks government has sat on its hands.

The government could look at a whole range of simple things. For example, it could look at a person not being able to sue if they were drunk or on drugs at the time an injury was caused. It could consider the good Samaritan legislation, which has been outlined before. Other solutions include the plaintiff giving expert evidence up front; costs being capped for small claims; preventing claims from people injured in the process of committing a criminal act — that is, people who hurt themselves breaking into premises cannot claim public liability — capping damages for loss of earnings; periodic payments rather than lump sums, and we know the problems with lump sums; and contributory negligence parties being made liable only for their percentage of their role in causing any loss.

While New South Wales may be having trouble legally implementing some of the measures, it is certainly leading the charge and having realistic discussions with a range of people in the industry.

In summary, I support this bill, reject the amendment and call upon the government to do more than have negotiations and put out press releases. It should get on with the job and start doing something for businesses, because by 30 June a lot of businesses will be in a far worse situation than they are in now.

Hon. PHILIP DAVIS (Gippsland) — I am pleased to have the opportunity to contribute to this debate, which is a very important debate, particularly for rural Victorians but generally for the adventure tourism industry in this state, as a matter of principle in resolving what is a growing dilemma for the whole of the community — that is, the increased costs of public liability insurance. It is quite evident that a large number of community events, business activities and private activities have been impacted on by the extraordinary increase in premiums for public liability insurance but, more particularly, the fact that in some instances insurance has become totally unavailable.

What is of primary concern for me is that, far from being bipartisan in trying to resolve what are very complex matters, the government is attempting to use parliamentary procedures — that is, the moving of a reasoned amendment to hold the bill over the next sitting — to stymie, to halt, to defer and to waste time in terms of resolving at least one aspect of this important public policy.

It is a reflection of the Bracks government's general approach to governance in Victoria — do nothing! If there is a potential excuse to do nothing, that is exactly what this government takes as the option. My view is that the government is attempting, in its continued resolute way, to frustrate the solutions to a problem which have been identified.

The bill is comprehensive and provides solutions to the adventure tourism market problems in relation to liability. The provisions of the bill are quite clear. The purpose clause states:

> The purpose of this Act is to regulate the compensation of persons who die or suffer injury arising out of, or in the course of, their voluntary participation in adventure activities which by their nature involve inherent risk of injury to participants, particularly where the physical or environmental challenge or the element of risk form part of the participant's enjoyment of the activity.

Personally I am of the opinion that a person who jumps from a perfectly sound aircraft at several thousand feet does not seem to be participating in a rational act. However, I know that many people enjoy the activity of skydiving. I do not believe it is appropriate that the person who takes that action, being of sound mind and body, should have some recourse to blame the person who fuelled the aircraft or drove the plane or was involved in some way in the activity that led to the person availing themselves of the opportunity to jump out of a perfectly sound aircraft. There are responsibilities that individuals must take on their own shoulders to ensure self-reliance, self-responsibility and governance of their own risks.

I believe it is clear that the principles established in the bill conform with the principles that have been elucidated in today's *Australian Financial Review*, which refers to the meeting of state and commonwealth governments that will be held tomorrow on insurance issues. The *Australian Financial Review* summarises the proposals that will be under consideration and refers to the fact that there will be discussion about caps being imposed on the maximum amounts of general damages paid to injured people and the prohibition of payments to those whose injuries fall below a statutory threshold. That is certainly consistent with what the bill proposes. The article states:

> … the scheme would introduce a national accreditation system for inherently risky activities that would allow registered organisations to escape liability at common law for killing or injuring people as a result of breaching the normal law of negligence.

That point goes to the principle of individuals taking responsibility for their own actions if they elect to become involved in an inherently risky activity.

The article goes on to state that within these arrangements it is proposed that registered organisations would have to adopt risk management standards and programs, and in return they would be granted an automatic exemption from the normal law of negligence. Again that is entirely consistent with the draft bill before the house.

The article further states:

> The scheme would also abandon the push for a uniform national response …

That is critically important. State jurisdictions would impose their own solutions because quite clearly thus far it has not been possible to develop a uniform national response, but it is too important to wait. Why is it so important? This is where we get to the meat of the debate. I can say to the house, as a member of Parliament representing a rural community in the Gippsland region, that many small towns are highly dependent on adventure tourism activities. Towns like Noojee, Erica, Lakes Entrance and others are very dependent on, for example, horseback safari businesses that operate out of those towns.

There are more sedate activities in South Gippsland such as horse-drawn wagons from Won Wron through the Mullundung forest, which, although they carry a lesser degree of risk, similarly have the burden of high insurance premiums. They are activities which may in themselves not be seen to be very high profile, notwithstanding their general attraction, but they are significant income generators for their local regions.

Some adventure parks have simulated activities, such as abseiling, rock climbing and so on, which have also been effectively priced out of the market. Premiums have risen from $2000 to $3000 a couple of years ago to $25 000 to $30 000. There is the example of the Kinkuna Country Fun Park based at Lakes Entrance, where the public liability premium rose from $15 000 to $60 000 in one year, effectively pricing that business out of the market. The net result is that 15 casual jobs over the busy summer holiday months have been lost. The proprietors of the business, Joe and Shirley Walters, have decided to liquidate their asset and get out because it is just too difficult to run the business.

There is much more that I would like to contribute to this important debate, but suffice it to say that I believe it is an absolute disgrace that government members have come into the house today and have put up reasons to do nothing when the government has done nothing for a year. Mr Stoney raised this issue in this house one year ago. What has the government done in the meantime? Not a damn thing! The only thing it has done is come into the house today and find 101 reasons for again doing nothing. It is about time the Bracks government got off its backside and dealt with the real issues that are impacting on rural Victorians, and it is a damn disgrace that government members will not support this bill.

House divided on omission (members in favour vote no):

Ayes, 27

Ashman, Mr	Furletti, Mr
Atkinson, Mr	Hall, Mr
Baxter, Mr	Hallam, Mr
Best, Mr	Katsambanis, Mr
Birrell, Mr	Lucas, Mr
Boardman, Mr	Luckins, Ms
Bowden, Mr	Olexander, Mr
Brideson, Mr	Powell, Mrs
Coote, Mrs	Rich-Phillips, Mr
Cover, Mr	Smith, Mr K. M.
Craige, Mr	Smith, Ms (*Teller*)
Davis, Mr D. McL.(*Teller*)	Stoney, Mr
Davis, Mr P. R.	Strong, Mr
Forwood, Mr	

Noes, 13

Broad, Ms	Madden, Mr
Carbines, Mrs	Mikakos, Ms
Darveniza, Ms (*Teller*)	Nguyen, Mr
Gould, Ms	Romanes, Ms
Hadden, Ms	Smith, Mr R. F.(*Teller*)
Jennings, Mr	Thomson, Ms
McQuilten, Mr	

Pair

Ross, Dr	Theophanous, Mr

Amendment negatived.

Motion agreed to.

Third reading

Hon. BILL FORWOOD (Templestowe) — By leave, I move:

That this bill be now read a third time.

In so doing I thank the Honourables Jenny Mikakos, Peter Hall, Graeme Stoney, Gavin Jennings, Wendy Smith and Philip Davis.

In thanking honourable members for their contributions to the debate I indicate that I was grateful to receive a letter from the Minister for Finance today and I look forward to speaking with him and the National Party to find a way through this next week.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

MEMBERS STATEMENTS

Sporting Shooters Association of Australia

Hon. ANDREW BRIDESON (Waverley) — Last Saturday I had the pleasure of attending the open day of the Sporting Shooters Association of Australia (Victoria) Ltd at the Springvale range, 710 Dandenong Road, Springvale. I would like to thank Sebastian Ziccone, the president of the association, and his management committee for the invitation and to compliment the association on its foresight in developing a range to promote competitive target shooting as a legitimate sport.

In fact, the association has developed a strategic plan that will take it to the year 2006 — the year of the Commonwealth Games in Melbourne. By developing more competition and providing more instruction in the disciplines of shotgun, rifle and pistol shooting, it is hoped that Australia will be at the forefront of the medal tally in shooting at those games. To achieve this it is incumbent upon government to ensure funding flows to this sport.

During my visit I was impressed with the strict rules and discipline displayed by the members as they actively participated in their sport. I was impressed too with the number of young people, the high level of

female participation and the fact that the Sporting Shooters Association of Australia welcomes and encourages people with physical disabilities. In fact, the Physical Challenge Shooters Club utilises the Springvale range and includes current Paralympic team members. It was pointed out to me that shooting is a growing family sport, with keen competition taking place between family members. I congratulate the Sporting Shooters Association of Australia on its achievements to date and wish it well with its future developments.

Amnesty International Australia

Hon. S. M. NGUYEN (Melbourne West) — I would like to take this opportunity to acknowledge the work of Amnesty International Australia.

Amnesty International Australia and the Australia Tibet Council supported the visit to Australia this month of the Dalai Lama. The visit was a great success with hundreds of thousands of Australians attending three public seminars in Melbourne, Geelong and Sydney. The special youth seminars attracted 1000 senior students and 700 teachers. This is one of many good examples of the work of Amnesty International Australia.

The Vietnamese community and I have worked with the organisation on many occasions to raise awareness of human rights in Vietnam and to fight for the release of many religious leaders and for the freedom to practise their beliefs. Its work has helped many dissidents to be released. It is here to investigate, document, campaign and expose human rights abuses. It pressures governments to abide by their responsibilities under the Universal Declaration of Human Rights, which every member state of the United Nations has accepted and signed.

Amnesty International is involved in a wide range of human rights education programs and encourages non-government organisations and businesses to support and respect human rights.

John Lockett

Hon. R. A. BEST (North Western) — I rise today to pay tribute to the life of a quite extraordinary Victorian, the late John Lockett, known as Jack, who died last Saturday night at Carshalton House in Bendigo at the age of 111.

Mr Lockett was born near Tarnagulla on 22 January 1891 and spent much of his life farming property near Walpa in the northern Mallee, an area which Mr Bishop and I represent. He served in the First World War for 1268 days, most of that service being in France. He returned home, and in 1923 he married Maybell, or Doll as he preferred to call her. They had 4 children, 15 grandchildren and 23 great-grandchildren, and I know he was much loved by them all. His family was tremendously proud of him, as he was of them. He listed the carrying of the Olympic torch in 2000 as the highlight of his life, and he did that at the age of 109! However, I am sure his OAM also gave him enormous pleasure and pride.

Jack Lockett will be sadly missed by the Bendigo community. He was a Bendigo icon, and during recent years we celebrated his birthdays. He wore humility as a badge of honour. He was a man who did not believe in fuss: just do the job, do it well, but be modest. As I said, he will be sadly missed by the Bendigo community, and I pass on my condolences to his family.

Local government: funding

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — As a member of Parliament I regularly attend with my colleagues briefings with my municipal councils, of which there are currently six in Eumemmerring Province. It is the character of these briefings that councils invariably ask for state members' support to obtain additional state and commonwealth funding in order to provide the services that ratepayers now expect of their councils; services such as kindergartens and home and community care as well as the traditional staples of local roads and rubbish collection. As a member of Parliament, I am always happy to support such funding requests where they are appropriate. However, it is a worrying trend that local government is putting out its hand for extra cash from state and commonwealth governments for its core programs while hoarding cash for the pet projects of the incumbent councillors and executive.

The City of Casey has recently requested help in obtaining more state government funding for home and community care programs — a request that I am happy to support. However, at the same time it is able to send a delegation of councillors to East Timor in support of an aid project. Foreign aid is not the role of local government, and it represents a misuse of ratepayers' funds. If local government is to be credible when seeking extra state and commonwealth funding it must be responsible in the way it uses its existing budget.

Clunes: film marketing strategy

Hon. D. G. HADDEN (Ballarat) — I wish to pay tribute to the people of Clunes, which is where

Victoria's first gold is officially recorded as having been discovered in June 1851. Clunes was named by Donald Cameron who took up his sheep run in 1838 and named it 'the Clunes' after his native home in Scotland. Clunes is known as Victoria's first gold town but it is also famous for its wide streets and intact 19th-century buildings. The main Street, Fraser Street, has underground powerlines, which is another factor adding to its historic look. However, Clunes is also famous for the filming of the first *Mad Max* movie, and more recently the ABC series *Something in the Air* was also filmed there.

Over the past few weeks Clunes has been transformed: one side of Fraser Street has been labelled Euroa and the other side is named Jerilderie, and red sandy gravel has been spread over the footpaths and main street all in readiness for the commencement yesterday of the filming of the new $30 million Ned Kelly movie starring the famous Australian actor Heath Ledger. The film's location manager, Russell Boyd, is quoted in the *Herald Sun* of 25 May as having travelled 8000 kilometres looking for a suitable town and saying that Clunes is the chosen town because of its historic main street, buildings and also because of its film policy.

Clunes has a film marketing strategy and sends information packs to production companies. This is an initiative of the Clunes Tourist and Development Association, and I commend the association president, Graeme Johnstone, and its members.

James Gemmell

Hon. W. R. BAXTER (North Eastern) — I want to record the recent death at Cobram at the age of 90 years of Mr James W. Gemmell.

Jim Gemmell was the founding chairman of the Murray Valley Dairying and Trading Cooperative Company Pty Ltd, which subsequently developed into the mighty Murray Goulburn dairying conglomerate, Australia's leading dairying company. Jim Gemmell and 14 other farmers founded the Murray Valley co-op after a meeting at Katunga in 1949.

They were mainly returned servicemen, although Jim Gemmell himself was not. They have built this company up to the mighty edifice it is today. Jim Gemmell also served for 20 years on the Cobram shire, and was president on a number of occasions. He was also chairman of the Murray Valley Development League, which of course was the predecessor to the Murray-Darling Association which now does such good work in terms of sustainable regional development in the Murray–Darling Basin.

Jim Gemmell was a community leader and a mentor to many young men and women, particularly in the dairy industry. He has been a fine citizen in northern Victoria for many years, and he will be sadly missed.

Housing: Nunawading tenant

Hon. B. N. ATKINSON (Koonung) — I wish to bring to the house my concern about the failure of the ministers of this government and of departments to respond to correspondence sent to them by people on issues that are of great concern to those people. One of the ones that concerns me is a public housing tenant in Eastbridge Court, Nunawading, who has resided in that property for some four years and who had moved seven times in the 14 months prior to that and been homeless for a period. Having lived in this facility for four years, she now faces the problem of not being able to ensure secure tenancy going forward and not knowing whether or not she can get a job. She is quite happy to pay maximum rent on this property or even to buy it from the department, but she is unable to find out from the department, from the minister, or from my colleague in another place the honourable member for Mitcham any information on what her entitlement is at this time, or indeed, to obtain any other simple information as to whether or not that property might be available for sale in the future.

This woman is trying to make a go of it; she has come out of a difficult relationship and simply wants very simple answers from the government, and they are not available.

The PRESIDENT — Time!

Mount Moriac Recreation Reserve

Hon. E. C. CARBINES (Geelong) — I was delighted last Friday to announce on behalf of the Minister for Sport and Recreation the allocation of $50 000 for the upgrade of the Mount Moriac Recreation Reserve.

This reserve is the home of the Modewarre football, netball and cricket clubs. Their oval has been in such a terrible condition that several matches have been rescheduled to other grounds in the interests of player safety. Indeed, some players have felt compelled to leave the clubs and join others.

The funding will allow Modewarre football, netball and cricket clubs to provide a safe player surface, helping to retain players and providing an opportunity to increase

membership. It sends a clear message to the Mount Moriac community that the Bracks government supports their endeavours to keep local sport alive. Congratulations to all at Modewarre, and good luck to the Warriors!

Stonnington: graffiti strategy

Hon. ANDREA COOTE (Monash) — I would like to congratulate the Stonnington City Council on the excellent job it has done in trying to eradicate graffiti vandalism in Prahran, Windsor, Armadale, Toorak and Malvern East. Graffiti is a huge and constantly increasing problem in Monash Province, and it is one which has received much attention in local newspapers. It affects tourism in some of Melbourne's most prominent shopping districts — Toorak Road and Chapel Street alike.

The Stonnington council has worked for some time on graffiti management, and it had a trial which went from November last year until February this year. Private properties were permitted two free clean-ups and commercial properties one free clean-up. A graffiti hotline was set up for ratepayers, and the council has also provided them with free graffiti removal kits, which contain a spray bottle, goggles, gloves et cetera.

We have also had a lot of poster problems in Stonnington, with posters everywhere, and the City of Stonnington is to be commended, unlike the Bracks government. Like graffiti, illegal posters denigrate the public places in Stonnington. The placement of illegal posters is an offence under the Summary Offences Act. The recommendations of the Scrutiny of Acts and Regulations Committee to deal with this issue have now been sitting on the desk of the Attorney-General for over six months, and the community is yet to see any action on graffiti and posters within the City of Stonnington.

David Reynolds

Hon. G. D. ROMANES (Melbourne) — At the Education Week gala dinner last week, a number of teachers, school leaders and parents were recognised for their commitment to building a world-class public education system in Victoria.

One of Victoria's outstanding secondary teachers, David Reynolds from Princes Hill Secondary College, was awarded the Lindsay Thompson Fellowship for 2002 for his work in bringing together clusters of primary and secondary schoolteachers to work on a whole range of issues together.

David's service to public education in Victoria has extended over a long period. I know that because he taught my oldest son when he started his secondary education at Princes Hill Secondary College many years ago. When I spoke to David at the dinner last week he recalled how my son Jeremy corrected his spelling when he first started teaching at the school. For his part, Jeremy recalls David as an excellent teacher who had a great impact on him and many other students.

I congratulate David Reynolds and the team of teachers with whom he works to provide first-class teaching and care to young people of the North Carlton area.

Gallipoli veterans

Hon. R. F. SMITH (Chelsea) — I pay tribute to the late Alec Campbell, the last of our Gallipoli veterans. I, along with an overwhelming number of Australians, was saddened by his passing. We must reflect on the passing into history of Mr Alec Campbell and all the other Gallipoli veterans as they represent a historical part of our history and the make-up of who we are. Mention should also be made of the passing of Mr Jack Lockett, a great old fellow, and I am sure that the family and all Victorians mourn his passing.

ADDRESS BY PRESIDENT OF THE HELLENIC REPUBLIC

The PRESIDENT — Order! I have received the following communication:

> Mr President, the Legislative Assembly transmit to the Legislative Council a resolution inviting members of the Legislative Council to attend the Legislative Assembly chamber next Wednesday, 5 June, at 9.15 a.m.

The resolution adopted by the Legislative Assembly today was as follows:

> That —
>
> (1) The Legislative Assembly invites members of the Legislative Council to attend in the Legislative Assembly chamber on Wednesday, 5 June 2002, at 9.15 a.m. when the Speaker takes the chair to hear addresses of welcome to His Excellency, Constantinos Stephanopoulos, President of Greece, by the Premier, Leader of the Opposition and Leader of the National Party and an address to the house by President Stephanopoulos.
>
> (2) The lower public gallery on the opposition side of the house be deemed to be part of the Legislative Assembly chamber for the duration of the addresses to provide additional accommodation for members of the Legislative Council.

(3) The Speaker of the Legislative Assembly shall chair the addresses and the conduct of the proceedings shall be in accordance with the standing orders of the Legislative Assembly.

The following arrangements will apply in relation to Wednesday's proceedings:

Members of the Council will be permitted to enter the Assembly chamber after the ringing of the Assembly bells at 9.15 a.m.

Assembly members will occupy their usual places, with Council members utilising any vacant spaces. The lower public gallery in the Assembly chamber which is normally reserved for Council members, together with the seating immediately behind that area, will be reserved for the exclusive use of Council members to accommodate any overflow during the proceedings.

For the duration of their attendance in the Assembly chamber Council members will be subject to the authority of Mr Speaker and the standing orders of the Assembly.

Members of the Council will withdraw from the Assembly chamber following the addresses from the Premier, Leader of the Opposition, Leader of the National Party and the President of Greece. This is expected to be by 9.45 a.m.

The Council sitting will commence at 10.00 a.m.

TRANSPORT (FURTHER MISCELLANEOUS AMENDMENTS) BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. C. C. BROAD (Minister for Energy and Resources, on motion of Hon. M. M. Gould.

MAGISTRATES' COURT (KOORI COURT) BILL

Second reading

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I move:

That this bill be now read a second time.

The Magistrates' Court (Koori Court) Bill 2002 delivers on our government's commitment to establish a Koori court pilot program for Victoria as outlined in the Victorian Aboriginal justice agreement. This illustrates the government's commitment to reconciliation and developing a strong partnership with the Victorian indigenous (Koori) communities.

The Victorian Aboriginal justice agreement is the first significant negotiated initiative launched by this government which maximises Aboriginal participation in the development of policies and programs in all areas of the justice system. Our government recognises that it is not possible to address the overrepresentation of Aboriginal people in the criminal justice system without also tackling the disproportionately high levels of Aboriginal disadvantage caused by the dispossession of traditional lands and the separation of families.

Together, this government and the broader community must be prepared to experiment with inclusive, innovative, culturally appropriate and modern approaches to strategically reduce Aboriginal overrepresentation within the criminal justice system. The Koori court represents a fundamental shift in the way in which we as a community deal with Aboriginal offenders.

We do not pretend that the Koori court is the only answer to address the alarming number of Aboriginal people represented within our justice system. Rather, it is one initiative of the government's and the Aboriginal community's agreement which encompasses the areas of prevention, accessibility, effectiveness of justice-related services and rehabilitation. It aims to improve the current startling statistics relating to indigenous contact with the criminal justice system in all its forms. The Koori court will complement a number of existing and planned justice initiatives such as:

the adult residential program;

the cultural immersion program;

mediation and dispute resolution programs;

Koori family history service and link-up;

community legal education;

improved relations between Victoria Police and the Aboriginal communities; and

the increased number of indigenous bail justices.

This initiative will give a clear message to the courts and the wider community that there is a genuine commitment by this government to have real and meaningful participation in the justice system by the Aboriginal communities. By adopting this initiative our

government intends to incorporate Aboriginal knowledge, skills, values, cultural beliefs and practices in the legal system. To do so recognises the fact that Koori communities themselves are seeking means to have a greater input into the manner in which they govern their communities. This initiative recognises that Koori communities acknowledge the need for sanctions for unacceptable conduct and rehabilitation in a culturally appropriate fashion.

In South Australia, the Nunga court has been operational for over two years. Based initially in Port Adelaide, the objective of this court is similar to that of the Koori court. In New South Wales and Queensland like models have been developed. Such courts have also been established in many overseas jurisdictions emanating from first nations' incorporation of their cultural beliefs and practices in the legal system. While indigenous courts have a number of common features, no two courts are identical.

The Victorian Koori court has been developed after extensive analysis of the effective features of indigenous courts both in Australia and overseas. I emphasise that the Koori court model is unique to Victoria, encompassing the best features of existing models whilst still acknowledging their cultural diversity expressed by the Victorian indigenous communities.

Why have a Koori court?

The key to understanding the need for a Koori court is an acceptance that historically Aboriginal offenders often come from the most disadvantaged of backgrounds, and that they are often victims themselves. Only negotiated innovation can and will address this problem.

The Royal Commission into Aboriginal Deaths in Custody recognised that Aboriginal Australians face a much greater risk than the general Australian population of becoming victims of violence, possibly up to 10 times greater in the case of homicide. Further, it is estimated that Aboriginal people are 11 times more likely than non-Aboriginal people to be placed in an adult prison and more likely to be remanded in custody than non-Aboriginal people (23.4 per cent compared to 13.8 per cent). The number of Aboriginal prisoners in custody at June 2001 has increased since 1995 by 17.2 per cent.

Further, in 2000–01 Victoria Police processed 4676 Aboriginal people — an increase of 1118 people representing an increase of 31.4 per cent over five years.

The opportunity to establish a Koori court acknowledges that it is essential to incorporate Aboriginal communities' cultural beliefs and practices. It is intended to produce fair and equitable treatment for Aboriginal people in the justice system. It is also an opportunity to divert Aboriginal people away from prison where it is appropriate to do so. These aims are best achieved through a partnership between the Aboriginal community and government that reforms the justice system, addresses the underlying causes of criminal activity and fosters trust, understanding and commitment through the direct involvement and participation of the Aboriginal community in the justice system.

Community participation in the sentencing process not only increases the participation rate of the Aboriginal community within the justice system but reflects the view that input by the offender's community is both an appropriate and potentially more effective method of sanctioning unacceptable conduct than traditional judicial decision-making models have been. Indeed the courts and the community must recognise that present sentencing practices are doing little to reduce the rate of offending and that more creative uses of the sentencing processes are needed to enable Aboriginal communities to exercise greater flexibility and control over sentencing outcomes.

The Victorian Koori court will be piloted over two years, commencing at Shepparton with the expectation that the metropolitan pilot site — Broadmeadows — will be operational within six months after the commencement of the first pilot site. The selection of the location of pilot sites was the subject of extensive consultation with key stakeholders and a detailed analysis of data and statistics was conducted, the results distributed to the Aboriginal community for comment.

Accordingly, Shepparton has been chosen as the first regional location for the Koori court due to the alarming statistics from the Shepparton region.

In addition, the contributing factor as to why this site was selected was the availability of services for Koori court participants, such as:

drug and alcohol treatment;

an indigenous women's mentoring program;

well-developed indigenous community controlled social service providers such as Rumbalara Aboriginal Cooperative and the Burri Family Preservation Service and others, all of which reflect the commitment of these communities to resolving

difficulties which are long standing and which often result in adverse interaction with law agencies; and

access to social and emotional wellbeing counselling.

The government anticipates that the Koori court will commence operation in Shepparton by August 2002 and Broadmeadows by the end of the year.

The objective of the court is to actively include the Aboriginal communities within the justice system and allow for community involvement in the sentencing process. Input by the offender's community is arguably a more effective method of decision making; however, the magistrate retains the ultimate decision-making authority and continues to be the sentencing agent. All sentencing dispositions are available to the court including prison if this is deemed appropriate.

What is a Koori court?

In essence, the Koori court is an alternative way of administering sentences so that court processes are more culturally accessible, grounded in Aboriginal communities' efforts to promote rehabilitation and impose sanctions which are acceptable and comprehensible to the Aboriginal community. The key emphasis is on creating an informal and accessible atmosphere and allowing greater participation by the Aboriginal community through the Koori elder or respected person, Aboriginal justice worker, indigenous offenders and their extended families or wide group of connected kin, and if desired, victims, in the court and sentencing process. It aims to reduce perceptions of intimidation and cultural alienation experienced by Aboriginal offenders.

It focuses on the individual through close collaboration with family, community service providers and criminal justice agencies. This partnership approach aims to maximise rehabilitation prospects which benefits the whole community by assisting offenders to comply with the completion of sentencing orders and where appropriate to develop a case management plan designed to meet the needs of the individual offender in a culturally appropriate manner. In this way the Magistrates Court considers and deals with the sentencing of Koori offenders in a more culturally appropriate and aware manner.

How will the Koori court work?

Rather than being a new court, the Koori court is a fundamentally new way of approaching and dealing with Aboriginal offenders. The bill establishes the Koori court as a new division of the Magistrates Court.

The Koori court magistrate will be assisted by a Koori court team consisting of an elder or respected person, an Aboriginal justice worker, a community corrections officer and a police prosecutor and defence lawyer. The Aboriginal community's participation illustrates their willingness to incorporate their principles of what is considered acceptable and not acceptable behaviour. The role of the elder/respected person is an important part of the model. It ensures a cultural context is applied to the court's processes allowing for the Koori court participants to comprehend the consequences of their offending behaviour from both the law's and the Aboriginal community's perspective.

The Koori court will generate new and build upon old partnerships between judicial officers, lawyers, law enforcement agencies, correctional authorities, treatment providers and government departments. These organisations and individuals will need to adopt new roles and embrace a collaborative, team-oriented approach in working together to manage Koori court participants and reduce their offending.

Another crucial element to this initiative is the development and incorporation in the process of an Aboriginal community code of conduct. Concerns raised by the Aboriginal members of the regional Aboriginal justice advisory committees suggested that there is an underlying perception from offenders that when crime is committed the law which is being broken is the 'mainstream law', which does not form part of Aboriginal culture and community. The code is about reclaiming and redefining 'mainstream law' by developing standards that are owned by the Koori community.

The participation of the elder or respected person symbolises that the offence is not condoned by either the Aboriginal nor non-Aboriginal communities and that any sentence imposed is done so after input and information provided to the magistrate by the community representative, the elder or respected person in a transparent fashion in open court. In this way the sentencing process as well as the sentence ultimately is community owned so when crime is committed it is against community standards. This elder/respected person will play a critical role in the effectiveness and acceptance of the Koori court initiative.

The court requires a magistrate to take into account the offender's Aboriginality not simply in determining the sentence to be imposed but in adopting suitable procedures for arriving at that sentence and ensuring that any order imposed is more likely to be complied with given the significant Aboriginal community

approval of the sentence as an outcome which is adopted by that community.

It is expected that successful completion of the Koori court program, with its supervision regime, treatment and support services will prevent or delay the entry of the offender into prison.

Indication from other similar courts is that the breach rates for offenders and fail-to-appear rate of offenders is reduced. This translates into the savings in costs of correctional services, savings in prosecution and defence costs and in welfare and unemployment benefit costs. There is also evidence of improved health and wellbeing of offenders. The non-Aboriginal community plainly benefits from these reductions.

What does the Koori court aim to achieve?

The Koori court has several operational and community-building aims. From a criminal justice perspective, the Koori court aims to:

- further the ethos of reconciliation by incorporating Aboriginal people in the process and by advancing partnerships developed in the broad consultation process which has led to this initiative being adopted;
- divert Koori offenders away from imprisonment to reduce their overrepresentation in the prison system;
- reduce the failure-to-appear rate at court;
- decrease the rates at which court orders are breached; and
- deter crime in the community generally.

Similarly, from the community-building perspective the Koori court aims to:

- increase Aboriginal community ownership of the administration of the law;
- increase positive participation in court orders and the consequent rehabilitative goals for Koori offenders and communities;
- increase accountability of the Koori community families for Koori offenders;
- promote and increase Aboriginal community awareness about community codes of conduct/standards of behaviour and to promote significant and culturally appropriate outcomes; and
- promote and increase community awareness about the Koori court generally.

To achieve these goals, the Koori court requires coordination of services together with the input of community resources to help offenders, victims and the community to achieve successful outcomes.

Key features of the bill

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

Not all Aboriginal offenders will be suitable for the Koori court. Currently there is no specific target group of offenders except that the offender is adult and Aboriginal and would otherwise be subject to sentences imposed by the Magistrates Court.

Individuals will be eligible to appear in the Koori court where they plead guilty to offences within the jurisdiction of the Magistrates Court. At this stage offenders will be excluded where the offence committed is one of crimes (family violence) or sexual offences given the complexity of the issues and the services required. Statistics indicate that the most likely offences considered by the Koori court will be property offences, given that 55 per cent of the Aboriginal people processed in Victoria during 2000–01 committed crimes against property.

It will be vital that Koori court participants reside in an area in the vicinity of the Koori court, to enable them to be supervised whilst on their order and to allow ease of access as outlined in their order. This will facilitate participants' compliance with the order and therefore reflect a decrease in the number of breaches — one of the clear measurables of the Koori court pilot's success.

The bill departs from the traditional one-size-fits-all approach to sentencing, by giving the Koori court the ability to tailor programs to address offenders' behaviour and meet their complex individual needs. The Koori court's Aboriginal justice worker and the community corrections officer together will develop a case management plan for each participant which might include matters such as drug and alcohol treatment, and accommodation, if necessary. The case management plan will assist the Koori court in determining which program conditions are to be attached to each order determined by the magistrate.

Conclusion

This division of the Magistrates Court has been developed by long and committed consultation with the Koori community, with significant leaders in that community and with people from the grassroots. It

reflects the Aboriginal communities' commitment to addressing the underlying issues offenders face and creates a greater sense of safety within the community. It provides us with an opportunity to explore ways in which we can reduce Aboriginal exposure to the criminal justice system. As a program of initiatives it provides us as a community with the capacity to make 'imprisonment the sentence of last resort' by incorporating options for rehabilitation which will have a better chance of success. It aims to incorporate the leaders in the Koori community in decision-making processes in a way which demonstrates to Kooris who come before the courts that illegal conduct is unacceptable to the whole community. It will, as a partnership, sanction this unacceptable conduct, but it will do so in ways which should see offending reduced and greater compliance with court orders.

The effective and appropriate resourcing of the Koori court is critical to its success. This is acknowledged by this government, and we have committed funds under the Victorian Aboriginal Justice Agreement for the establishment and operation of the Koori court and its programs. This funding will not detract from existing programs, rather it is additional in order to absorb the increased demand on existing services.

The Koori court pilot will be evaluated to determine whether it has been effective in reducing indigenous contact with the criminal justice system, a reduced rate of recidivism is evident, and the pilot has ultimately made a difference. If the evaluation is successful the Koori court could be extended to further locations throughout Victoria.

This bill is the culmination of an extensive period of consultation across the justice portfolio, across government agencies and importantly with the Aboriginal community. I am pleased to say that the community has expressed strong support for a Koori court and this innovative approach to ensuring the courts' processes are culturally responsive for Aboriginal offenders. I would like to thank those individuals and organisations who responded to the discussion paper and who generously gave up their time for consultation.

This government refuses to turn a blind eye to the underlying issues that prove to be causal factors resulting in the overrepresentation of Aboriginal people in the justice system. It is committed to trying creative and innovative initiatives which look beyond offending behaviour to address its underlying causes. The Koori court is a bold and exciting initiative to reduce the overrepresentation of indigenous people in our system and its destructive effects on the Victorian community. I commend the bill to the house.

Debate adjourned on motion of
Hon. P. A. KATSAMBANIS (Monash).

Debate adjourned until next day.

ENERGY LEGISLATION (FURTHER MISCELLANEOUS AMENDMENTS) BILL

Second reading

For **Hon. C. C. BROAD** (Minister for Energy and Resources), Hon. J. M. Madden (Minister for Sport and Recreation) — I move:

That this bill be now read a second time.

The bill before the house, the Energy Legislation (Further Miscellaneous Amendments) Bill 2002, is designed to restructure the mechanisms for appeals against certain decisions of the gas and electrical safety regulators, through the transfer of such jurisdiction to the Victorian Civil and Administrative Tribunal (VCAT), and to further clarify the regulatory framework for the electricity and gas industries.

By way of background, the Gas Appeals Board and the Electrical Appeals Board were established under part 4 of the Gas Safety Act 1997 and part 6 of the Electricity Safety Act 1998, respectively, to provide avenues of appeal against certain decisions and actions of the Office of Gas Safety and the Office of the Chief Electrical Inspector. Regulatory decisions of the Office of Gas Safety and the Office of the Chief Electrical Inspector that may be appealed generally relate to industry licensing and registration, equipment and appliance approvals, the issuing of recall, improvement or prohibition notices and the issuing of specific directions to industry participants — although some differences exist between the two regulatory regimes.

It is worth noting that since the formation of both the Electrical Appeals Board and the Gas Appeals Board, no appeals have been lodged under either the Electricity Safety Act 1998 or the Gas Safety Act 1997. This may be a function of the fact that industry participants are in many cases well trained and have a good knowledge of the industry standards that they are required to apply. While this appears to have reduced the likelihood of appeals, it has also become apparent that the continued devotion of resources to maintaining these boards as separate entities is not efficient, and that their functions can be more efficiently managed through the existing VCAT structure. VCAT has the necessary infrastructure, processes and access to tribunal

members and technical experts to effectively manage any such appeals from the decisions of the Office of Gas Safety or the Office of the Chief Electrical Inspector.

In addition, the absence of board activity has made it increasingly difficult to attract new members to the boards or to retain the interest of existing members. I would, however, like to take this opportunity to thank each of the current and past board members for their time on the board and, in particular, the initial chair of both appeals boards, Mr John Chamberlain, for his assistance in setting up and running the mechanisms that currently underpin the operation of both boards.

I turn now to each part of the bill. Part 1 of the bill states the purpose of the bill and provides for its commencement.

Part 2 of the bill contains amendments to the Electricity Safety Act 1998, principally aimed at abolishing the Electrical Appeals Board and transferring its appeal jurisdiction to VCAT. The transfer of the appeal jurisdiction to VCAT will not change the categories of decisions of the Office of the Chief Electrical Inspector that can be subject to review, with one exception. Section 70(2)(f) of the Electricity Safety Act 1998 currently provides that, in addition to the categories of decision prescribed by the act, other decisions prescribed by regulation are also appellable. This provision is not re-enacted in the bill as it is inappropriate to confer additional jurisdiction on VCAT by regulation.

Furthermore, the transfer of appeal jurisdiction to VCAT will not change the categories of persons who are currently entitled to appeal; those same people will be entitled to bring an application for review before the tribunal. The transfer will, however, provide a more accessible mechanism for the review of relevant electrical safety decisions, as persons considering bringing an appeal will benefit from access to VCAT's 'shopfront' service. Clause 4 of the bill defines those persons eligible to apply to VCAT for review of a decision and the types of decisions for which such an application is allowed.

In addition to its responsibility for electrical safety appeals, the Electrical Appeals Board is required to maintain a register of the exercise of powers of entry by enforcement officers pursuant to division 2 of part 11 of the Electricity Safety Act 1998. Clause 6 of the bill transfers this function to the Office of the Chief Electrical Inspector. The clause provides that the exercise of powers of entry by enforcement officers must be reported to the Office of the Chief Electrical Inspector within three business days after the entry. This is comparable to the reporting requirements imposed on enforcement officers exercising powers of entry under other Victorian legislation, for example the Fair Trading Act 1999, the Legal Practice Act 1996 and the Infertility Treatment Act 1995.

Powers of entry under the Electricity Safety Act 1998 are already subject to various checks on their use, including a general requirement for prior written consent from the Office of the Chief Electrical Inspector before the exercise of a power of entry, and a requirement to provide a copy of entry details to the owner or occupier of the land or premises. These provisions are contained in part 11 of the Electricity Safety Act 1998.

In addition to the above provisions, part 2, clause 5 of the bill contains amendments to empower a fire control authority to assign a low or high fire hazard rating for the purposes of the Electricity Safety Act 1998 and regulations, rather than ratings of high or very high, which is currently the case. This amendment will ensure that all areas across Victoria are assigned fire hazard ratings that accord with their level of bushfire risk, and thus ensure that vegetation management of trees near powerlines is not more extensive than necessary.

Clauses 7 to 9 of the bill provide for amendments consequential to the transfer of appellate jurisdiction from the Electrical Appeals Board to VCAT. Clause 10 provides for the repeal of spent provisions of the Electricity Safety Act 1998.

Clause 11 provides for a new schedule 1 to the act which sets out transitional provisions for the transfer of appeal functions from the Electrical Appeals Board to VCAT. It provides that on the relevant commencement date the Electrical Appeals Board will be abolished and its members will go out of office. In addition, it clarifies processes and procedures for pending proceedings. Proceedings which the board has not begun to hear immediately before the commencement of clause 9 of the bill or which the board has begun to hear at that time but in which evidence on a material question of fact has not been presented will be taken to have been commenced in the tribunal and will be heard and determined by the tribunal. However, if immediately before the commencement of clause 9 of the bill the board has begun to hear an appeal and has been presented with material evidence on a question of fact, that appeal will continue to be heard, and will be determined by the board under the provisions of the Electricity Safety Act 1998 as in force immediately before clause 9 of the bill commences.

New schedule 1 also provides transitional arrangements for the transfer of the powers-of-entry register to the Office of the Chief Electrical Inspector and the transfer of any register or documents in the possession of the board, relating to proceedings before the board, to the principal registrar of VCAT.

Part 3 of the bill amends the Gas Safety Act 1997 to abolish the Gas Appeals Board and transfer its appeal jurisdiction to VCAT. These amendments are in principle similar to those contained in part 2 of the bill. The transfer of the appeal jurisdiction to VCAT will not change the categories of decisions of the Office of Gas Safety that can be the subject to review, with one exception. Section 81(2)(h) of the Gas Safety Act 1997 currently provides that, in addition to the categories of decision prescribed by the act, other decisions prescribed by regulation are also appellable. This provision is not re-enacted in the bill as it is inappropriate to confer additional jurisdiction on VCAT by regulation.

Similarly, the transfer of the review jurisdiction will not affect the categories of persons that are currently entitled to bring an appeal; those same people will be entitled to bring an application for review before VCAT. Clause 13 of the bill defines those persons eligible to apply to VCAT for review of a decision and the types of decisions for which such an application is allowed.

As is the case with the Electrical Appeals Board, the Gas Appeals Board is required to maintain a register of the exercise of powers of entry by enforcement officers pursuant to division 2 of part 5 of the Gas Safety Act 1997. Clause 14 mirrors clause 6 of the bill, transferring responsibility for maintaining a register of the exercise of powers of entry to the director of the Office of Gas Safety. As with the Electricity Safety Act 1998, powers of entry under the Gas Safety Act 1997 are already subject to various checks on their use, including a general requirement for prior written consent from the Office of Gas Safety before the exercise of a power of entry, and a requirement to provide a copy of entry details to the owner or occupier of the land or premises. These provisions are contained in part 5 of the Gas Safety Act 1997.

Clauses 15 to 19 of the bill provide for amendments consequential to the transfer of appellate jurisdiction from the Gas Appeals Board to VCAT. Clause 19 provides for a new schedule 1 to the act which sets out transitional provisions for the transfer of appeal functions from the Gas Appeals Board to VCAT. It provides that on the relevant commencement date the Gas Appeals Board will be abolished and its members go out of office. In addition, it clarifies processes and procedures for pending proceedings. Specifically, proceedings which the board has not begun to hear immediately before the commencement of clause 18 of the bill, or which the board has begun to hear at that stage but in which evidence on a material question of fact has not been presented, will be taken to have been commenced in the tribunal and will be heard and determined by the tribunal. However, if immediately before the commencement of clause 18 of the bill the board has begun to hear an appeal and has been presented with material evidence on a question of fact, that appeal will continue to be heard and will be determined by the board under the provisions of the Gas Safety Act 1997 as in force immediately before clause 18 of the bill commences.

New schedule 1 also provides transitional arrangements for the transfer of the 'powers of entry' register to the director of the Office of Gas Safety and the transfer of any register or documents in the possession of the board, relating to proceedings before the board, to the principal registrar of VCAT.

Part 4 of the bill provides minor technical amendments to the Electricity Industry Act 2000.

Clause 20 amends section 14 of the Electricity Industry Act 2000 to allow the amendment of the Victorian electricity supply industry tariff order. Clause 20 will permit clause 4.5.1 of chapter 4 of the tariff order to be amended so as to clarify the application or non-application of the provisions of chapter 4 to tariffs charged by the Victorian Energy Networks Corporation.

Clause 21 clarifies that it is not necessary to apply for authorisation under the Commonwealth Trade Practices Act 1974 in order to receive the benefit of the cross-ownership exemption in subsection 68(8) of the Electricity Industry Act 2000.

Part 5 of the bill replicates clause 21 for the gas industry, clarifying that it is not necessary to apply for authorisation under the Trade Practices Act 1974 in order to receive the benefit of the cross-ownership exemption in subsection 129(3) of the Gas Industry Act 2001 that will be available from 1 July 2002.

I commend the bill to the house.

Debate adjourned for Hon. C. A. FURLETTI (Templestowe) on motion of Hon. B. Forwood.

Debate adjourned until next day.

CRIMES (WORKPLACE DEATHS AND SERIOUS INJURIES) BILL

Second reading

Debate resumed from 16 May; motion of Hon J. M. MADDEN (Minister for Sport and Recreation).

Hon. P. A. KATSAMBANIS (Monash) — On behalf of the Liberal Party I put on record that we oppose this bill. At the outset I also put on record that the Liberal Party has a very good history of supporting initiatives that increase workplace safety and ensure that Victorian workplaces, no matter where they are within our state, are as safe as possible.

Consistently in this place we have supported legislation and initiatives of the Victorian Workcover Authority and its predecessors to ensure that the greatest level of workplace safety on work sites right throughout Victoria is achieved.

The reason the opposition opposes this bill is that the bill has no intention of improving workplace safety. In fact, its passage would result in such a significant negative shift in workplace safety culture on work sites that it would lead to outcomes that would not improve but would in many ways reduce workplace safety and put at risk the gains we have seen over the last decade in Victoria in relation to workplace accidents and deaths and workplace safety generally.

I do not resile from the fact that the Liberal Party will ensure that this piece of legislation will not get onto our statute books, because if that happened it would be a terrible outcome for all Victorians. It would be a bad outcome for employers, a bad outcome for employees and a bad outcome for economic growth and employment opportunities in our state, and it would send our state backwards, both as far as development and employment opportunities are concerned and, importantly, as far as workplace safety is concerned.

Victorians, be they employers or employees, should be proud of the achievements of the past decade with workplace safety. We have seen a decrease of over 70 per cent in workplace incidents and a significant decrease in both serious injuries and deaths occurring in our workplaces. That has happened because employers and employees have had an understanding that to achieve positive workplace safety outcomes they need to work together. There has been a development of a cooperative approach that relies on those people at the coalface working together to get positive outcomes. Yes, there has been a legislative framework, and, yes, there have been penalties — and rightly so. But the crux of the improvement in workplace safety over the past decade has been the cooperative approach between employers and employees to make the workplace safe. It has been an approach which has developed over time and which I imagine many years ago both parties took with great caution, but they have embraced it because they have seen that it works, as we have seen with so many other aspects of workplace culture.

In industrial relations when we took away as much as possible the adversarial nature — the 'us and them' nature — of the past and moved to a cooperative approach, employees and employers did not speak to each other through representatives sitting in glass towers a million miles away from the work site, but got down to the coalface and worked together for mutual benefit and outcomes.

The results are on the record. There has been a significant improvement in workplace safety — over a 70 per cent reduction in workplace accidents and significant decreases in the number of workplace deaths and serious injuries — which is a good outcome, and we want to see people continue to work towards even safer workplaces.

We all embrace the fact that the best safety record is one with zero deaths and zero injuries. I dare say that 15 years ago that might have seemed pie in the sky and an unachievable dream, but today it can become a reality. But it will only become a reality if we continue the cooperative culture that has developed. The bill threatens those gains and puts them at grave risk.

This is a bill about us and them; it is a bill that seeks to apportion blame, and in many ways it is a bill that seeks to play an eye for an eye and a tooth for a tooth. That is a mentality that went out with the Dark Ages and led to the significant problems with workplace safety that we faced in the state for many years. A return to those dark days would not help employers or employees, and certainly would not help Victorians. That is the main reason for the opposition opposing the bill — it puts the great gains of the past decade at serious risk. This is a flawed bill. It is a bill that creates differentiation in classes of people in Victoria when it comes to the application of the rule of law. It changes the boundaries of manslaughter laws and makes it easier to obtain a manslaughter conviction against an employer than to obtain a general conviction for manslaughter. In many ways it attempts to make employers second-class citizens with less rights than others.

It is a perverse and pernicious bill. It is a bill that should not see the light of day in Victoria's statute book, and if this government were honest with itself, if this government were a government that truly governed for all Victorians, the bill would never have seen the light of day in any shape or form in the first place and would not have been debated today. However, this government says one thing and does another, and we see examples of that again and again.

Under the guise of workplace safety and protecting injured workers, or those workers who might be at risk of injury or death in the future, the government has introduced a Trojan horse bill to satisfy its paymasters in the trade union movement. That is what the bill is about: it is about the Labor Party delivering to its paymasters. It is known that the Labor Party is a wholly owned subsidiary of the trade union movement; we know that the trade union movement owns the Labor Party.

Hon. R. F. Smith — We have shares in it — we get a dividend as well!

Hon. P. A. KATSAMBANIS — Mr Smith, you may very well be a shareholder in the Labor Party. I do not know how the Labor Party is structured, but I know it is a totally owned subsidiary of the trade union movement. On the opposite side of the chamber the Minister for Sport and Recreation, a former head of a trade union, and Mr Smith, another former head of a trade union, are both confirming that fact. The Minister for Sport and Recreation was head of one of the most successful trade unions of the past few years — it destroyed a number of Victorian football clubs in the process! That is what trade unions are about.

We have heard a great deal about the modern trade union movement changing its ways, but leopards do not change their spots. We know the trade unions pay lip service to the rights of the workers they purport to represent and make sure that they feather their beds at the expense of employees. That is what the bill is about — it will punish employees as much as it will punish employers. The best support you can give Victorian workers is to ensure their jobs are safe and create more jobs so that there are more opportunities in the future for all Victorians. That is what we should be about when in government — growing the pie, not diminishing it, not trying to destroy the livelihoods of employers so that they are no longer able to provide opportunities for their employees. Governments should not be about driving investment away.

This is an export bill — it exports Victorian jobs to other states. That is why the opposition opposes it. We will not lamely sit back and watch the Labor Party reward its paymasters in the trade union movement at the expense of Victorian workers. In many ways Victorian workers are damn lucky they have a Liberal Party and a National Party prepared to stand up for the interests of workers rather than the interests of trade union bosses.

I will slowly work through all the facts so that even Mr Bob Smith can understand them. He might not accept them, but I am sure he will be able to understand them.

Hon. R. F. Smith — Tell us about your first-hand experience!

Hon. P. A. KATSAMBANIS — I will get to first-hand experience. The opposition has received a great deal of correspondence on this issue. We have been approached by small, medium and large-size enterprises and employer groups, representative groups, trade union groups, the Trades Hall Council and various other interested parties. The impact the bill will have on Victorian employers and employees has been made very clear to us. We will not sit back and allow a bill to pass this place that destroys businesses, that sends businesses away to other states and nations and that takes away employment opportunities for ordinary Victorians. I will not stand by and watch that happen, nor will members of the National Party. However, I know that, unfortunately, the Labor Party has shown that it would rather back its paymasters in the trade union movement than worry about ordinary Victorians trying to run businesses or hold down jobs and feed their families. They do not interest the trade union bosses or the Labor Party — they are in it to feather their own nests!

Hon. R. F. Smith — What are you going to tell the families?

Hon. P. A. KATSAMBANIS — I will pick up that interjection. I feel for any person who has had to endure the outcomes of a workplace incident that has resulted in injury or death. I feel for the people involved and for the families of the people involved. As have many Victorians, I have had personal experience of family members being severely injured in workplaces. I know what the consequences are of serious injuries, but I also know what it is like to be lied to and to be played like a puppet in a political game that has nothing to do with achieving outcomes that will benefit Victorian workers.

If the bill were about outcomes that would benefit Victorian workers, members on this side of the house would be joining members opposite and supporting the

bill. Unfortunately it is not about benefiting Victorian workers. Conversely, the bill threatens the gains of the past decade, and if Mr Smith were ever able to take off his trade union blinkers he would understand exactly where I am coming from and why this bill should not exist on Victoria's statute book.

I can tell honourable members what the outcomes of this bill will be and I will tell honourable members what the government has said the outcomes are likely to be. Firstly, the Premier, Mr Bracks — it is his government and members opposite love calling it the Bracks Labor government — was quoted in a radio interview as saying that the legislation was about employers who deliberately take action that results in the death of their workers.

Mr Smith may or may not have studied law, but even he would know that a deliberate act that leads to the death of another person is not manslaughter: it is murder. The Premier tried to tell us that this bill is about people who murder other people. Wrong. Either the Premier did not know what this bill was about or he was deliberately misleading the public. He tried to increase the angst by suggesting that there are employers who deliberately kill employees. Wrong, Mr Bracks; employers are not doing that and, more importantly, if they were, manslaughter would not come into it. If an employer took deliberate action that led to the death of an employee it would be murder. The Crimes Act has a specific provision that deals with that.

The bill does nothing of the sort. The Premier was caught out. Either he did not know what the legislation was about or he chose to misrepresent what it was about to tug at the heartstrings of Victorians and to suggest that this was about getting the rogue employers out there who were deliberately killing people. If that was happening, does Mr Smith think we would stand by and watch it happen? No. Not one example has been given during this debate about employers taking deliberate action that has led to a death in this state. It is a shame on the Premier and is an indictment on him and his government that they deliberately mislead the community to garner emotional support for a flawed piece of legislation.

I refer to the Victorian Trades Hall Council. Mr Leigh Hubbard, the secretary of the council, wrote to me, as I am sure he wrote to other members, on 13 March. Among other things he suggests in his letter:

> This sanction against senior officers would be used only where the corporation is also convicted and when the negligence is so gross and falls so far short of the expected standard that it warrants criminal sanction. In respect to companies the great advantage of this bill is that it will expose larger companies to the criminal sanctions that small companies have faced for many years under the Crimes Act.

This letter, dated 13 March, is signed by Leigh Hubbard, the secretary of the Victorian Trades Hall Council.

Hon. R. F. Smith — He is prone to losing his way.

Hon. P. A. KATSAMBANIS — The Honourable Bob Smith suggests that the secretary is prone to losing his way. Did I get that right?

Hon. R. F. Smith — Absolutely.

Hon. P. A. KATSAMBANIS — If it assists you in your current internal brawling and factional fighting in the Labor Party, I am happy to put it on the record. I return to the bill and the flawed logic of Mr Hubbard and the Trades Hall Council. He is telling us that the bill will bring large companies under the same criminal sanctions that small companies have faced for many years under the Crimes Act. If that were true why doesn't the bill simply say, 'We extend the coverage of the provisions in the Crimes Act' — I will not quote them because I do not know which ones he was referring to — 'that apply to small companies to large companies'. It would be a simple bill. But that is not the case. The laws that apply to small companies in the Crimes Act apply equally to medium and large companies. They apply equally to all companies and all employers. This bill is not about catching large companies under the same umbrella that currently applies to small companies.

I do not know what Leigh Hubbard was getting at. Maybe Mr Smith is right, maybe he is prone to losing his way. He is deliberately trying to mislead me and, I dare say, other honourable members of this house and is tugging at the emotional heartstrings to get us to support a bill that I am sure he is happy with, but it is a bill that we know will lead to the destruction of job opportunities for Victorians. The Premier is wrong, Leigh Hubbard is wrong and the Trades Hall Council is wrong. Either they are deliberately misleading or they are unaware of the operation of the law. They are the stark choices. Premier Bracks and Leigh Hubbard stand condemned of one of those two things with their intervention in the public debate on this bill.

The Labor Party has introduced a flawed piece of legislation that is simply payola for its trade union mates. It has in this place and in the public arena used mistruths and has capitalised on the understandable grief and concern of people in the community to feather its own nest. That is reprehensible. The government

would stand condemned if that were all the bill did, but it does more.

I have talked about the change in the culture on our work sites over the past decade. I have talked about the new cooperative approach between employers and employees with workplace safety which has resulted in significant gains in minimising workplace accidents and the incidence of death and serious injury in the workplace. They are wonderful achievements. I am sure even honourable members opposite would applaud those achievements. I mentioned that all the people who went through that process years ago would be more than satisfied with the outcomes so far. I am not saying that is where we stop, but at this point in time the gains have been significant. I congratulate employers, employees and the responsible trade unions and trade union officials for working together to achieve those outcomes. However, despite all that wonderful cooperation there is evidence to suggest that workplace safety has not always been used in workplaces for good. Workplace safety has not always been used as a goal in itself. Unfortunately, in some cases, it has been used as a blunt weapon to achieve other industrial outcomes.

Hon. R. F. Smith — Rubbish!

Hon. P. A. KATSAMBANIS — Mr Smith says it is rubbish. I received a letter dated 11 April from the Victorian Congress of Employer Associations signed by the Australian Industry Group, the Australian Retailers Association Victoria, the Master Builders Association of Victoria, the Printing Industries Association of Australia, the Victorian Automobile Chamber of Commerce, the Victorian Employers Chamber of Commerce and Industry, the Victorian Farmers Federation and the Victorian Road Transport Association — eight respectable organisations. In that letter they say:

> Unfortunately, OHS issues are sometimes used improperly in the industrial relations area and there is no doubt that a large area of support for the proposal indicates that this position can only be made worse by its introduction.

Employers are saying clearly that this bill will be used by some rogue trade union officials as a blunt weapon to further their industrial relations aims, and not for the purposes of workplace safety but to win some campaign, fight some factional battle or, as we see from the revelations of the Cole royal commission into the building industry, to extort another payment from an employer or conduct some other nefarious industrial relations fight instead of using workplace safety as a goal in itself.

That is the unfortunate consequence of the actions of some rogue trade union officials in Victoria and in other places across Australia. Some of it has already come out during the Cole royal commission. I dare say there is probably more to come but we know anecdotally and in writing, signed by eight leading Victorian employer organisations, that occupational health and safety is unfortunately used as a blunt tool to further industrial relations outcomes rather than an end in itself.

What does that do? It would be okay if you were using something as a means to an end if it did not pervert the process of workplace safety. If an employer is not sure whether something is being used as an end in itself or as a tool to further some other aim, what weight will the employer place on that issue?

If you muddy the waters — if you have an employer sitting in his or her office thinking: is this workplace safety issue a real workplace safety issue or is it being used to further some internecine union factional battle, or some wage case claim, or because the blokes on the site decided today was a fine sunny day and they would go surfing, or for some other reason — that is the first step to disaster in workplace safety. You muddy the waters; you have people having second thoughts about whether an occupational health and safety issue is legitimate or not.

The government is going back to the adversarial system that led to the workplace injuries and deaths of the 1970s and 1980s that were at astronomically and atrociously high figures. I do not want to go back there; people on this side of the house do not want to go back there; workers do not want to go back there; families of workers do not want to go back there; and employers do not want to go back there. But that is where the government with this perverse bill wants to take them back to. It is simply not on! The opposition will not sit back and watch workplace safety turned into a political and industrial relations football to further the aims of some trade union bosses at the expense of ordinary workers. It is something we will not stand for!

The bill creates a new offence of directors and corporations being liable for criminal manslaughter in certain circumstances. It also aggregates the activities of various officers within a corporation in order to sustain a criminal charge on a particular individual within the organisation. It takes into account the actions of others and imputes those actions to be the actions of one individual or a corporation in toto. Both those things are a perversion of our system of law.

The government says that there will be a test for manslaughter generally and it will have certain elements to it but in the area of workplace safety there will be another test for manslaughter. It will be a reduced test; you will not have to satisfy the test for manslaughter that exists at law today — —

Hon. Gavin Jennings — Is that for an individual or an organisation?

Hon. P. A. KATSAMBANIS — For both.

Hon. Gavin Jennings interjected.

Hon. P. A. KATSAMBANIS — You will get your go!

The government is seeking to create two classes of manslaughter, making Victorian employers subject to a lower test. It is proposing to aggregate the actions of company officers and to purport the aggregated total of their actions onto corporations. It is a perverse interpretation of our criminal law system. It is not something that will achieve positive outcomes. It will make employers think twice about being in Victoria. When you hang the threat of criminal prosecution over a senior officer of a corporation, a director of a corporation, or a corporation in total, they will legitimately start asking the question: do we really want to be here?

Employers are not out there to try to maim, injure or kill employees — far from it. It is in the best interests of employers, as it is in the best interests of employees, to ensure that workplaces are as safe as possible.

The government comes into this place and talks about the rogue employer as if there is a plethora of people out there who are actively trying to kill their employees. Where is the evidence? There is no evidence because there are no rogue employers when it comes to workplace safety. There is a workplace safety regime and with a carrot-and-stick approach employers come into line — and they have come into line. Employers are telling us and the people of Victoria in general that if the legislation comes in they will think twice about doing business in Victoria. They are telling us that it will destroy the culture of cooperation. This is what the Victorian Automobile Chamber of Commerce (VACC) said in a media release of 22 March:

> … the major contributing factor in the reduction of workplace deaths — from 102 in 1988–89 to 31 in 2000–2001 — has been the successful growth of a willing and cooperative approach toward workplace safety.
>
> This culture of willing cooperation by employers, their employees, and government toward workplace safety stands threatened by a discriminatory, ill-considered and inequitable piece of legislation …

It goes on to say:

> Why put at risk a culture which has so clearly produced results in increasing workplace safety?
>
> Engendering cooperation and trust are the all-important ingredients in securing workplace safety. There is no doubt that this proposed legislation is a retrograde step. To propose such a law is sheer folly …

The VACC says that. I could also rattle off the comments made by the Master Builders Association of Victoria; the Victorian Farmers Federation; the Victorian Congress of Employers Associations, which I have already referred to in another context; and the Victorian Employers Chamber of Commerce and Industry (VECCI) in its discussion paper headed 'The Crimes (Workplace Deaths and Serious Injuries) Bill — Have we given up on prevention?'. All of these groups condemn the government for this legislation because it will drive employers from this state and drive employment opportunity away from this state. Look at what Victorian Employers Chamber of Commerce and Industry says:

> VECCI is calling for a responsible approach from the legislators. High in our deliberations will be the effect the bill might have in achieving actual improvements in workplace health and safety. We could not support a proposal which risks being detrimental to achieving reduced death and injury in Victorian workplaces. We do not need a law that diverts the focus from improved risk controls to a focus on self-defence and avoidance of penalty

That is the crux of why there will be a shift in culture if this legislation is introduced. Currently when employers think of workplace safety they think of improving safety in their workplace by introducing further controls, by assessing things, looking at them and introducing improved risk management. Introducing this bill will introduce criminal liability.

What will be the first step that a prudent employer will take? They will reduce their criminal liability and defend themselves against prosecution; they will go into self-defence mode and try to avoid penalties. The most critical thing in their minds will be, 'I don't want to go to jail', not 'I want to have a safe environment'. They will do everything in their power to avoid going to jail. They will get the paper trail right; they will not worry about actual safety. They will worry about getting the defensive mechanisms in place.

When there is a workplace accident today, what do you do? You call the ambulance, you render first aid, you make sure the person is looked after, and then you ring the workplace safety inspectors at Worksafe, part of the

Workcover authority. What will you do if this bill comes into place? You will still call the ambulance — then you will ring your lawyer! You will ring your lawyer and say, 'There's been an accident — will I go to jail?'. That is what a prudent employer will do. Do you know what the lawyer will say? 'Do nothing until I get there; say nothing' — that is what lawyers say.

Is that improving workplace safety? No, it is not. What it is doing is creating that us-and-them mentality that has dominated trade union thought for generations. It is destroying cooperation; it is destroying the critical relationship between employer and employee that makes workplaces run and that builds successful workplaces and businesses.

It is destroying that culture and creating a type of environment that is making workplace safety almost impossible to achieve. That is what the government is doing with the bill. The employer groups are not happy and potential investors in the state will not be happy. You can imagine in an increasingly globalised capital market decisions about investment in Victoria are being made in the boardrooms of large corporations in far-flung places like New York, London, Tokyo and other places. That is increasingly unfortunate. It galls me that so many companies are now headquartered in Sydney rather than Melbourne, but that is where the decisions will be made. Directors are sitting around the boardroom tables considering not whether they will set up a plant in Victoria but whether they will set up in Victoria, New South Wales, the United States of America, Japan, Malaysia or Indonesia. They are weighing up the economics and the risk factors. Overlay on that that if you operate a workplace in Victoria and something goes wrong, not only would you be penalised with your Workcover premiums and face a hefty fine but the directors of the corporation in New York or Tokyo might be charged with criminal manslaughter and dragged to Melbourne and dragged through the courts.

That will be the decision-making process: we can go to New South Wales or Victoria and set up business, but if something goes wrong in Victoria somebody may go to jail. That is a great way to attract business! That is a wonderful incentive to give the good people at Business Victoria who are out there trying to attract interstate and international business to locate in Victoria to provide economic growth, prosperity and jobs for Victorians! What a millstone to hang around the necks of those people who are trying to attract business to the state — by saying, 'Come to Victoria. We will help you out; we will help you set up here — but if something goes wrong we will lock you up in jail'. That is a great message to send to the investment community.

I turn to the issue of the small versus the large corporation. Unfortunately, a lot of the compliance mechanisms in the bill are technical. If you get the paper trail and the chain of command right, all the manuals upgraded and have them on the shelves, send your relevant employees to the proper training courses, all that sort of technical stuff that a prudent corporation will do, then you are likely to avoid prosecution. You will have done everything in your power by dotting the i's and crossing the t's. That is what we were told.

I received a briefing, not from a trade union or the government, but from a large and reputable law firm in Melbourne, which said, 'The prudent employer will update their manuals, send employees to courses, dot all the i's and cross all the t's and should not have anything to fear from this legislation'. All that is well and good. You can hire the best legal guns, put your manuals in place and update them on a regular basis, and have a dedicated occupational health and safety unit in your workplace. They can do all that, but does that sound like a small business? To me that sounds like a very large corporation.

This is a bill that will make it easier for large corporations to comply with the technical provisions in order to avoid prosecution but not for the small and medium-size businesses out there trying to turn a buck to ensure profitability in difficult economic times, trying to ensure that their doors stay open to earn some money to pay their employees and to feed their families. They are the sort of people who might not cross every 't' or dot every 'i', or have the time to update page 733 of the occupational health and safety manual. They are the sort of people who may not see one of their workers for a couple of days when they need to give them a specific instruction because that worker was somewhere else trying to earn a dollar for himself or herself in the business.

They are the sort of people who will find trouble under this legislation. The large corporates in the main will probably in practice be best placed to avoid the pitfalls of the legislation. It will still be an impediment to them. Directors will not want to be charged, so they will say, 'I don't want to go to Victoria; I'll go somewhere else'. It is the small business that will cop the real brunt of the legislation. It is those people trying to do the right thing by themselves and by their employees but who do not have a big law firm behind them to prepare their safety manuals, do not have all the training that is necessary, and do not have the occupational health and safety unit as part of the business. They are the people who will suffer.

You have to put yourself in the situation of a small business person. Their employees are like family. If an injury or a death occurs in a small workplace it affects the employers terribly. It will not affect them as much as employees — it cannot — but it has a devastating effect on the employer because the employees are like family to them. Employers at that time will be threatened with the fear of going to jail, having done the right thing but having missed out on some technical step along the way. Is that the sort of legislative regime we want? No, it is not.

They are the reasons why the opposition cannot support the legislation. It will not achieve positive workplace safety outcomes. It will, conversely, lead to a shift back to the past and a return of the mentality on work sites that will lead to a more dangerous workplace safety culture than we have had over the past decade. It will start reversing the gains of the past decade. It will send the wrong message to employers looking to invest in the state. It will send a bad message to large multinational companies considering setting up in Victoria, and it will export jobs. If the legislation is introduced Victorian employers who want to reinvest in Victoria may consider moving offshore or to another state because it is more attractive. It will destroy job opportunities and growth in Victoria.

Importantly, the bill will unfortunately have an impact that is likely to be felt most inappropriately in the small to medium-size business sector. They, together with others, are the reasons why we oppose the bill.

The bill also increases financial penalties for workplace incidents, in some cases threefold. There has been no consultation and no communication. The bill introduces the measures by stealth. Maximum penalties increase from $250 000 to $750 000 in some cases. They are significant increases. The government has not argued why those increases are required when workplace safety is improving, when Worksafe inspectors are working more cooperatively than ever before, and when incidences in the workplace, serious injuries and deaths are continuing to decline.

The government has not spelt out the case why in an environment where safety performance in the Victorian workplace is getting better it will increase penalties. Do we need a deterrent effect? Things are working well. I would say the government should congratulate employers, employees, the trade unions and Worksafe for the gains they have made over the past decade. We have heard very little of that.

There are many reasons why the opposition will not support the bill. What will be left in its place and will workers be worse off by the legislation not being passed?

The primary aim of the legislation is to somehow or other create an offence of corporate manslaughter and negligently causing serious injury. Can it be done today or do we need this legislation? Interestingly, just last week the Victorian Law Reform Commission released a report into criminal liability for workplace deaths and serious injury in the public sector, which was tabled in this place. In many ways the report attempted to justify the actions of the government. The commission was appointed by the government with its members hand-chosen by the Attorney-General. The report simply attempted to justify — —

Hon. W. R. Baxter — It is extremely sycophantic!

Hon. P. A. KATSAMBANIS — Mr Baxter says it is extremely sycophantic. I will put that on record — I will not take issue with the description. In the report I expected to find a litany of rogue employers and miscarriages of justice on work sites in Victoria that needed this legislation to help the workplace safety case. I expected it to outline the case for change and to find examples of those rogue employers that the government keeps yelling about. Where is the list of them?

The commission referred to one unreported case. It hung its hat on the case of supposedly one rogue employer who got off. It was the 1995 case of the *Queen v. A. C. Hatrick Chemicals Pty Ltd* and the unreported decision of Justice Hampel. It was a very serious incident that led to the death of one man and a serious injury to another man. Officers of the company as well as the company itself were charged with manslaughter. Remember, this is the case the commission used to justify that there were rogue employers out there who were getting off scot-free. It was the one example that the Law Reform Commission could find in the Victorian law courts.

In a very learned judgment that talks a lot about the law of manslaughter as it applies to industrial incidents — and I recommend to people in their spare time if they want to know more about this area, they could do a lot worse than read this judgment — Justice Hampel says:

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

He goes on further to say:

> Those matters in combination could well amount to negligence but not, in my view, criminal negligence. The

> negligence alleged against the others is well below the standards required for criminal negligence.

That is very clear. Justice Hampel goes on to say:

> As none of the individuals' negligence is sufficient, the prosecution cannot rely on the concept of aggregation to move what may, in individual cases, be negligence, to the realm of criminal negligence which can then be attributed to the company.

Justice Hampel is saying, 'We have heard the evidence in the case. There has been a lot of evidence but the evidence we have heard does not reach the test'. There is a test for criminal negligence that can lead to a conviction for manslaughter. It is already in place, but this is not a rogue employer. It has not reached that standard. It has not been criminally negligent. Justice Hampel says that there are tests, but the employer has not reached them.

Later on Justice Hampel talks about a company and says:

> A company may be liable for criminal negligence in extreme cases of failure to provide a safe system or to supervise its implementation. This is not such a case because there was undoubtedly a safe system provided which was to be implemented by employees such as Hill and de Zilva.

Bingo! This case, which was held up by the Law Reform Commission as indicating rogue employers who were getting off, is decided in favour of the employer because it was found that it had a safe system that was to be implemented by its employees. It was not a rogue employer at all: it was a good employer with a good, safe system which stood up in a court of law. Justice Hampel found that there had not been a failure to provide a safe system and to supervise its implementation. It was not a rogue employer: it was an employer who was prosecuted under the law and was found to have been fully compliant with it.

The employer was not a shonk operating in the dead of night. It was not so negligent as to be reckless about whether its employees would suffer a serious injury or death. It was a good employer, but it is held up as an example of rogue employers.

So when you look at the commission's report and the only example of a supposedly rogue employer that is getting off under the current system, and you go and get the unreported case and examine it, you find that the company was not a rogue. The examples cited by the commission do not prove the case, but rather disprove the case and therefore disprove the government's case.

Justice Hampel in his judgment says there are laws that can fine individuals and corporations liable for criminal negligence that leads to manslaughter. The laws exist. The tests are strong. And he makes the point that the tests for criminal negligence are higher than for civil negligence. That is fact in our law. Civil cases are decided on the balance of probabilities and criminal cases are decided beyond reasonable doubt. That is the fundamental basis of our legal system.

What the government is trying to do is reduce the test because it does not like it. It does not like the fundamental basis of our criminal justice system. It wants to convict Victorian employers and corporations by changing the goalposts, by reducing the test, by throwing away the principles enunciated by Justice Hampel in this 1995 decision of *Queen v. A. C. Hatrick Chemicals Pty Ltd*. It wants to throw that all away. As I said, Justice Hampel quotes the law lords from England and various other jurisdictions. I think at one stage he quotes Lord Denning and others who have decided these cases over the years.

There is an established process. We are not leaving Victorian employees and their families high and dry. It is not as if by rejecting this bill we will find there is no law for manslaughter in workplace accidents. There is a law. It is there, and it works. The reason Victorian employers have not been convicted under this law is that there are not the rogue employers out there that this government likes to claim, recklessly creating workplaces with such total indifference to the safety of their workers that they can be held to be criminally negligent.

This government wants to use some arbitrary method of aggregation of other people's actions to pin liability on one particular person — and not just to pin liability but to send them to jail. That is a perversion of our criminal justice system. That, tragically, is what this bill does. Not only does it pervert the prevailing cooperative culture in our workplaces that has led to such significant increases in workplace safety; not only does it pervert the operation of legitimate businesses in Victoria and drive investment away from this state, but it perverts the fundamental basis of our criminal justice system. 'If you do not like the outcome, you move the goalposts'. That is not good enough. And why is the government doing it? It is doing it to satisfy its trade union masters.

I reiterate that the Liberal Party is fully committed to workplace safety. Beyond that it is fully committed to working in a cooperative manner with every stakeholder — employers, employees, employer groups, trade union organisations and Worksafe and the Victorian Workcover Authority to achieve even better outcomes, to build on the gains of the past decade. But

we are not prepared to throw those gains away and return to an adversarial 'us and them' nature that will destroy the basis of the success we have had as a state and as a community in workplace safety. We will not pervert the fundamental principles of our criminal justice system to pay back our paymasters — or the government's paymasters — the trade union movement. We are not paying back the trade union movement with this perverse legislation that it will use as an industrial weapon.

The Liberal Party is standing up for Victorian employees and Victorian employers equally, and it is standing up for the future economic prosperity and job growth of this state. That is why the opposition is rejecting this bill. I proudly say that I stand up here today to make sure that this perverse and illegitimate piece of legislation will not see the light of day in our statute books.

Hon. GAVIN JENNINGS (Melbourne) — Today is another black day for the Legislative Council and it is a very black day for the Parliament. It is a day which demonstrates yet again that this chamber, in exercising its mandate that derives back to the majority of numbers that were obtained from 1996, is rejecting an important piece of legislative reform introduced by the Bracks Labor government — a clear mandate that was taken to the people at the election in 1999 and satisfies an undertaking we gave to the people.

The extraordinary issue about the hysteria that has been generated by the opposition in its contributions to this debate is that so far, and I anticipate more to come, it is very different from the begrudging grinding-of-the-teeth contribution that we witnessed from the opposition when it agreed to the restoration of the common-law entitlements. It has clearly seen that the longer that its stale mandate goes on, it now believes it can operate within the luxury of denying the mandate of the Bracks government, which includes this piece of legislation.

It is on the basis of time and luxury that the opposition thinks is available to it, given that there is inadequate scrutiny on this chamber, that it believes it can vote down this important piece of legislation in a total state of denial of the truth.

I have just listened to a lengthy contribution by a member of the Liberal Party who says that this piece of legislation is not required because the trend line in workplace deaths in this state is a good one. That is clearly not the case. One death is too many. Thirty-one or 32 deaths that occurred in the last year are far too many. The 15 deaths that have occurred in the Victorian workplace this year are 15 too many. The trend line is not a good trend line because unfortunately the history in the last 10 years has been on average that there have been 30 to 35 or more deaths in Victorian workplaces consistently over that period of time, and consistently the number of serious injuries that have taken place in Victorian workplaces has been in the order of 3500 serious injuries each and every year.

From the government's perspective, one death is too many. It is not going to be complacent about one death, let alone the 15 that have taken place this year. It has a clear commitment to do whatever is required within its responsibilities to turn that drastic and tragic circumstance around. It does not have the luxury of sitting in opposition and being able to use numbers that are not accountable to the people to vote down this legislation.

In my interjection to the previous speaker I said that the government's intention is not to have a conviction under this piece of legislation. There would be nobody happier in Victoria if this legislation was passed and was never required to be prosecuted through the courts, because that would mean that no deaths had occurred in Victorian workplaces or that no deaths had occurred where there were serious questions raised about occupational health and safety standards in the workplace and the degree of responsibility shown by the corporations or senior officers within those organisations. It would mean that there was no reason to prosecute these cases through the courts.

That is the head of power the government hopes sits within the provisions of this bill — the legislation that sits on top of the good work that has been done in terms of occupational health and safety dating back to 1985 when the original legislation setting out occupational health and safety laws was introduced in this state. It is the head of power that sits on top of the cooperative arrangements that have been in place over many years under different administrations, and it builds on the good work that has taken place to improve occupational health and safety practices. It also builds on the good work undertaken by the Workcover authority in its various incarnations over the last 15 or so years. There have been many success stories along the way in terms of cooperative workplace arrangements facilitated under Victorian statutes and supported by Workcover authorities, employers and certainly by trade unions in this state.

About 10 years ago I undertook an occupational health and safety training program. I was very pleased to be a participant and to have the opportunity to learn about the nature of risk reduction. I understand that the intent

of the legislation was not only to permeate every workplace in Victoria with an understanding of the necessary standards and the requirements of the legislation but, more importantly, to enable the identification and removal of risks from the workplace.

Hon. Bill Forwood — What job were you doing? An acting job?

Hon. GAVIN JENNINGS — I was working for a union.

Honourable members interjecting.

Hon. GAVIN JENNINGS — Doesn't that totally turn around my contribution to the debate! Doesn't it seriously bring into question the legitimacy of what I'm saying and the concerns that I have! The jokes being perpetrated in the chamber at the moment are petulant and pathetic, with people living in denial of the unacceptability of workplace deaths in this state.

When Mr Katsambanis started his contribution he said the Liberal Party has a good track record in this regard. What track record? Why should we be satisfied? Why should the Parliament — or the people — be satisfied with a good track record? The Liberal Party's track record is inadequate, and demonstrably so.

Hon. Bill Forwood — You have to make a case that this bill will improve workplace safety.

Hon. GAVIN JENNINGS — That is in fact what this bill does. It builds on the regime I have outlined to the house — the emphasis on occupational health and safety that was generated by the Cain government in 1985 and which has had a significant impact upon workplace safety.

Hon. Bill Forwood — You were Joan Kirner's adviser, not John Cain's.

Hon. GAVIN JENNINGS — No, you're wrong; you're wrong again.

Hon. Bill Forwood — You were John Cain's adviser as well as Joan Kirner's!

Hon. GAVIN JENNINGS — Yes, thank you so much for putting the record straight.

The history of this Bracks government since 1999 has seen a number of important legislative reforms that fall within a suite of legislation to improve the calibre of Victorian law applying to occupational health and safety matters and the access employees have to it to ensure their entitlements. These include the Administration and Probate (Dust Diseases) Bill, the restoration of common-law rights, accident compensation legislation and other important measures that were rejected by this place. The Fair Employment Bill — a bill which would have improved the working conditions of 300 000 lowly paid workers and their families in this state — was rejected out of hand by this chamber. Regardless of the consequences of the working conditions, living conditions and standards of living of constituents of all members of this chamber, that bill was dismissed out of hand and treated with contempt.

In addition to that legislation, this government has introduced in the course of the last two years a significant increase in the effort undertaken by the Workcover authority with regard to occupational health and safety measures. We have seen the number of workplace inspectors grow to over 230, an increase of about 30 per cent. We recognise that the effort we have made in workplace occupational health and safety is not necessarily only in the interests of workers — who we are proud to say are the Labor Party's traditional constituency and whom it is particularly concerned to deliver to — but, equally importantly, it has been in the interests of the business community in Victoria in order to ensure a viable economy for businesses to grow and thrive and flourish. We understand the essential nature of good occupational health and safety practices and the positive role a low rate of accidents, injuries and deaths plays in terms of the bottom line and the ongoing viability of Victorian businesses. We are a government that is particularly alive to those concerns, and we devote a great deal of effort to ensuring that this state has a growing economy and thriving businesses.

We do not believe that this piece of legislation comes at the cost of the viability of businesses in Victoria. Indeed, it will play a role in assisting, by providing a head of power for the enforcement of a tougher approach to occupational health and safety in the workplace. That is its intent. Its intent is not to result in a prosecution, because a prosecution means we have lost the exercise because a death has taken place in circumstances that our community would be alarmed about. We have seen the emphasis within the Workcover regime. In addition to the restoration of common-law rights we have seen an escalation in the effort put in to support employers and employees in the workplace, to providing advice on reducing risks and to providing all the types of training programs of which I was a beneficiary 10 to 15 years ago.

As has been indicated by the previous Liberal Party speaker in this debate, we have seen an increase in the penalties and sanctions that apply to abuses of workplace health and safety practices and a failure to

satisfy obligations under the Occupational Health and Safety Act.

We have also seen a continuing emphasis by the Workcover authority and its previous forms on high-profile promotional media activities which from time to time address particular concerns, risks, and safety measures in the workplace and reinforce for both employers and employees the importance of adhering to occupational health and safety standards in this state. Through the Workcover authority the government has made a significant investment in ensuring a high degree of recognition of these issues within the Victorian community.

In the era of the Kennett administration Workcover ads were probably as well known as any other ads that were run during the course of that regime. I will not comment about whether from my perspective those ads had the appropriate balance that I had hoped they would have, but the message was and continues to be clear in the public domain that both the previous government and this government recognise the value of investment in high-profile media campaigns to support the work being undertaken by the Workcover authority.

During the course of this regime we have seen new rigour being brought to bear through the restoration of access to common law and an emphasis on rehabilitation and restoration of people back into the workplace. This government has not just sat on its hands — an expression I have heard used on a number of occasions today — and said that it only wants payments under common law to satisfy the ongoing working life of men and women in this state who have been injured in the workplace. It wants to get them back to work. It does not want to be complacent. It does not want workers to lose their enthusiasm for and commitment to working, or their families to be demoralised and feel as if they have been washed up following their workplace accidents. As far as the government is concerned it is vital that people who have been injured in workplace accidents get back on the job and have as productive and happy working lives as possible.

The government has put a great deal of effort into ensuring that additional rigour is brought to bear with improvement and prohibition notices in the workplace and has tried to be proactive in ensuring that those standards are met each and every day. But despite the overall effort that has been put in with advertising campaigns, increased inspectors, and improvement and prohibition notices, there are still too many deaths in the workplace — last year there were 32 deaths in Victorian workplaces and this year there have been 15.

So the government has taken action which it believes appropriate to satisfy its commitment to the people of Victoria and to finally turn around this totally unacceptable rate of workplace deaths. The government believes the existing laws to be inadequate, as the Attorney-General in the other place indicated in his second-reading speech, when he gave a number of examples which demonstrably prove them to be inadequate.

On a number of occasions under the existing legislation prosecutions have been attempted but have failed. On one occasion a company admitted its guilt in relation to a workplace death, but a prosecution was not successful because that company was in liquidation. There was nobody left to take the responsibility for that tragic death.

There has been and will be discussion in this debate about the mechanisms adopted with the legislation to provide the appropriate test for determining culpability and the degree of responsibility that corporations and officers within those corporations must bear for tragic deaths that occur on their watch. Despite what the opposition has alleged, the government firmly believes that those tests are fair, complete and do not lower the standards that would have to be satisfied within the courts of the land. We believe that it is an extremely difficult test to satisfy. That is why there has been much public discussion, which the Premier has entered into on a number of occasions to indicate that to successfully convict a senior officer of an organisation there has to be almost an admission of guilt — that is, knowingly sending a worker into a situation that caused their death. The test is so onerous that without that admission a conviction would never be satisfied.

The government will take the quantum leap and make significant inroads into the reduction of workplace deaths by adopting the approach of using the head of power in this piece of legislation to drive reforms in the workplace even further than has been possible after all the good work that has been undertaken in the 17 years since the introduction of the first occupational health and safety legislation in this state.

We believe there will be a culture shift. That is the essential part of what this legislation is about — to provide within the ranks of employers a deeper level of understanding of their responsibility and obligations to satisfy this piece of legislation. That does not mean they will be preoccupied with saving themselves. Instead of saving themselves from prosecution they will need to focus on what is required to reduce and manage workplace risks to demonstrate that they have an understanding of and a method of addressing and

reducing those risks. If and when they can demonstrate that they have acted in accordance with reducing risks in the directions they have provided to their employees, they will be assisted in not only being able to prevent injuries and deaths occurring in the first place but they will be provided with an instant defence to their culpability should a case ever proceed to the courts.

It is the very nature of the proactive intervention in each and every workplace in Victoria that the government hopes will underpin this head of power and will play a positive role in reducing the unfortunate incidence of, on average, over 30 deaths in Victorian workplaces each year to our, hopefully agreed, intention of none. That is what the government intends to achieve through this legislation.

The test required to be passed will be an assessment of the gross negligence that has been demonstrated by a corporation. If a corporation — an employer, for want of a better word — is able to demonstrate that it has assessed and reduced the risks and has acted in accordance with the requirement to provide directions that minimise risks to workers, gross negligence at the corporate level will never be proven. The subsequent test that applies to an individual's culpability within that corporation will never be satisfied, because the mere evidence of having complied with the obligations under the act, which mitigate against risk, will be an instant defence. This evidence will demonstrate that people have not acted recklessly in their responsibilities to provide direction to workers in their organisation.

That is why the government totally refutes the argument put by the opposition that this is a witch-hunt or vendetta against employers in the state. The bill not only provides the legislative framework and the clear requirements of what actions should be taken in the workplace to reduce deaths, but it very clearly puts within the one piece of legislation the obligation to provide a safe workplace. In doing so it provides a rigorous framework for a defence if and when a case ever proceeds.

The difference between a civil and criminal case is that in a civil case culpability for manslaughter is determined on the balance of probabilities whereas in the criminal jurisdiction it must be proven beyond reasonable doubt that the corporation was grossly negligent. It is clearly the view of the government that that is a higher test; the courts will have a greater requirement to prove beyond reasonable doubt that gross negligence has occurred.

Contrary to the hysterical contributions made by members of the Liberal Party in the other place and in this chamber today, the government is confident that in moving from the civil to the criminal jurisdiction a higher standard of proof is required. The government has not adopted that approach lightly; it is a considered approach. If, as the opposition alleges, the government were doing nothing but pandering to the interests of the union movement, one would have assumed the government would have dropped to the lowest common denominator: any conviction will do. That is not the way it has approached the legislation. The government has applied the highest standard it possibly can, a standard that it believes is appropriate to be placed on the Victorian statute book. It is totally appropriate to provide safety and security for employers and employees and their trade unions in this state. That is the mindset that we have brought to bear here.

In terms of how the legislation will work in practice, the government has determined that in the case of a corporation or employer a case of gross negligence has to be identified. The workers covered by the bill do not necessarily have to be direct employees of the employer. They may be acting as contract workers on behalf of an employer or working on the site where the injury takes place. It is a roping-in mechanism to go beyond the direct employer–employee relationship but it involves a contractual connection between the corporation and the worker. There may be one or two steps in that contractual obligation, so long as there is a contractual arrangement between the employer and the corporation that controls the workplace and the individual workers.

The government fully appreciates that there needs to be an understanding within the legislation about decisions that may be made on the spur of the moment or in moments of crisis or emergency. The bill is alive to those precarious situations such as are involved with firefighting or with other emergency services where decisions must be made on the spur of the moment. They may be extremely risky activities that workers are called upon to do at the direction of others. The government is particularly alive to the onerous responsibility of those in emergency services who must give directions at those times.

The bill takes into account those circumstances by allowing the courts to make an assessment of the urgency of the situation. It takes into account the prevailing work practices and the systems approach to risks that are part of emergency service operations. The courts will make an assessment about whether directions are given in accordance with the procedures, practices and approach of the employer — for example, the Country Fire Authority — to comply with safety practices.

The only circumstances by which emergency service employees or officers of those emergency services could possibly be roped in is if they were to give instructions counter to the prevailing safety procedures that were operating within that corporation. However, the government believes it is important to understand the context in which decisions are made and directions given. So it has allowed for emergency situations but it will not allow boards to sit in splendid isolation for months or years preceding an accident in the workplace and make one or a series of decisions which ultimately lead to unsafe circumstances in the workplace that lead to injury or death. Those examples may include decisions made not to invest in safety equipment or to employ inappropriate staff and untrained staff. Those decisions will not be acceptable and if and when those decisions lead ultimately to unfortunate incidents in the workplace it is possible within the head of power of the legislation to create a causal link between those acts of negligence and the injury that ultimately is caused.

The bill is not vexatious and it is not onerous for the vast majority of employers in Victoria. It is not the intention of the government to ever go down the path of vexatious prosecutions or prosecutions that would undermine the spirit of what has been achieved in the past 17 years in occupational health and safety. It is not the intention of the government to provide a disincentive to current or prospective Victorian employers. The government wants to provide a clear set of obligations for all Victorian employers. It wants to make sure that the laws of the land are clear and rigorous and consistent and have the capacity to be consistently applied. In particular the government wants the ability to make the quantum leap in the culture that prevails in Victorian workplaces to lead to a reduction in the number of deaths that occur in Victoria.

Hon. Bill Forwood — You have not demonstrated that the bill will do that.

Hon. GAVIN JENNINGS — Mr Forwood has been chatting to people for the last half hour and then he says I have not made a contribution to the debate.

The Liberal and National parties live in a state of denial, a denial of their responsibility to carefully consider — —

Hon. Bill Forwood interjected.

Hon. GAVIN JENNINGS — I do not know about your state of denial. The Liberal and National parties have an extraordinary inability to recognise the legitimacy of any piece of legislation that comes to this place that tries to improve the prevailing working conditions of ordinary workers in this state. It is an extraordinary state of denial that people in the opposition parties do not hear the evidence about workplace deaths and not recognise that there is an urgent need to do something about the 15 workplace deaths in Victoria already this year. We do not want one more.

Hon. Bill Forwood interjected.

Hon. GAVIN JENNINGS — The Liberal Party should wake up from its slumber and complacency from sitting in this place and respond.

Hon. W. R. Baxter interjected.

Hon. GAVIN JENNINGS — You know those 15 lives cannot be retrieved. That is a ridiculous interjection. You know we cannot bring those people back — —

Hon. Bill Forwood interjected.

Hon. GAVIN JENNINGS — This is ridiculous. I cannot make the case because you refuse to accept there is a case. The Liberal Party has refused to accept there is a case. The contribution from Mr Katsambanis was to the effect that 'we have a good track record'. It is not good enough to have 30 deaths occurring in the workplace. It is not good enough to indicate that you have regard for the working conditions for people in the state. The opposition's flagrant denial of the Fair Employment Bill indicates that it dismisses out of hand the working conditions of the men and women in this state, and that is an absolute disgrace and continues to this day. I will not be baited to concede in any shape or form that the opposition is doing anything but living in a state of denial and in splendid isolation. Get out of the chamber and talk to real people and go to real workplaces!

Honourable members interjecting.

The ACTING PRESIDENT (Hon. R. H. Bowden) — Order! The Chair has been very tolerant and I know that this debate has considerable interest and emotion and the Chair will continue to be tolerant. I ask honourable members to be mindful that there will be adequate time for most members to make their contributions and that it would be helpful for honourable members if each member could make his or her contribution with a minimum of assistance.

Hon. GAVIN JENNINGS — I appreciate your assistance, Mr Acting President, in relation to providing me with a forum to discuss this issue. The great

disappointment to all the people of Victoria is that you cannot guarantee that the opposition will listen. You cannot guarantee, regardless of how long I stay here, regardless of how much evidence I put on the public record, regardless of the truth of those tragic cases I read into the record in preparing for this debate illustrating the deaths occurring in the Victorian workplaces, that the opposition will listen. I do not understand how it cannot be affected by the degree of tragedy that has taken place in Victorian workplaces and why it would not do everything in its power to make a difference.

If I flip over the argument, the opposition has provided no evidence to support its hysterical claims that this would be a disincentive for Victorian employers to employ more people and would lead to an investment drain in this state. Not one bit of direct evidence has been put, only ongoing hysteria and whipping up resistance in the community on the basis of misrepresentation about how the law applies.

The total inconsistency and the illogical leaps made by Mr Katsambanis in his contribution were flabbergasting. They were totally consistent with the views taken by the Liberal and National parties to the community and in the debate in the other place which will be replicated tonight in this place, before the opposition takes the sorry action of voting down this piece of legislation.

I continue to implore the members of the Liberal and National parties — —

Honourable members interjecting.

Hon. GAVIN JENNINGS — Listen to the case, read *Hansard,* remember the 31 deaths that occurred last year and the 15 deaths this year and look into your heart of hearts to see if there is not a case for us to make a quantum leap in Victoria. See if there is not a case to provide a head of power that enables the legislation that applies in the state to lead to safe workplaces. Look into your heart of hearts and see whether you believe that is the case.

Hon. Bill Forwood interjected.

Hon. GAVIN JENNINGS — Yes, and what comes out of your mouth is a complete state of denial. What comes from the contributions of members of the opposition parties is a state of denial. Take some responsibility and pass this piece of legislation. This bill is distinct from other private members bills that have been debated in this place, which have no idea how to pass legal tests or to provide for certainty within our courts. This legislation does that. The work has been done over a lengthy period and it provides for criminal jurisdictional cover for workplace deaths and injuries.

I congratulate the Attorney-General and the Minister for Workcover for bringing this legislation into the Parliament and I thank all those who have worked in cooperation with them in preparing the bill. I condemn the opposition parties for their intransigence and state of denial in relation to what is required to make a significant difference. It is not good enough to say that the trend line in deaths and injuries in the workplace is acceptable. It is clearly not acceptable, despite the good efforts of the Victorian Workcover Authority, employers and employees.

We will not rest on our laurels and sit on our hands. We are not a do-nothing government. This is an important piece of legislation — —

Honourable members interjecting.

Hon. GAVIN JENNINGS — This is a case where an important reform in Victorian legislation is being denied by the recalcitrant upper house. It is a chamber that lives in a state of denial and in a different world. You want to go back to the dark ages of industrial relations and you are not prepared to support modern or safe workplaces or support the efforts of the government to turn around the incidence of deaths and workplace injuries in this state. I implore the opposition parties to wake up to themselves, to be alive to the truth in this state and to support this legislation, because this chamber's time is running out. Its credibility is zilch. Its respect and regard of ordinary working people in this state is at an all-time zero. The only zero that is acceptable to the government is zero deaths and injuries in the workplace. We will keep working until that is achieved.

Sitting suspended 6.26 p.m. until 8.02 p.m.

Hon. W. R. BAXTER (North Eastern) — Prior to the suspension the house was treated to a very curious contribution from the Deputy Leader of the Government, the Honourable Gavin Jennings, who I would have anticipated as the lead speaker for the government might have attempted to justify the legislation and explain to the house how it might achieve its stated purposes. He singularly failed to do so. He started his contribution with reference to mandates. I have never much subscribed to the mandate theory because it is difficult to come up with an appropriate definition of what a mandate is. I would have thought looking at the vote in another place on this legislation — 44 to 43 — and the fact that it is a minority government and that the legislation got

through on the vote of an Independent, albeit a sympathetic Labor Independent, was hardly an illustration that a mandate for the legislation existed in the Legislative Assembly. In fact the vote could not have been any closer or it would have failed.

Then Mr Jennings suggested that there is somehow or other a stale mandate here and that if those honourable members who were elected in 1996 did not vote, the legislation would pass. I am not sure how he arrived at that conclusion because I have looked at the circumstance. If we disregarded the opinions of those elected in 1996 and took only the 22 people who were voted into this house in 1999, I anticipate the legislation would still fail 13 to 9. So the honourable member's allegation that somehow or other the government's legislative program is being stymied by people who have been here longer than the most recent election does not hold water.

In any event, the people decided that they would elect a minority government in the Legislative Assembly but would preserve a non-Labor majority in this place. I reject entirely the honourable member's allegation that somehow this house is acting irresponsibly in taking a decision on this legislation in the way that I anticipate it will.

This is bad legislation but it is dolled up in respectable clothes and they are the emotions surrounding workplace deaths and injuries. No-one would dispute that any death or injury in the workplace is a tragedy, not only for the person directly involved and his or her family but for their friends, relations and employers. The point was well made by Mr Katsambanis that in many businesses — small, medium and perhaps large — the death of any employee is a tragedy for the employer and the family company. They feel it very deeply as if it were a family member directly affected. However, that does not seem to be understood by some honourable members of the government.

I found it very disappointing to hear a month or so ago the first law officer of this land, the Attorney-General, on the front steps of this building whipping up an audience in Spring Street with entirely inappropriate emotional language, alleging there were rogue employers out there and suggesting that employers could not care less about their employees and were prepared and ready to put them into dangerous situations day by day. That is patently not so.

Employers in this state are very safety conscious. Apart from the duty of care and their own sense of wellbeing and living in the community, it is economically sensible that they look after their employees and have safe workplaces. The cost involved in employing someone, training them, replacing them if they leave or are injured, paying the Workcare premiums and so on is so expensive it makes economic sense to operate a workplace that is as safe as possible. I can contend that is what businesses do in this community.

I totally reject this sort of ideological warfare that is still conducted by some honourable members down in the Trades Hall Council, as if we were still in the age of the industrial revolution. They are fighting this class war that is now 200 years out of date — I just wish they would get themselves up to speed and really understand how business works in this state.

There is absolutely no contention from the National Party about the need for safe workplaces. We have supported amendments to the occupational health and safety legislation, both in the time of the last government and the present government. We are very keen on having safe workplaces.

We have seen dramatic improvements in industrial safety — much of that initiated by the Honourable Roger Hallam when he was Minister for Workcover in the last government. He turned around Workcover, which was $2 billion in the red, had claims running out its ears, a high injury rate, and perhaps not enough emphasis on workplace safety as there should have been. I think the community owes Roger Hallam a great debt because he seized upon this problem, ran with it, and worked very hard to get a better culture in the workplace. And the facts speak for themselves — he succeeded overwhelmingly. The statistics on workplace deaths — which have been bandied about in the house tonight, and which appeared in the advertisement run in the metropolitan media by employer organisations back in April and in the statistics that are in the Workcover annual report — demonstrate that there has been great achievement and great progress.

Yes, we would acknowledge that there is more to be done — of course there is more to be done! And, as Mr Jennings said — and I am very sorry that he is not here at the moment — one death in the workplace is one too many. I agree, but you have to acknowledge that great progress has been made over the last decade or so.

Yet I was somewhat taken aback by Mr Jennings's use of Workcover statistics. He referred to the 31 deaths last year and the 15 deaths that have occurred in the workplace so far this year. The implication of his remarks was that if this legislation had been in place either these deaths would not have occurred, or if they

had, the respective employers would have been liable to prosecution under this legislation. That was the implication he gave to the house before dinner. I am not sure at all how he arrived at that conclusion, because if one examines 15 deaths that have occurred in the first quarter of this year, one will see — and I will just run through some of them — that two of the deaths occurred on four-wheel bikes. I happen to know something about one of them in particular, a farmer in my own area, a self-employed operator, who met his death while spraying blackberries on a four-wheel bike. Clearly if this legislation had been in place it would not have prevented that and it would not have led to a prosecution under the bill. Yet Mr Jennings led us to believe that either of those scenarios might well have taken place.

Another one of the workplace deaths this quarter has been a crime — indeed, a murder. The Crimes Act will deal with that as it is in its present form. This legislation would not have added anything to that at all.

Another one was a death caused by someone being crushed against a float by a horse. That is dealing with animals — animals can be dangerous. I do not see how, if this legislation had been in place, that tragedy would have been avoided. One was a crushing death of a motorcyclist who was hit by a tailgate falling from a truck on the road. I am doubtful that that should be put in the workplace deaths tally — it seems to me it is a tragedy that has occurred on the road, that it is one of our road deaths occurring, regrettably, every day of the week, and we have seen another tragedy at Bendigo today.

One was a death caused by a falling tree. I would have thought that that was an act of God! This legislation, if it had been in place, would not have prevented that, nor would it have led to a prosecution, I would have thought.

There was another death of someone falling from a horse. Again, I do not think this legislation could have prevented that if it had been in place, nor is it likely to lead to a prosecution if someone falls from a stockhorse, and so on. So I believe that Mr Jennings misled the house to a degree in suggesting or very strongly implying that if the legislation had been in place some of those deaths would have been prevented or prosecutions would have resulted therefrom. From my study of the statistics I do not think either of those events would have occurred.

Hon. E. J. Powell — He gave no evidence.

Hon. W. R. BAXTER — No, he did not provide any evidence. Most employers are bending over backwards to maintain safe workplaces. Regrettably that is not always reciprocated by employees. I think most employees are safety conscious: they take care of their own safety and are conscious of the need to work in a safe manner so as not to put their colleagues at risk. But there are some who are recalcitrant in terms of taking instructions from managers, employers and supervisors on how to work safely. Some are careless or reluctant to put safety guards on machinery after they have been taken off for maintenance or whatever. We have those difficulties.

Sometimes when persons refuse to abide by safety directions and they are dismissed it results in an unfair dismissal claim, usually aided and abetted by a union official, and that generates a lot of bad blood between employers and employees. It is another one of the features we have in Victoria now where businesses, particularly small businesses and farms, are going out of their way not to employ people. If they can find a mechanism whereby they can do without taking someone on, they use it because it has become too difficult to employ people. Unfair dismissal laws and the activities of some union officials are one of the prime causes in that circumstance.

We need a much more cooperative workplace between employers, employees and union officials. I feel a great deal of sympathy at times for employees who want to do the right thing but are often heavied by union officials to take action, to make allegations that they would prefer not to make. It is time that unions woke up to the fact that they are driving employment out of the state by some of their activities.

Why is the government taking unilateral action on this particular measure? We spent a long time in this country getting Corporations Law at a national level so that company law across the nation was the same, so that if you were in Victoria the same law applies to you as it does in Queensland in terms of company law, and we got away from the old days where state borders caused a great deal of difficulty with businesses that were operating nationwide. Yet here we have a government wanting to turn the clock back and introduce a law applying to corporations which will be Victoria exclusive.

That is counterproductive to generating investment and employment in Victoria, and I can see no reason why the government should move ahead in the way it has done. It will drive away investment from Victoria. It may even drive it away from Australia. The Honourable Peter Katsambanis gave a good example

when he talked about the boards of directors in Singapore, Hong Kong or wherever looking to where they will invest. When they see this sort of legislation on the statute book in Victoria, why would they want to come here, why would they not go somewhere else in Australia, or indeed to another nation? I believe the government has not thought this through sufficiently. If we are to grow Victoria — the government keeps telling us every day of the week that that is the intention — here is an action it is taking which will stymie that potential growth.

I am also concerned at the breadth of the bill. The definition of 'worker', for example, is broad indeed and will include in the company work force many people who would not be considered workers in the normal course of events. The Victorian Minerals and Energy Council says:

> The definition of 'worker' is extremely broad and includes any manner of people providing services to an enterprise. Many people supplying services are not managed or controlled directly by the body corporate. The definition should be amended to exclude the liability of a body corporate for the acts of subcontractors which the body corporate did not engage, but who were engaged by a principal contractor. Responsibility for the acts of subcontractors should rest with those body corporates who directly engaged the subcontractors.

I could not agree more. How can a company, a senior manager or a board possibly be responsible for the actions of an agent's agent? It beggars belief that you can somehow be held responsible so far from the actual engagement and the direction of the particular employee, yet this is the situation the bill sets out to bring about.

It also attempts to include outworkers again in the definition of 'employee'. We are revisiting the Fair Employment Bill again because that was a provision in it.

Hon. M. A. Birrell — The old union agenda.

Hon. W. R. BAXTER — Yes, the old union agenda. That bill was rightly rejected by this house because there was a union agenda to have those people out there in Springvale, or wherever they are, working in their own homes, included and defined as workers so the union could send union officials out there, force them into a union, interfere in their activities and put conditions upon how much work they might do in a day and what their productivity might be. Fortunately it was rejected by this Parliament.

One thing I have learnt about Labor governments is that they never give up when they are being told what to do by the Trades Hall Council, and they come at it another way. We are seeing it in this legislation tonight.

Hon. R. F. Smith interjected.

Hon. W. R. BAXTER — Well, Mr Smith, we did not come down in the last shower. We will watch you all the time. We will certainly protect those people who do not consider themselves to be employees and do not want to be defined as such at the behest of the union.

I would like to ask the government to explain, because Mr Jennings certainly did not, where is the demand for the legislation. The government says, 'Oh, well, we have run four cases and only one has been successful'. I would have thought a 25 per cent success rate in the courts is not too bad anyway, seeing that you have to prove things beyond reasonable doubt, but I would want to have run a lot more than four cases under the existing law, whether it be the Crimes Act as currently drafted or the Occupational Health and Safety Act, and not be making any progress if I genuinely thought I had a case.

Only four cases have been run. The one that was successful was successful because the company pleaded guilty. We heard from Mr Jennings that that was ineffective because the company went out of existence, had gone bankrupt and the fine was not collected. That is true, but what does that have to do with the price of fish in terms of this particular legislation? He also did not acknowledge that the proprietors of the company, whom I happen to know because they were engaged in the road construction industry when I was the roads minister, were totally destroyed by the death of that employee.

They have paid a very stiff penalty indeed. Their business went out of business and they have certainly suffered an extraordinary amount of stress, yet listening to Mr Jennings one might get the impression that there had been some sort of conspiracy almost not to pay the fine, that they wound up the company, that they had liquidated it. Nothing like it. It went bankrupt purely and simply because of this incident and it lost work.

I also advise the government that it should have a look at the Blair experience. The Parliament and the British government have been looking at this problem for quite some time. The then Home Secretary, Jack Straw, produced an extensive discussion paper, which I have read, and the Brits are having a great deal of trouble coming up with a workable scheme. With all the experience that they have had, and regrettably they have had some horrendous industrial accidents, there is probably more pressure for them to have in place

legislation which would address criminal negligence where it can be proved, but they have been unable to come up with a law to bring to the House of Commons.

It would have made a little more sense if the government had not gone off on its own tangent but taken note of the British experience.

I am also concerned about the inconsistency in the legislation. The same crime can be subject to criminal sanction if it is proved to be committed by someone who happens to be in receipt of some sort of remuneration, but the identical action proved to be committed by a volunteer is exempt. I am not advocating extending this sort of law to volunteers, but I have some difficulty with the logic of the same crime being treated differently only on the basis of whether or not the person is remunerated. As a matter of logic, I cannot see how that can be allowed to stand, yet the government wants to go down that path.

I support Mr Katsambanis in his very well put contention that this legislation is not going to foster a safe workplace or encourage senior people to take an interest in what is happening on the factory floor and in the workplace. It will cause them to distance themselves from it, to put up a wall between themselves and the actual workplace. They will not want to be associated with anything. They will not want to be seen at any time to have taken any particular decision that might come back later with an allegation that they were negligent. It will cause a separation between senior management and the coalface. That is the direct opposite to what we should be endeavouring to achieve, and which we are achieving under the current culture in the workplace where senior people are much more conscious of the need to be involved in running a safe workplace. Yet this government is going to drive in a wedge and employers will say, 'We cannot afford to be seen to be hands on. We have got to distance ourselves from it'. That would be absolutely counterproductive.

If the government really wants to assist employers to create safer workplaces it might do something about giving them some powers to check on the suitability or capability of an employee to do a certain job at a particular time of the day. As an example, I refer to forklift drivers operating in warehouses. They go up and down on forklifts at quite high speeds in narrow corridors between stacks of pallets of product. During their lunchbreak, some of the drivers may indulge in alcohol or other drugs. At the moment there is absolutely no provision for an employer to conduct any tests to see whether that employee is in a suitable condition to be operating a forklift in those circumstances at a particular time of day. Currently if he attempts to do so he will have the union down on him like a ton of bricks because it will be alleged that he is discriminating against people.

Hon. M. A. Birrell — And a Labor law firm to boot!

Hon. W. R. BAXTER — Indeed, Mr Birrell; a Labor law firm would be on his doorstep the next morning. Mr Bob Smith smiles because he knows that is the circumstance. If the government is really interested in safe workplaces it might have done something about that problem. It may not be a big problem, but it is certainly a problem. I know of a large employer who is very worried indeed about that.

While I am on my feet, and without going on for too long, I want to make a couple of references to the current annual report of the Victorian Workcover Authority, because it is a notorious document. It is staggering that someone can be appointed as chairman of a statutory authority and can present a document to the Parliament that is as political as this one is. I quote from the chairman's report, none other than Mr James Mackenzie.

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

Some of us remember what it was like in 1992 when that outfit was $2 billion in the red. Victoria had the highest Workcover premiums in the land, and something needed to be done. The former government got hold of it and got it back into credit, got the injury rate down and managed the thing properly. It got the premiums down to the second lowest in Australia, all in a matter of seven years. Yet this chairman has the temerity to make a political statement in the annual report presented to Parliament which is absolutely contrary to the facts. I find that very disappointing.

It has caused me to have a look at the current management and ask how it is going now. I will give a minor example. There has been a tender process for private investigators. We saw what happened up in Bendigo where a Workcover recipient who had been on Workcover for 104 weeks and had absolutely no track record at all got through the first hurdle of the tender process against a long-time private investigator who had a perfect success record but who did not get over the first hurdle. That is just one example of the oddities of this tender process.

The Honourable Ron Best took up the case and, to his credit, he did not let go. Along with Mr Best and Mr Hallam, I had a meeting with Mr Mackenzie and Mr Mountford only a month ago in this very building. They brought along a couple of heavies: one from a leading law firm and one from an accounting firm. They came here with the intention of convincing us that this was all above board, there was nothing wrong with it and it had been well done. I suppose if we had been inexperienced members of Parliament we might have accepted that, but we did not.

We gave them a run for their money and at the end of the day they backed down and admitted the whole thing was shonky and they have abandoned the tender process. I asked Mr Mountford, 'Where was this decision made? As you have never tendered for private investigators before, why did you take this decision to do it?'. Do you know what his answer was, Mr President? He said this was a decision taken deep in the bowels of the organisation. Here he was, the CEO, not prepared to accept accountability for an action but blaming some underling deep in the bowels of the organisation. I say that if this is the sort of report they want to bring to this Parliament and that is the sort of answer he wants to give me, I am standing by to see the year 2002 report because he had better come clean.

I also want to make a comment about the big-stick approach that this government is now exerting and what it is requiring Worksafe to do. I had a look at the workplaces visited in the first three months of this year. They range at around 550 in each month. But what about the notices issued? In January there were 162; February, 355; March, 313. So the rate of issuing prohibition notices has doubled.

Hon. Bill Forwood — They have to get the quota.

Hon. W. R. BAXTER — That presumably is it, Mr Forwood. We know they have appointed all these inspectors and they are going around issuing notices.

I would have thought that the approach that Mr Hallam adopted of working cooperatively was getting results. I think they will find that the big-stick approach is counterproductive or it is going to lead to the most absurd circumstances. I will give you one example of an absurd circumstance. It relates to the Country Fire Authority. I have a memorandum here from the manager of state operations, dated 13 March 2002:

> Following a recent incident where a volunteer firefighter fell from an appliance while trying to clean the top of the cab I request you implement the following direction:
>
> 'All brigades be advised that personnel are not permitted to carry out brigade cleaning or maintenance tasks which require access to the top (roof area) of a vehicle, or, from a location which is not designed for work to be carried out unless that task can be performed safely from a correctly positioned ladder and is done in accordance with a documented safe system of work which has been approved by the local operations manager'.
>
> Any cleaning of vehicles should be undertaken from the ground using a broom/brush which has soft bristles or similar (so as not to damage paintwork) and an extendable handle as per attached example.
>
> Worksafe Victoria have issued CFA with a prohibition notice which prohibits access to the roof area unless directorates can demonstrate a safe system of work for such purposes.
>
> Please note that a prohibition notice is a legal direction and any breach of this requirement will expose CFA to prosecution.

The point I want to make is that I am all in favour of eliminating risks and I am all in favour of risk management, but the art of it all is managing the risk, not entirely eliminating the risk if that means you have to go to absurd and extraordinary lengths to do so. Just because you have one incident, that is no reason to introduce a prohibition notice and put conditions upon everyone else which can be totally impractical.

Hon. M. A. Birrell interjected.

Hon. W. R. BAXTER — We could put them in cotton wool, Mr Birrell, and I have to say just as an interlude the CFA official who sent this to me wrote on the bottom, 'Is this what we have been reduced to?'. Here he is, a volunteer firearm, who spends hours and hours maintaining the local fire truck, and that is the sort of response he gets. No wonder volunteers are walking away, if this is the sort of thing they have to put up with.

Let me finish on this note: I do not believe that this legislation if passed will actually result in many, if any, convictions, in any event. I think it will be very difficult to prove the breaches and offences that the act envisages. I believe it will be very hard particularly to prosecute big companies, and they are the people the government keeps telling us they want to get at. Mr Katsambanis expressed that very well indeed. The big companies can dot the i's and cross the t's. They can hire the big-end-of-town lawyers; they'll be right. It is the smaller companies, the really conscientious guys, who may just slip up on some technical matter — they are the ones who are going to cop it under this legislation. I simply think that that is unfair on them.

The existing occupational health and safety law, or the provisions of the Crimes Act, if need be, are quite adequate to do what the government wants. What it will do is give the unions a mighty club to go around with,

beating up employers. I hate to say it, but it is absolutely true that there are too many union officials who are not interested in productivity gains; they are not interested in cooperation. They simply want to use their power to extract concessions, cash, or whatever from employers. If you want to ask, 'What is your evidence of that?', just read the transcript of the royal commission that is currently under way. There are examples after examples of union officials heavying employers for a cash reward. That is what it boils down to.

You can just imagine them coming around with a phoney occupational health and safety claim, threatening managers. It would be a glorious opportunity for them. I wish that I were not so convinced it would happen, but I have seen too much of it in the past. The leopard does not change its spots. That is exactly what we will get.

The National Party will be voting against this legislation, but we would not be averse to referring the issue to a parliamentary committee, for example. If the government is so serious about this and can produce evidence that a change to the law is necessary, it should refer it to a committee. All-party parliamentary committees over the years have done excellent work in this Parliament that has led to legislative change in a number of areas. More particularly, the Attorney-General could take it off to the Standing Committee of Attorneys-General so we could get some uniform legislation throughout Australia.

Why did he not choose to do that? Why did he go off on his own excursion? Was he afraid that he could not possibly get this past the Standing Committee of Attorneys-General anyway, so he did not even bother to try?

Hon. M. A. Birrell interjected.

Hon. W. R. BAXTER — I suspect he would not get it past the Carr government, no.

Hon. M. A. Birrell — He would not get it past the Beattie government.

Hon. W. R. BAXTER — I repeat that the National Party has no contention at all that deaths in the workplace are not serious. They are bad and we want to eliminate them. We acknowledge there are too many farm deaths. Most of them happen to owner operators, not employees, and regrettably a lot of them are elderly farmers past what would be the normal retiring age in industry. But we have a particular responsibility in the National Party to address that problem, and we are.

We have to acknowledge that great strides have been taken and that employers are much more safety conscious now than they were. Most employees are likewise much more safety conscious than they might have been 10 or 20 years ago, but there are still some old-style mavericks down at the Trades Hall Council fighting the class wars of years ago. They should put their prejudices aside and work in a cooperative manner with their members and their employers. I think we can reduce last year's death toll of 31 down to much less with that sort of action, rather than the big-stick, heavy-handed action that is envisaged in this bill.

The National Party will vote against it.

Hon. M. A. BIRRELL (East Yarra) — Even though by world standards Victoria has safe workplaces, I believe everyone would want to ensure that we have safer workplaces in this state. I cannot believe that there is anyone who does not agree with the central thrust put forward by the government that one workplace death is one too many. It is hard to imagine the tragedy that surrounds a family whose breadwinner does not come home from work, nor perhaps the impact that serious injury would have as a result of a workplace accident.

The only question before the house is not whether we want to achieve the objective of safer workplaces or avoid death and injury but how that can be done. I do not believe that over the last few months or during the debate in either house of Parliament the government has provided sufficient reasons to pass a bill which, as well as having a measurable downside, creates extraordinary precedents. If you cannot argue the case for such a radical and controversial proposal, then there is a duty on Parliament to pass judgment. I believe this house is likely to pass judgment against this bill on the basis of analysing it on its merits.

In simple terms, this proposal from the government is unprecedented, unwise and unjust, and therefore it is unproductive. In political terms, this type of legislation would not be passed by the Carr Labor government, the Beattie Labor government or, indeed, by any other state Labor government in this country. It would also not be passed by the Blair Labour government in the United Kingdom, because the whole proposal is without precedent in this precise form in any Western democratic government.

To those who are attracted to this debate by the emotional argument of saying 'Oh, surely you would pass any law if it would allegedly save a life', I say this: reflect on the fact that no-one has passed this law in any other democratic, industrialised nation or state because

they do not believe it will have that impact or that it will improve workplace safety. I do not believe that this bill is in the public interest because I do not believe that it will improve workplace safety over time. Indeed, it could sow the seeds of breaking down the cooperative arrangement which, since the 1970s, has seen a substantial improvement in the attitude to workplace safety and the outcome of that change in attitude.

No-one would suggest we face perfection in our workplaces now, but the real issue is that if we want to abandon the cooperative approach to achieving safer workplaces, is the alternative any better? The onus is on the government to say why its unprecedented actions should be experimented with within this jurisdiction. With the exception of the predictable support of the Trades Hall Council which, to be fair, is the author of the proposal, I find no other convincing group in favour of it, and I am not swayed from my view that it is against the public interest.

This bill needs to be defeated; it will be defeated, and the hard heads within the Labor government will heave a sigh of relief. They know that if they had expected to win the last election this would not have been part of their platform. They know that this is something they would like to get out of the way, even though publicly they will say they tried their valiant best to get this bill passed. They will be delighted if it is defeated and out of the way. It is an unworkable and undesirable piece of legislation which would probably harm workplace safety and environments if it were passed. It would certainly harm the employment and investment environment of this state if it were passed.

It is because of genuine efforts by employers and employees, governments and government agencies, particularly over the last 10 years but starting in the 1970s, that we have seen a sea change in attitude to workplace safety. Particularly amongst small and medium-size businesses, the attitude of near enough is good enough when it comes to looking after the employee has almost completely broken down. As a result of that, over the last decade there has been a fall in workplace deaths of about 70 per cent. This is a considerable achievement and a reflection of the success of what until this moment was generally a bipartisan policy. We may have disagreed at the fringes over some changes, particularly the justifiable concerns of the Liberal and National parties about politicisation of occupational health and safety at the behest of the unions, but we have not disagreed about the issue which is currently before the house.

I cannot overstress the fact that this proposal is untried and untested because it is without precedent in a Western democracy. The reason it lacks a precedent is that governments like the Blair government, despite its own connection to the trade union movement in Britain, have baulked at the chance to bring in such legislation within their own jurisdictions.

I am pleased that workplace deaths are down but, like those members of the Labor Party who would like to claim a monopoly on compassion, I believe that one workplace death is too many and we have to keep on exploring ways of getting the numbers down. The only solution surely is to get employers who have unsafe workplaces to reach the conclusion that that is against their interests, is totally improper and therefore changes in those workplaces have to be made.

The problem is that, despite the Labor Party's allegation that this bill is designed only to affect 'cowboys', it in fact treats all employers as cowboys. Instead of bringing in programs and policies that get to the very small minority of employers who have unsafe workplaces, it wants to bring in a new law that effectively terrifies genuine employers and which would have ramifications well beyond workplace safety, to the very point of questioning whether they would even want to have workplace employees because of their concerns about the implications of the bill.

In simple terms, this legislation, if passed, would create the offence of corporate manslaughter. It would make company directors and company officers personally liable for accidents. Distant, removed, but not emotionally or morally detached from their workplace, they would have to argue in court why they should not be treated as criminals for a tragic accident that had occurred, despite their best endeavours, their best efforts and their proper actions.

If one refers back to the workplace injuries that the Honourable Bill Baxter referred to in his address and the fact that that definition is so broad that it includes deaths, as tragic as they are, which happened to be at a workplace but which had nothing to do with the workplace, then one realises that this is a complex matter that is not facilitated or assisted by simple sloganeering, and never to be benefited from legislation which has as its roots a political promise rather than a public interest outcome. 'Hit the cowboys' by all means, but do not do it in a manner that harms the whole sector, including the very employees you claim you are concerned about.

The Liberal Party believes that prevention, education and inspection are the keys to further reductions in workplace deaths, and not just deaths but perhaps the more overwhelming prevailing problem of workplace

injuries. In saying that, in no way do I downgrade the tragedy and horror of deaths, but we have a large issue to deal with in terms of injuries.

In its May 2002 *Business Forum* magazine the Victorian Employers Chamber of Commerce and Industry precisely outlined some of the problems with the proposed legislation. The chief executive officer of VECCI, Neil Coulson, states:

> The responsibility for health and safety in Victorian workplaces must remain the shared responsibility of both employers and employees — punitive measures that target only companies and so-called 'senior officers' in those companies are not the way to drive this shared obligation.

Mr Coulson then goes on to say:

> The decision by the opposition —

to defeat the legislation —

> is a sensible policy response in these circumstances and they are to be congratulated for taking a stand on this important issue.

VECCI correctly points out that there needs to be a shared obligation. In the reforms brought in by the Kennett government under the excellent leadership in this area of Mr Roger Hallam, we saw the shared obligation heightened, strengthened and reinforced. That is one reason for the improved situation in Victoria in terms of workplace deaths. Notably the government is not undoing the vast bulk of the reforms brought in by Mr Hallam under that government, but here it is seeking to graft on top of that system an unprecedented set of criminal laws which are more to do with repaying a political promise to the Trades Hall Council than they are to adding to the layers of programs and legal systems in place to deal with a problem that concerns us all.

The Victorian Farmers Federation said it best in a letter dated 22 April 2002 to me and other honourable members from Peter Walsh, the president of the VFF:

> The bill changes the treatment of workplace accidents in Victoria. Its provisions are punitive and will turn accidents in the workplace into 'crimes' under Victorian law for which punitive criminal law prosecutions could be applied to business owners and management. In essence, directors and managers of many family farms could face criminal prosecution for workplace accidents under the bill's provisions.
>
> The punitive nature of the changes will be a disincentive for people to invest their capital into employing people. Some existing employers may choose to reduce employment. Early school leavers and young people would be especially disadvantaged by the bill because of the greater potential risk to employers of hiring inexperienced staff.

In a nutshell, that points out that this law would not only completely alter the system under which employers operate but it would also have many negative consequences. We cannot stand idly by and say, 'We will just let it through'. We must look at those consequences. It does not surprise me to know that the concerns of employers, many of which are privately shared by the Bracks government, are ones that should be reflected in dealing with this debate sensitively, and as a result of that seeing the bill defeated.

I was concerned that the bill was the result of such inadequate consultation with the community and with employers and businesses specifically. In this vein I particularly want to rely on the outstanding work done by the Australian Institute of Company Directors. From my memory I have not experienced the AICD being political; it is not really that type of organisation. However, this bill was of such extreme significance and impact upon company directors that they took a very clear and well-researched stand. They were particularly concerned about the lack of consultation with them and the impact that that would have on business and the long-term damage it could cause. In their submission to the legal policy and court services section of the Department of Justice on 14 March 2002, in dealing with the proposed legislation, they state:

> We have been disappointed with the nature of the consultation process and, particularly, with ministerial comments that consultation has been extensive. In our case we made two consistent submissions within short time frames and had a meeting with departmental officials. At that meeting we were advised of intended changes to the original bill and told that we would have an opportunity to comment upon the redrafted bill before its introduction into Parliament. As you know, we only saw this bill on a restricted basis the day before its introduction.

The Australian Institute of Company Directors, the principal body affected by the legislation, was treated as if it were an irrelevant pressure group, was pushed to one side and alienated from the process. The government dares to suggest that it consulted over a long time. It may well have consulted with the Trades Hall Council, to which it owed a great deal, but it did not consult broadly or with those who would be harmed by the bill, and therefore perhaps it did not learn the lesson of how bad the bill is.

The Victorian Automobile Chamber of Commerce had similar concerns about the absence of consultation. In a letter to me of 12 July 2001, it states:

> Despite two submissions and constant requests for feedback by VACC in relation to the proposed Crimes (Industrial Manslaughter) Bill, no consultation or amended draft bill has been forthcoming from the Department of Justice since the release of the initial draft in October 2000.

> Given the significance of the proposed legislation to Victorian employers, VACC requests that members of Parliament note the failure of the Department of Justice to adequately consult with employers …

The consequence is that we were confronted with a bill coming before Parliament that most members of the Victorian community were not even aware of, and one that most of the bodies one would expect to be informed about the legislation have not been able to study. It is the strength of the Legislative Council that it is able to use its systems to bring to bear the necessary research and study and is able to properly pass judgment on legislation after it has consulted with the bodies that have been cut out of the government's process.

We are not bluffed by old commitments to Trades Hall Council; we do not owe the union movement any specific debt. Therefore we can come to the debate with clean hands and an open mind.

Like the Blair government, the Carr government, the Beattie government and other Labor governments throughout the world, we do not like the legislation. No-one thinks this is the path you should go down in the 21st century, but it is seriously suggested there is some moral necessity for this chamber to pass the legislation. I would like to see it work somewhere else. I do not believe it will or that others will try.

The fact that no other jurisdiction has this type of legislation is a central concern of the Victorian Congress of Employer Associations (VCEA). The congress complained to me in a letter dated 11 April that:

> The proposed legislation is an attempt to turn the clock back to an adversarial system which was discarded in the 1980s …
>
> It is interesting to note that for some six years, legislation of this type has been under consideration in the United Kingdom but, to date, the complexities of the issue have not resulted in any proposals being agreed.

The VCEA represents the Australian Industry Group, the Victorian Automobile Chamber of Commerce, the Australian Retailers Association, the Victorian Employers Chamber of Commerce and Industry, the Master Builders Association of Victoria, the Victorian Farmers Federation, the Printing Industries Association of Australia and the Victorian Transport Association. The congress members are an informed group, moderate in their public statements, and they deserve to be listened to. The Liberal Party, like the National Party, has listened to them and we believe they are right in their concerns about this proposal.

Clearly also in our mind is the concern that the legislation, if passed, would not achieve its central goal. As the Australian Institute of Company Directors states:

> No evidence has been produced to show that bodies corporate and their senior officers are a source of the government's concern.

No argument has been put forward that legislation that deals explicitly with bodies corporate and their senior officers should be the focus of the government's attack. As the institute says:

> … the rate of workplace death is decreasing and static in 2000 and 2001. The latest statistics also show that the agricultural sector has the greatest number of workplace deaths, which seems to have been the case for some time …
>
> The bill is concerned with punishment not prevention.

It is that view which strikes the strongest chord with me. Of course, it is not only larger businesses and industries that are affected. I received a number of representations from small businesses in my electorate and beyond the boundaries of my electorate. I quote one local small business, R and M Boys, automotive engineers of Hawthorn. In a letter to me dated 16 April the firm says:

> As a business owner and employer, I object to the introduction of the proposed legislation. From my point of view, modifying the Victorian Crimes Act and Occupational Health and Safety Act 1985, will not enhance workplace safety, but rather adversely affect the positive and cooperative approach already adopted by government, employers and employees.

Hear, hear! A letter to me from the Warrnambool Cheese and Butter Factory at Allansford states that the legislation is:

> … counterproductive to good management and does not effectively reduce industrial accidents.

The last word in terms of what a small business has said to me comes from another one of my constituents, Graeme Cuthbert, an automotive engineer. He states:

> There is no evidence that the proposed crimes bill will improve work practices and do anything to protect workers. It is critical that the Parliament fully comprehends the potential impact of this bill, and forces the government to properly consult with the various interest groups.
>
> I strongly reject the crimes bill because the basis for it is flawed. As my local member, I call on you to reject the bill.

The duty is not on us to say that something which is unprecedented and which enjoys limited public support should be passed through this Parliament when it is clear that the cooperative regime that has existed under Liberal and Labor governments is achieving better results and better workplaces and increasing the safety

levels within the Victorian community. The duty is on the government to explain why its proposal is better than the current law.

Given our concern to ensure that we do not have laws that are fundamentally flawed, you can understand the reasons that the Liberal and National parties have taken the stand that they have.

I conclude by calling on the words of the Victorian Farmers Federation, which has led a strong campaign against this proposal and which raises the broader issue of the impact on the Victorian economy. I leave it until last because perhaps when talking about deaths and injury it is a lower order issue, but it is not an insignificant one. If passed, what impact would this bill have on the Victorian economy, industry, employment or, if you look through the eyes of the VFF, regional development? The VFF says to me:

> The proposed legislation would have a major negative impact on employment in rural and regional Victoria, especially in those industries associated with agriculture.
>
> The bill changes the treatment of workplace accidents in Victoria. Its provisions are punitive …

The VFF speaks logically about the damaging impact the bill would have on the economy, and I believe its views apply equally to the damaging impact on urban centres throughout Victoria.

No doubt one of the reasons that the New South Wales Labor government has not followed this policy is because it fears the flight of investment by company directors who choose to move footloose investments to other jurisdictions to avoid an unwelcome and unexplained criminal system.

We cannot turn a blind eye to those economic consequences, and I have not heard a convincing argument from the government that those consequences are not real. They are real and they are at the heart of the concern of the Australian Institute of Company Directors. They motivate the public statements against this bill by the Victorian Congress of Employer Associations and they have fuelled the anger of the Victorian Farmers Federation.

I believe on balance all of that leads to the conclusion that the current cooperative system, potentially with further improvement, is a lot better than a criminal system that would treat innocent people as people who have to prove their innocence. Clearly we do not want a criminal system that overwhelms what should be a cooperative, team act.

Hon. R. F. SMITH (Chelsea) — Where to start! I normally start by saying that I am pleased to make a contribution on this bill, but not in this case. It is depressing and, in fact, I feel great despair. One could argue that there is no point in making any contribution to the debate given that the conservatives opposite have decided to number crunch and do in the bill. I ask myself: why would they be so obstructionist to what in my view is a sensible bill? It is clear: they are responding to the concerns handed to them by their constituent base — the employer groups. That is who they represent.

Speaker after speaker from the opposite side has made much about the fact that this government is simply responding to the pressures of the union movement or the Victorian Trades Hall Council in particular. To a degree that is right. We make no apologies for that. We say on numerous occasions that we represent working people. I commented in my inaugural speech that I came here in the hope that I would improve the lives and conditions of ordinary working men and women. This bill is one of those rare opportunities where we will get to do just that — if we are successful.

I am a bit bemused by the comments coming from the conservatives opposite that they care about workers and the workplace and are nurturing a more cooperative workplace environment. What hypocrisy! Their interest is in one thing only, and that is the profits generated from the workplace — nothing else. That is the bottom line — how do they get there?

In 1985, on one of those rare occasions when the Labor Party had the numbers in the upper house, we were able to get through the Occupational Health and Safety Act. Members of the opposition at the time did not support the bill; in fact, they fought like alley cats to prevent it becoming law. Now they want to claim credit for improving the workplace and reducing the number of workplace accidents and deaths as a direct result of their caring for ordinary working people. I am afraid that not even an alligator is going to swallow that line!

Mr Katsambanis went to great lengths to explain his views about what happens in the workplace. I asked, by interjection, how he would know. He has never had a real job; he has never been on the factory floor. The Leader of the Opposition accused me of not having had a real job. What I was doing on the floor of a steel mill? That was a pretty good imitation of a job. As I said, in my view, that gives me the qualifications to stand here and debate this subject — I have been there and done that.

At the end of the day, at least the government has the courage to admit who we represent, and we are quite open about it. The opposition will never admit publicly that it is on the side of the bosses and no-one else; it only cares about the bottom line. We know it does not care, and the Minister for Sport and Recreation will reiterate that point!

Mr Baxter — —

Hon. Bill Forwood — Spoke well!

Hon. R. F. SMITH — Yes, he did, in fact. I thought he was quite amusing and he put on quite a turn for us. I kept glancing at people sitting in the gallery, and they were amused as well. I thought it was a great little performance. However, he made some comment that we on this side of the house need to understand what business is about. Well, let me give my view on what business is about and what it needs: I go back to 1985 when I was the senior union delegate at the steel mill at Westernport when the Occupational Health and Safety Act came in. I was the first occupational health and safety delegate on the site, and the senior one and I helped formulate our first consultative committee. Let me tell you about the attitude of business then. It was absolutely distraught — —

Hon. Bill Forwood — When was this?

Hon. R. F. SMITH — It was in 1985–86. Businesses in the steel industry were distraught at having to consult with the work force, to sit down with delegates in a consultative manner and talk about ways and means of improving the workplace.

Hon. Bill Forwood — Seventeen years ago the Berlin Wall was still up!

Hon. R. F. SMITH — It came down and the other side lost, I know. The fact remains that big business was extremely put out that it had to actually talk with its work force, consult and agree on ways and means of improving safety in the workplace because it took away some of its status or the born to rule — —

Hon. W. R. Baxter — Just like I said, you're still fighting the class war!

Hon. R. F. SMITH — Mr Baxter says we are still fighting the class war. On the contrary, because we have won it in the workplace; it is over. The reason it is over is because the union acted responsibly and delivered the goods that significantly improved the workplace.

The steel mill I worked at had, and on the odd occasion today still has, more than its share of industrial accidents. I am sad to report that some of the accidents resulted in deaths. Some I was close to — I mean both in location to the accidents and to the individuals who were killed — but I was always involved in some way with the ramifications of those deaths in the workplace. I can honestly say that on not one occasion was a supervisor or senior officer of the company charged or found guilty of wilfully placing someone at risk. The accidents were avoidable and were the result of a lack of training or education or of sheer negligence on the part of some workers.

There are occasions when workers make mistakes and take risks for the wrong reasons, and unfortunately some have paid the ultimate price. It is quite disturbing and distressing for everyone in the workplace — mates, employers and so on. I agree that many — in fact, the vast majority — of employers care about the people who work for them, and I will not be flippant and suggest it is just because they make money out of them. That would be unfair; they do care.

As an example of how accidents can happen, I recall once when we had a shutdown in the zincalum line, which is part of a process of coating the sheet steel used for roofing. The sheets of steel are uncoiled and go through vats of hot molten zinc. During routine shutdown maintenance periods these areas are closed off. On one occasion in an area that was roped off with 'Danger' and 'Do not enter' signs, warning flags, switches isolated — everything that could possibly be done — a contractor stepped over and walked across what he thought was concrete. In fact it was a thin crust on the molten zinc pot. The pot was about 2 metres by 2 metres and probably 3 metres deep, but it was molten zinc. It was all the way up to his waist before he got hold of the sides to pull himself out, and the poor bugger lasted about three days before he died. What more action could be taken to prevent that? I suggest maybe some more education for contractors or whatever. This guy was clearly a little gung-ho. He refused to recognise the safety standards and preventions that were in place, and in those circumstances no employer could have been charged under the proposed bill because it was not an action that would have fitted in.

I refer to another near fatality, and this goes to people's attitudes in the workplace. Once the occupational health and safety delegates had been established in 1985, the attitude of foremen was causing a great deal of angst. They felt that their authority was being taken away by people who had the capacity now to say, 'No, I will not do that' or, 'No, that is unsafe'. I recall on one occasion

a worker had been instructed to go and help get some scrap out of the work rolls at the hot strip mills. Those work rolls weighed approximately 10 tonnes each, and there were also much bigger rolls. Hydraulic pressure was used to flatten hot slabs of steel into thin coils, et cetera. They go through a reduction process.

During the course of that process we had what we call a cobble where the steel flies up, the system crashes, so we have to clean it all out, cut it out, et cetera. The worker was instructed and wanted to go in between those rolls, lying down, crawling in with some long plier-type appliances and pull some scrap out, which was completely contrary to the safe working practices that we had designed. As the occupational health and safety delegate I went down immediately and stopped him. I nearly got into a punch-up with him because he felt I was impacting on his willingness to be gung-ho and prove to the foreman that he was foreman material. He was most upset about that.

The foreman took his side, naturally, because he wanted the job fixed as quickly as possible so we could get on with rolling because we had a bonus system: the more tonnes you produced the more bonus you got at the end. We got rid of that system by using the act because we felt it created an incentive for people to put themselves at risk. That incident escalated into a major dispute, and we won that too. It all went to people's attitudes at that time, and it was not before the introduction of that act that people started to change, contrary to the views of those opposite that they had started to change the culture in the workplace — which is laughable.

The introduction of that act proves that introducing legislation that tells people they will be punished if they go beyond this, or if they put people at risk wilfully, will have an immediate impact. After the introduction of that act people started to think about and reflect on what they were doing. The act applied to workers, supervisors and employers. If that is the case — and I think most people agree that is the case — then is it not logical that by extending the powers and penalties to include industrial manslaughter charges against people who wilfully put others at risk or do something that results in someone being killed in the workplace, it is likely we will reduce the number of deaths? It is impossible to calculate how many; no-one attempts to do that. In his contribution earlier the Honourable Gavin Jennings did not claim that it would reduce the number of deaths, but that it is likely because of the attitudinal change of both workers and employers in particular.

The opposition over the last week — the leader in particular — has rabbited on publicly about being for law and order in this state, and said that it does not want criminals getting away with anything, et cetera. How does that then sit with its objection to this bill, which is clearly designed to make it a criminal offence if you deliberately and wilfully put someone at risk to the point where they are killed? Is that not culpable? The opposition supports laws punishing people for culpable driving; why would it not support laws punishing people who are culpable in the workplace? It is hypocritical.

The only reason the opposition does not support the bill is because it has got its riding instructions from the Australian Industry Group. Mr Bob Herbert, the head of that group, was having lunch — wining and dining — with Mr Birrell last week. I happen to know Mr Herbert. Guess what they were talking about? Their riding instructions. He made a comment to me in the passageway. When I said, 'Bob, I wonder what you are here for?', he said, 'You're right, and you are not getting it up'. That was Bob Herbert and not Mr Birrell.

I gave examples earlier about some tragedies in the workplace. I have a couple more I want to refer to. While I have no chance of convincing members opposite to change their minds and to demonstrate a bit of heart and compassion for people — that will not happen — with respect to the families and to those deceased in the workplace I will raise these issues. A number of people have asked me, and in some cases begged me, to get this legislation up so that such a loss does not happen to anyone else. It is pretty emotional stuff.

At BHP's uncoiling site at Braeside they uncoil 6 to 8-millimetre steel that has been rolled up and taken from the steelworks at Hastings to be uncoiled and cut into sheet. A young 21-year-old, a fantastic young fellow who was liked by everyone — the supervisors, his workmates, et cetera — was a little gung-ho. As he was uncoiling the steel it got a kink in it and it could not get through the work rolls. The work rolls at that stage were about 8 millimetres apart. He decided not to isolate the equipment but to jump the wire fence — which is an absolute no-no, and there was plenty of notification of that, such as signage, including 'Do not enter' signs, lock-out switches, et cetera. He got a lump of four-by-two and started jemmying it to get it through the rolls to get it past that kink. Unfortunately for him it took off. He got it through, and the steel and roll caught the lower part of his bluey work jacket and dragged him through the rolls.

Honourable members can just imagine what that looked like. The despair in the workplace and the shock was very difficult to describe. When I got there the young man was on the ground and it was very distressing. What I will never forget is the impact it had on all the work force there, including supervisors, office staff, and his blue-collar workmates. It took an enormous amount of counselling and the like for people to get over that. The occupational health and safety delegate was just distraught, blaming himself and almost beating himself physically for not having done enough, and thinking that maybe it was his fault in some way. It was quite tragic but, again, no-one there could have been prosecuted under our proposals.

I will talk about Simsmetal. In the latter part of the 1980s Simsmetal had a site — it still has a site — at Braybrook, where it smelted scrap metal. In the smelter, the workers pour in bags of chemicals, et cetera, to help heat the smelter itself. It had another site down the road which it closed. It transferred chemicals to this site in a very ad hoc way and stored them next to the bags of chemicals used in the furnace.

The problem was that it was, I think, phosphorous nitrate that was brought down. The foreman who brought down the bags knew where he stacked them and knew that it was irresponsible and in fact dangerous to do that. As Murphy's Law would have it, within days one of the workers, with a forklift, got some bags from the stack to put into the furnace, but he had gone to the wrong stack — they were next to each other. He put them in the furnace. As soon as he put the second bag in, it exploded, killing four people and injuring seven very badly. I had the, well, good fortune — I have to say — of having met and talked at length with one of the survivors a couple of years later, and what a mess he was! His fingers were melted together and his ear to the side of his face, and he had massive scarring, et cetera.

That company was found guilty of the charges laid against it. It was fined $45 000, with four men dead and seven seriously injured. It was clear to the union movement then and discussed quite extensively within Trades Hall — at that time I was a vice-president of Trades Hall — that something had to be done to address this situation, because it was clearly inadequate. By that I mean the legislation at the time was inadequate to prevent those sorts of things from re-occurring.

People now say, 'Well, this won't reduce the number of industrial deaths, et cetera — the only way to do that is through training and education'. I might add that the people who say that are the employers and their representatives in here. Well, I wonder what Esso would think of that? Do you think Esso at Longford would argue that it really cares about its work force? I bet it does now! But at the time of and prior to that explosion would it argue that it really cared about the work force, that it did not need any legislation to demonstrate whether it could improve, that it would do it as a matter of course because it was responsible?

Well, all the evidence is to the contrary and the arrogance displayed by Esso had to be seen to be believed. It was just an extraordinary example of employer arrogance in a situation where it was clearly culpable for what happened in that particular workplace. They got massive fines and the like but it was a drop in the bucket for Exxon.

Now let me give you a little bit of insight into some of the goings-on and the thinking behind Esso's decisions at Longford. Exxon had made a global decision that it would cut costs around the globe to make up for the money lost through the Exxon *Valdez* disaster — another example of it taking its eye off the ball, I suppose you could say. It cost them something in the order of US$10 billion. Well, it said, 'Let's tidy that up, let's cut costs around the world'. Guess where it did it? It did it in maintenance: program maintenance costs were slashed. Talk to any of the labour hire companies that do maintenance work on these sites and they will tell you that Esso made a deliberate decision to cut their costs and, in doing so, put not only the plant but its work force at risk. Do not tell me it cared; do not tell me that training or attitudinal change in the workplace will take place with companies like that without the legislation we propose. It will not.

Over the years — I do not want to go back forever into a genuine class warfare situation — we had kids in mines and up chimneys. What changed that? Working men and women, through their unions. That is the only thing that changed it and the only thing that will ever change it. When you look around the world today and see the exploitation that is going on at different work sites in Third World countries and so on, where is the union movement? You will not find one, or if you do its members are deceased and are in the local graveyards or wherever, or about to go there because they impact on the bottom line of employers.

It has always been the case. The difference here, of course, is that we are a little stronger, better organised, and, dare I say it, more effective in this country. That is one of the reasons we have such a high standard of living by Western standards. We are right up there with a strong union movement. That is what delivered it,

nothing else. If anybody wants to tell you something different they are kidding themselves.

The Victorian Farmers Federation says to the conservatives opposite, 'You must oppose the bill', and the opposition's response is, 'Do you want us to jump? How high do you want us to jump?'. The VFF says that this will drive investment out of the state. What nonsense! Not one employer will move out of the state as a result of the legislation, not because the bill will not get up. Every member in this place knows it.

It is interesting that the VFF would have this view because clearly it is representing its constituent body that happens to be in the agricultural industry. The farming industry has one of the worst rates of deaths in the workplace. We all know there is a constant barrage of statistics and injuries in the workplace associated with agriculture. I never thought the VFF had any credibility anyway, but now I am convinced of it.

What is the bill all about? At the end of the day it is about delivering on a commitment made on delivering a new crimes act that creates offences when dealing with workplace deaths. The proposal is that maximum fines would be imposed for industrial manslaughter of up to $5 million for corporate bodies and $2 million for negligently causing serious injury. I stress that these fines are for the body corporate. For senior officers of the body corporate the jail terms and fines are five years and/or $180 000 where a body corporate has committed manslaughter, and two years or $120 000 for some serious injury.

If anyone suggests that this will not change attitudes in the workplace they are mistaken, because it will certainly straighten up a few people in terms of their thinking in the workplace. We are only targeting a handful of people who would actually be so uncaring or irresponsible as to deliberately put people at risk. By far the majority would not. Again, workers are entitled to be covered wherever they work.

I started my contribution by saying that it is depressing to make a contribution to debate on the bill in the knowledge that it is futile, that it is going nowhere, but my views are still the same. It is a pity because I believe the bill has great merit and would improve the chance of workers working in a safer workplace, which would be a good thing. Its passing would have brought some rare credit to this house. It is a pity there is not a conscience vote on the bill because I genuinely believe some members on the other side have a genuine conscience, are genuinely caring about people and would vote to support the bill. However, it will not happen. As I am ever the optimist; and I believe we will be back and we will get it at some stage. I commend the bill to the house.

Hon. E. J. POWELL (North Eastern) — The National Party opposes the Crimes (Workplace Deaths and Serious Injuries) Bill. The Honourable Bill Baxter eloquently put the National Party's case and explained why we made this decision. The government has brought forward a number of reasons why it thinks the bill will fix all the problems of workplace safety. It has not at this stage put anything on record that even faintly looks like a way that would make a workplace safer, but rather would increase punishment and put people in jail. This is not the way we should be going.

The bill has caused a great deal of concern in the community. The government is wondering why the opposition parties are opposing it and saying it is just because we have the numbers. We are opposing it because we think it is bad legislation. We do not believe it will achieve the aims it wants to achieve. Therefore we will oppose the bill because it is bad legislation, not just because we have the numbers.

When the bill was introduced in this place some 12 months ago the government thought it was perfect legislation, but since then it has already buckled under community pressure where some volunteer groups voiced concern that they may be brought under this legislation in a way that perhaps the government had not intended, but obviously the government had not examined that.

The Honourable Bill Baxter and I received letters, one being from Mr Bruce Brisbane, the coordinator of Murchison Community Care, who expressed absolute dismay about the impact on his community and on volunteer committees of management if they were brought under this legislation. It is difficult in all areas of Victoria, but probably more importantly in country areas of Victoria, to get volunteer groups because of public liability insurance problems, but to now put this onerous burden on committees of management so that volunteers could be found responsible for workplace deaths and receive jail sentences is inappropriate.

We also received a letter from the Barwo Homestead aged care hostel in Nathalia. The secretary, Mr Gerald Quin, said that the organisation is a not-for-profit organisation, and that the committee of management consists of volunteers. The government buckled under this provision. It obviously received a lot of phone calls and much pressure from community groups saying that volunteer groups should be exempt from the legislation.

The Honourable Gavin Jennings in his contribution said that the government had a mandate, but already the government has amended this so-called perfect piece of legislation that is supposed to be the perfect foil to ensure that workplaces throughout Victoria will be made safer. In the second-reading speech I was pleased to see that the government has responded to community pressure, and that the provisions in this bill now only apply to a senior officer who holds the position for a fee, gain or reward or the expectation of a fee, gain or reward.

The government went into damage control and said in the second-reading speech that it recognises the indispensable contribution made by those who volunteer in senior positions in charitable or other community sector organisations such as school councils or hospital boards.

The government has buckled under that pressure, but what it has not said is that some of these boards of management and community centres have boards and committees that have people who receive a fee or an allowance. Are those people not to be exempt under the bill? It seems that is the case. Somebody who is on a management board could be exempt from the bill if they do not take a fee, but if they receive an allowance they could be caught under the legislation. I am sure the government did not intend that to happen. We still have people doing exactly the same job, but they will not be exempt under the legislation.

It will cause huge anomalies on boards of management where people who are volunteers sit beside people who receive some sort of fee for service or allowance, perhaps a travel allowance. It will be interesting to see how this works if it ever becomes law, which I hope it does not.

On 12 July 2001 I received a letter from the Victorian Automobile Chamber of Commerce which was concerned about a number of provisions in the draft bill. It provided me with a copy of the submission sent by the Victorian Congress of Employer Associations to the government on 3 November 2000 — two years ago. The VCEA was established in 1974 to provide a focal point for the needs of Victorian employers. It is a peak Victorian employer body made up of nine employer organisations in Victoria that represent over 30 000 employers directly and thousands more by indirect affiliation with the industry organisation. The signatories to that affiliation are the Victorian Employers Chamber of Commerce and Industry, the Australian Industry Group, the Master Builders Association of Australia, the Printing and Allied Trade Employers Federation of Australia, the Plastics and Chemicals Industries Association, the Retail Traders Association of Victoria, the Victorian Automobile Chamber of Commerce, the Victorian Farmers Federation and the Victorian Road Transport Association. As I said, it is the peak body for a large number of employer groups across Victoria.

Its submission raised a number of concerns about the draft legislation that first came to this place, which had the potential to expose an employer to onerous penalties because of its broad definitions. We have seen that some of those definitions can be interpreted in many different ways. It was one of the VCEA's concerns, because while the government says, 'These things will not happen because the case study does not prove it', that has not been proved because no other state in Australia or any other country in the world has introduced this legislation, so we cannot get feedback from anyone else to find out how it works in other states or countries.

The VCEA was also concerned about the introduction of an unprecedented and unfair new law which singles out employers. The current legislation provides for an individual to be charged with manslaughter if they are charged with gross negligence. That charge exists anyway. There is also the requirement for an officer to prove that he or she is not guilty once a corporation is found guilty. The VCEA say it is unreasonable to have the reverse onus of proof where penalties are increased and imprisonment is also a penalty.

In his presentation Mr Jennings said that the opposition parties are not listening to the community, and we hear that rhetoric from the government time and again. He says that the only reason the opposition is voting against the government's legislation is because we have the numbers. That is not true. Many of us have been inundated with phone calls, letters and visits from employers, employer groups or employees who work for good employers and who can see the impact it will have on their workplaces. I counted the letters I received, because I had to respond to each and every one of them. I received 23 letters from businesses right across Victoria. Many were from people and organisations in my electorate and yes, Mr Smith, the Victorian Farmers Federation was one of the bodies that wrote. It represents the farming industry, so it is a body that the National Party takes note of because it speaks to the people that it represents. When the VFF speaks, we listen because we know that it has the interests of the constituents in its communities at heart. When it talks about the farming and agricultural industry, the National Party listens, as I am sure the Liberal Party does. When the Victorian Farmers Federation as a peak body talks about what is in the

best interests of the farming community, we certainly listen and take notice.

All of the letters asked me, as the local member, to reject this bill. I know personally many of the business people who wrote to me. They have a good reputation in the towns where their businesses are and they care about their employees. A number of government members talked about the fact that the National Party only looks after the employers. Many of our employers care about their workplaces and the people who work for them and they have a good reputation with those employees. Many are family businesses and have had the employees for many years. I know some employees who have worked for some of the businesses for 15 years, and you do not work for a business for 15 years if it is not going to look after you! The government seems to think it has a mandate on compassion. I say to it: you do not have the mandate on compassion in this house.

I would like to read some of the concerns listed in one of the letters I received. The letter comes from Lorraine and Gordon Threlfall of HSM Auto Repairs and Spares in Shepparton. I will not go through the whole letter, but will list some of the major concerns about the bill:

> The bill jeopardises what has been an effective and cooperative approach between employers, unions and governments to enhance workplace health and safety in Victoria.
>
> The harsher penalties and the new criminal offences will adversely and inappropriately affect business.
>
> Employers will be exposed to harsher penalties, without the provision of clear guidelines on what constitutes gross negligence and reasonable precautions.

They are saying that the government is putting the guidelines in place but is not stating what the guidelines are. The government is saying, 'If you do the wrong thing, we are going to put you in jail and increase the penalties'. But that is not working with the employer groups. The letter continues:

> The bill has the potential to deter new business investment and further reinvestment in Victoria.

The Honourable Peter Katsambanis, in his opening address for the Liberal Party, put on record the way in which we as Victorians might have to try to compete not just against the other states in Australia but, more particularly, overseas countries. It is just ludicrous that with some of the draconian laws that the government wants to bring in somebody could be sent to jail not for being part of a business but for just being on a board of management or perhaps of a body corporate.

The letter continues:

> The crimes bill is a worldwide precedent and, notwithstanding what the government says, there has not been sufficient meaningful consultation with employers on the matter.

We have heard a number of members on the Liberal and National Party side talk about the consultation the government has had, but it has been with union members rather than the employers and the employees, and perhaps even some of the farming community.

The letter goes on to say:

> As business owners, we believe the proposed crimes bill will not reduce or prevent workplace deaths and serious injuries, but only expose our business to unnecessary financial and legal exposure.

It finishes by saying:

> We strongly reject the crimes bill because the basis for it is flawed. Jeanette, as our local member, we call on you to reject the bill.

The Victorian Employers Chamber of Commerce and Industry (VECCI) put out a discussion paper that we all have had a copy of, about the Crimes (Workplace Deaths and Serious Injuries) Bill. On the front page it says:

> Have we given up on prevention?

It goes through some of the issues and says, as we on the opposition side have said, that the best way to decrease workplace deaths and injuries is to work with employers and find a way to go in and inspect their workplaces, and if there is a problem to work with the employer and the employee. A number of people have raised the issue that if an employee is negligent and does not adhere to all the safety precautions, you cannot sack that employee. You still have to carry them. We have had this situation at our own workplace where an employee often came into the business on a Monday morning quite intoxicated. We were not able to sack that person, yet they put us at risk because when using any of our machinery or working on any of the vehicles we have in our workshop they could be seriously injured or killed. In that instance we obviously would be liable for their death or injury, whereas there was some contributory negligence on the part of the employee. This bill does not look at that. It does not address any of that.

The VECCI discussion paper talks about the approach that has been adopted historically by Victoria in occupational health and safety. It has always been based on risk management, education, improved safety standards and a simplification of legal requirements,

with the overall objective of preventing workplace injuries. Figures released recently by the Minister for Workcover suggest that this approach has produced results, with the number of deaths and injuries in Victorian workplaces continuing in a pattern of decline. The report contains some graphs that have come from the Victorian Workcover Authority statistics report, and they are quite interesting. A number of members have talked about the statistics that are in the Workcover authority's report. While every member here has said that 31 deaths last year is too many, 15 so far this year is also too many, although it is much better than the 93 in 1985 to 1986.

We have a long way to go, but I believe if we work with our communities and our employees and tell them what their responsibilities are — that there is also responsibility on the employee and not just the employer — we will make sure that everybody in the workplace has a cooperative approach to make sure that nobody has an accident or dies.

Many of the people who have businesses in my electorate would be devastated if an injury or particularly a death occurred in the workplace. They would not be saying, 'It is not our fault'. They would feel it very severely because in country areas nearly everybody in the community knows the people in businesses there. We are a very close community. If somebody did the wrong thing, it would get around the area very quickly, and that person would lose a lot of business because they have unsafe work practices.

There have been a number of people on this discussion here today talking about the overrepresentation of the agricultural industry in workplace deaths, and that is true, and it is tragic. Eleven of those deaths last year occurred in the agricultural sector. There were seven in construction and five in manufacturing. So agriculture is still overrepresented in deaths and injuries on farms.

The former government was working very strongly to try to reduce those statistics because it realised it had to work with the industry. As the Honourable Bill Baxter said in his presentation, a farm is a unique workplace. You are working in all sorts of conditions and on different sorts of terrain. You are working with animals. You are working with machinery. You are working very early in the morning and working very late at night. Calves seem to want to be born at about 2 o'clock in the morning. Usually it is quite dark and usually the person that is coming out to do the calving is tired. They are wanting to get back to bed.

They are working with people who live on their workplace, which is also unique. There are not many workplaces in Victoria or in Australia where people actually live and have visitors coming there. They are not only there for themselves; they have people who come there for social reasons. They come there to visit the family. There are young children in those workplaces. Many young children work on the farm as well. I think the reason for the overrepresentation of farms in workplace deaths and injuries is the unique type of industry or workplace that the agricultural industry is. We need to work more closely with those people instead of condemning them. If there is an accident on a tractor or a piece of machinery, we should try to rectify that in the beginning rather than putting the farmer's wife into jail because perhaps she is on the board of directors or is a shareholder.

We have a long way to go. The former government brought in the tractor rollover bars program, which was very successful. After the rollover bars were put on tractors — with a government subsidy, I have to say — the number of deaths on tractors, which had been one of the highest in Victoria — most deaths on farms occurred on tractors — decreased dramatically. That is the sort of thing we need to look at. We need to examine instances where safety could be made a higher priority and to consider which way we should be dealing with safety precautions to make sure that the number of workplace injuries and deaths, not just for the people who work there but also for those who visit there, is reduced.

The former government also brought in a program under Pat McNamara, who was the then Leader of the National Party and also the Minister for Agriculture. He understood first hand the importance of bringing down the number of workplace deaths in the agricultural industry. He organised a number of seminars going right across country Victoria. Those seminars were called Growing the Farm Business. They were directed at women. I was a contributor to those seminars. There were 10 seminars that visited Victorian country towns and about 500 women attended them. There were seven presenters, all women. They were speaking to the women on farms. One of those presenters was Julianne Adams, who was the information manager for the Victorian Workcover Authority. She spoke to the conferences about the tragedies that happen on farms and workplaces.

As I travelled around country Victoria with her, I understood the message she was trying to get out to the people who live and work on farms and who visit farms. The message was very clear: that the farm workplace is unique. What she was saying to the farmers in the audience was that there is help at hand and that the Workcover authority has a number of

people who can come to look at your property. She was saying that they can talk to you about some of the resources available. There are grants available if you need to upgrade some of your farming practices. So what we were doing was going around country Victoria lifting the profile of farm safety to the people where it matters — to the people who live on the farms and the people who run those farms. That is an important part.

It is not the heavy-handed, big-stick approach of saying, 'We are going to throw you in jail or throw the book at you'. It is working with these people and saying, 'We understand you have a problem. Now let's see if together we can overcome it'. As I said earlier, the unpredictable nature of a farm is why the agriculture industry is overrepresented in farming accidents and deaths.

An article in the *Weekly Times* on 25 May refers to a kit that focuses on farm safety, and I would like to read a very small part of it:

> A farm safety education kit for children being launched at Beechworth …

which is in the electorate that the Honourable Bill Baxter and I represent —

> … next month might become a national program.
>
> 'Farm safety is fun' is the new program to create awareness and help prevent children being injured and killed on farms.

Hon. W. R. Baxter — I am going along.

Hon. E. J. POWELL — Mr Baxter is going along to that launch. It shows you what can be done to improve farm safety on farms without the government coming in and saying, if there is a farm death or a farm injury, after the event, 'We can put you in jail', because, tragically, the people where the accidents or deaths happen feel the impact probably more than if they had to go to jail.

One of the presenters here today — I think it was Mr Baxter — was talking about the impact on a business that ended up going bankrupt. A member of the Labor Party was using that as a bad example, and yet when you heard Mr Baxter's example, you understood that that firm felt that death very strongly, and continues to do so.

The second-reading speech states that Victorians want and deserve workplaces that are safe and productive. Victorian families have a right to expect that when they see their loved ones off to work each morning they will return home safely each night. I agree with that sentiment. I wish to put on the record something that is a very personal to a friend of mine. I have a friend, Katrina Mooney, who lost a son in 1997. Just recently the court case was finalised. I spoke to her and told her about this bill.

Katrina's young son Adam was 24 years of age. He had been working at J. D. Coates in Shepparton for three months. He was so excited to have got the job; he had left home and was living in a flat. His mother drove him to work on the particular morning, left him there and drove home. She was going to pick him up at lunchtime so they could have lunch together, as they did every day. When she arrived at his workplace to pick Adam up, there were ambulances and police cars there. She knew something was wrong, but nobody would talk to her. She found out later that Adam had been crushed. He had been working near a silo that held 20 tonnes of apricot kernels, and the silo had split and crushed him. Adam died a horrific death. I attended the funeral, as did many people in Shepparton; Adam was a very well liked and popular young man.

His mother waited and waited to hear from Workcover to find out what she should do and what was happening. She waited again to hear from the police. After phoning the police again and again, 16 weeks after the accident they told her that the officer who was investigating the case was in court in Melbourne for two weeks. After she phoned again she was told, 'Sorry, he is on leave'. She was finally contacted 20 weeks after Adam had been killed; that is almost 5 months. Can you imagine the trauma that mother was going through? She did not know what was happening, when the court case was coming on or whom she should see for support or help. There was no counselling; she was just in a never-never land waiting for somebody to contact her. Six weeks later she was given the name of a Workcover contact.

Next day, 26 weeks after her son was killed at work, the contact person came to see her. He said he was sorry, but the system had let her down; Workcover had not been aware Adam had a mother. Katrina had to do all the work contacting Workcover to find out what was happening with the health and safety investigation. There was no information forthcoming and no-one got back to her. She continually phoned the courts to find out when the inquest was on. Can you imagine her distress when she went to the court one day to ask when Adam's inquest would be on to be told by the person behind the counter that they did not know; it could be 3 days, 3 weeks or 3 months. She walked out of there in tears.

Hon. Gavin Jennings — The system is not good enough, is it?

Hon. E. J. POWELL — It is not good enough, Mr Jennings, it is not good enough. What the government should be doing instead of trying to change it so that we take the big-stick approach, is to perhaps look at how people who are going through this trauma are dealt with. The system let Adam's mother down.

Katrina Mooney came to see me again, and I contacted Workcover. It then appointed Julianne Adams to case-manage her time with Workcover, and from then it started to get much better. However, no-one from Workcover was at the second coronial inquest. Katrina asked to speak to the Minister for Workcover, the Honourable Bob Cameron, and asked me to send him a letter asking him to talk to her so she could tell him how badly the system had let her down and that Workcover had not got back to her.

I acknowledge that lots of people make claims on the Workcover system, but somehow this single mother who had had Adam when she was 16 — he was not an accident; she wanted to have him and he was the joy of her life — was in a system that nearly destroyed her because no-one would help her. She asked me whether she could talk to the Minister for Workcover to let him know how the system had let her down, so I wrote to the minister in October 2000. Katrina knew that this could not help Adam, but she was hoping that it would help somebody and would make some other parent's road much easier. I received a letter from the minister, and his response was that he did not meet with Workcover claimants or their families but that he would make available the services of a senior Workcover advisory officer to meet with her.

I spoke with the Honourable Roger Hallam today to find out whether he, when he was the minister responsible for Workcover, had met with families and claimants — people who were making claims. He said, 'Many times. It was not an easy task. It was very distressing to meet with people but you had to do it; you had to listen to them and make them feel that they had been listened to'. If the former minister, the Honourable Roger Hallam, could meet these people and listen to their stories with feeling and empathy, why will this minister not meet with, as he calls them, Workcover claimants? This is the mother of a dead child.

When this government says that we are not listening and we represent the big end of town and are just making the numbers up, that is not true. We have examples of times when the system has failed, but putting employers in jail will not help. Making Workcover and the courts more responsive to those people who have lost loved ones is the way to help. Katrina Mooney has allowed me to use her example to make sure that nobody else goes through what she has been through.

The manager of Workcover advisory services came to my office in Shepparton because Katrina felt she could not meet the adviser by herself; it was just too traumatic. The adviser gave a memorandum, a briefing note, to the minister, documenting the history of the case. An interesting point is that the memorandum to the minister from Frances Corker, the senior adviser, states:

> For further action:
>
> Maybe Workcover needs to look at funding some sort of support service that goes beyond what the advisory service can provide. We deal more with the claims process, which while important does not flow on to court cases etc. If it is to be expected that Workcover provides people to visit families then I think you'd need people who are trained in dealing with these sorts of issues. Maybe the authority could have grief counsellors or 'court angels' on a retainer similar to how our crisis psychologist operated who could make themselves available to visit families and make sure they have the appropriate support networks in place and if required support them through court processes.

That was on 31 January 2001, and I ask: has this happened yet? The adviser goes on to say:

> Ms Mooney still needs to know the status of the health and safety investigation.

The court case has finally finished more than four years after Adam was killed. Justice has been done. The employer was found to be at fault and he was fined accordingly. Under the heading 'Kernel firm fined $25 000 for death' an article in the *Shepparton News* of 22 January 2002 states:

> A Shepparton company was fined $25 000 in Shepparton Magistrates Court yesterday for the workplace death of Adam Neil Mooney more than four years ago.
>
> Mr Mooney, 24, was killed in an industrial accident at apricot kernel processor J. D. Coates on August 18, 1997.
>
> He died when a container holding 20 tonnes of apricot kernels split with the contents throwing him against a forklift.
>
> Mr Mooney was found to have died from asphyxiation and head injuries.
>
> After the accident, J. D. Coates was charged over failing to provide a safe work environment under the Occupational Health and Safety Act 1995.

The article goes on to say:

> The company has since spent $92 000 replacing the silos with containers that are bolted to the floor, with warning signs and marking on the floor warning of potential hazard.

> However, Dr Auty said the action was no consolation for his mother, Mrs Mooney, who was in court during the sentencing, for the loss of her son.
>
> The company was ordered to pay a $25 000 fine and $6750 in costs.

When Mrs Mooney phoned me after the hearing she said she had heaved a sigh of relief, but she did not want Mr Coates to go to jail. She said, 'I just wanted to make sure it does not happen again'.

Mrs Mooney had to put a victim impact statement to the court. I will not read it all because it is too distressing. However, at the end she says:

> The lack of respect, compassion and consideration shown to the mother of a workplace victim is intolerable and unbelievable. I have been treated as though I don't exist, that my cherished role of mother was worthless. I have lost faith in the 'system' that I had believed was there for 'we' the people.
>
> Adam would be disgusted if he knew his mum had been treated so poorly by so many people involved in his death.

The bill is about punishment, increased penalties and jail terms, even for those not actively involved in running a workplace. We need to make sure that attitudes in regard to workplace safety continue to change. We need to provide education and information on risk management and prevention; that is the best way to get cooperation. The government says Victoria is leading the way. No other state has this legislation. There is no evidence to say this legislation will reduce workplace injuries, and for that reason the National Party rejects it.

Hon. D. G. HADDEN (Ballarat) — I rise to speak in support of the Crimes (Workplace Deaths and Serious Injuries) Bill. I am concerned that the opposition does not support this bill and has made it clear that it will not support it. I am concerned about a number of areas, but the major concern is with the first opposition speaker, the Honourable Peter Katsambanis, who is a lawyer. He knows the tests for manslaughter, murder and gross negligence. He knows the tests as well as I do, yet he says he supports workplace safety and initiatives. If he did so truly and in fact he would support this bill. I say to Mr Katsambanis: you are being hypocritical and not true to your lawyer training and profession.

I also say that to Mr Birrell, who was also a lawyer before he entered this place. There is a saying, 'once a lawyer, always a lawyer'. Once we qualify we either practise or do not practise but we are still lawyers. Mr Birrell said that the message needs to be sent out that what is damaging to our rural and regional economy is workplace deaths and serious injuries. Indeed, it is, and if he were true to his word he would support this bill. The bill is not about those minor accidents or negligence or unavoidable accidents in the workplace. The bill is about industrial manslaughter — that is, a killing in the workplace.

The bill is also about gross negligence. I listened to Mrs Powell. We are not talking about a simple accident or negligence; we are talking about gross negligence. Mrs Powell would have served her constituents better had she looked at the bill and told her constituents what the definition of gross negligence is.

I turn to the bill. Proposed section 13 under the heading 'Corporate manslaughter' states:

> A body corporate which by negligence kills —
>
> (a) an employee in the course of his or her employment by the body corporate; or
>
> (b) a worker in the course of providing services to, or relating to, the body corporate —
>
> is guilty of the indictable offence —

which means a very serious offence —

> of corporate manslaughter and liable to a fine not exceeding 50 000 penalty units.

Proposed section 14, under the heading 'Negligently causing serious injury by a body corporate' states:

> A body corporate by negligence causes serious injury to —
>
> (a) an employee in the course of his or her employment by the body corporate; or
>
> (b) a worker in the course of providing services to, or relating to, the body corporate —
>
> is guilty of an indictable offence and liable to a fine not exceeding 20 000 penalty units.

Proposed section 14B, under the heading 'Negligence' states:

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

That is what we are talking about. We are not talking about the unavoidable accidents or negligence in a workplace, because those incidents are already covered

in common law under occupational health and safety legislation and dangerous goods legislation. It is on the issues of gross negligence and industrial manslaughter that we do not have a level playing field in the state in relation to the workplace. Corporations hide behind the corporate veil, and Messrs Birrell and Katsambanis know exactly what I am talking about. It is impossible to charge a body corporate with murder or manslaughter because you have to prove, firstly, mens rea and, secondly, actus rea. The mens rea is the mental element, the intent to kill. How do you get behind the corporate veil to prove that? Do not laugh, Mr Forwood; it is not a laughing matter. That is why it is essential that the bill be passed and supported by the house.

In his second-reading speech the Attorney-General talks about the level playing field for small business. It is difficult to prosecute large corporations because of the corporate veil, and one has to find the directing or controlling will and mind to be able to attach a charge of manslaughter or murder. It is less difficult to prosecute small business due to the fact that prosecution requires the identification of one controlling mind and will of the corporation. It is easier to find one controlling mind and will in small corporations where there are 1, 2, 3 or 4 persons, compared to a large corporation where one has a board of directors behind the corporate veil.

It can be difficult to find one controlling mind and will in large corporations because many people are often involved in a decision and a single senior officer is not always responsible. What this bill would do, if passed by this house, is establish a level playing field for large corporations so that they are brought down to the level of small corporations and are equally liable in the workplace for injuries and deaths caused as a result of gross negligence or industrial manslaughter.

I use the analogy of culpable driving. I do not see why I should go to my workplace and die as a result of gross negligence or industrial manslaughter by my employer and the offender not be dealt with under the law. I do not know of any person who would not know that if you get in your car and kill someone you run the risk of being charged with culpable driving. Culpable driving causing death on a conviction can attract a maximum of 20 years imprisonment. Where is the difference? An employer who causes gross negligence at a workplace should be equally liable and culpable as is the person who gets behind the wheel of a car and goes out on the road and kills someone. I do not see any difference. Section 318 of the Crimes Act has a provision for culpable driving causing death, yet we do not see any proposition from the opposition to reduce the penalty under culpable driving where there is a corresponding reduction in deaths on the road. This bill is being mirrored in a discussion paper in Queensland at the moment.

I now look at deaths in the workplace. I attended a series of seminars, I think in March, in Ballarat where two senior barristers, one a Queen's Counsel and one a doctor of law, went around to regional centres on behalf of the government, the Attorney-General and the Department of Justice to hold seminars on the bill.

Hon. M. A. Birrell — What were their names?

Hon. D. G. HADDEN — Dr David Neal and Ross Ray, QC. I attended both seminars on this particular day over a period of about 5½ hours. The first seminar started at the Trades Hall and the second seminar was conducted by the Victorian Employers Chamber of Commerce and Industry. I refer to the VECCI discussion paper because it provides statistics of deaths in the workplace taken from the Victorian Workcover Authority's statistical reports. Yes, there is a declining trend. In 2001 there were 31 deaths in the workplace, with 11 of them occurring in the agricultural sector, followed by 7 in construction and 5 in manufacturing. The graph of statistics shows that in 1990–91 deaths in the workplace were 67, and they have reduced to 31 by 2000–01. That is to be commended. We also have a reduction in Workcover claims reported over the same period, of about 50 per cent.

Worksafe statistics were quoted in VECCI's discussion paper. It sets out the increase in the number of prosecutions for breach of the Occupational Health and Safety Act from 127 in the year preceding 2000–01 to 210 prosecutions. It also sets out the prohibition notices, which have nearly doubled to 2752 in 2000–01.

Hon. M. A. Birrell — What is the point?

Hon. D. G. HADDEN — The point is, as the Honourable Gavin Jennings said, that one death is one too many. In 2001 there were 3700 workers seriously injured and as at the middle of April this year the 12th person died in the workplace. He was a young labourer who died near Ouyen and he brought the statistic up to the 12th workplace fatality for this year.

We have heard from a previous contribution about the case of Denbo Pty Ltd in the Victorian Supreme Court in June 1994, which is the only case in Australia in which a body corporate has been convicted of manslaughter. There was a plea of guilty to manslaughter under the Crimes Act and the company was fined $120 000. That company went into liquidation. The claim concerned the death of an

employee driver. The director was convicted and fined $10 000 for two offences under the Occupational Health and Safety Act. The other case was in the late 1980s involving Simsmetal in the County Court, which was unreported. That case did not result in a manslaughter charge being brought. Simsmetal was convicted and fined $45 000 for three offences under the Occupational Health and Safety Act. The Simsmetal case involved an explosion killing four employees, with seven seriously injured and suffering serious burns.

The other case that I will mention tonight is that of two young men who went off to work on 12 November 1998 and on their first day of work, having been hired by a labour hire company, were dropped off at Drybulk Pty Ltd in Footscray. They received no training or safety equipment. They were told to sweep the floor in front of 5.5 tonne cement walls. The slabs shifted and fell on them, killing one of the young men, Anthony Carrick, and severely injuring his mate, resulting in crushing injuries to his back, pelvis and legs. Drybulk Pty Ltd was fined $60 000; the company was liquidated; and the fine has not been paid. Similarly, separate court orders for loss of pain and suffering were awarded to the deceased's family and surviving friend and they remain unpaid. The company was not charged with common-law manslaughter and the company that owned Drybulk Pty Ltd now operates from the same premises.

A pamphlet authorised by Mr Leigh Hubbard, the secretary of the Victorian Trades Hall Council, himself a lawyer and a very knowledgeable and intellectual person, says simply:

> Workplace death laws will help send a message to corporate executives and other senior company officers.

It also says that corporate killing needs a law against it and that there will be one if we all support it. Of course, members of the opposition are not prepared to support it. Victor Jose, of the Australian Manufacturing Workers Union in Ballarat, wrote an eloquent and simply written letter which appeared in the Ballarat *Courier* of Saturday, 13 April. He said:

> The aim of this bill is to punish 'those found guilty' of corporate manslaughter or serious injury.
>
> There is nothing sinister or misleading about the bill.
>
> …
>
> Unfortunately there are still some 'bad apple employers' out there.
>
> …
>
> Those who do the right thing have nothing to fear … those who don't, hopefully will be motivated enough under this bill to change their ways before another statistic is added.
>
> Industry groups such as AIG and VECCI should put aside the political arguments about the bill, and simply see it as a moral obligation to support a bill which has the potential to reduce workplace deaths or injuries.

The bill, if supported by the opposition and passed by this place, would have the effect of improving workplace safety initiatives. It would prevent corporate manslaughter and gross negligence in the workplace, and so prevent all future deaths of young people and others going to work, who should go to work in the knowledge that they will come home safely at the end of the day. That is the bottom line, and I commend the bill to the house.

Hon. N. B. LUCAS (Eumemmerring) — The government has given itself away on three counts: firstly, in response to a suggestion that it was really just playing its part in some arrangement with the trade union movement to bring in the legislation, Mr Smith said, 'Yes that's right. We're responding to the trade union movement'.

The second count is the numbers in the chamber. If the opposition has a strong view on an issue, we are all here. This is the government's legislation, and I have taken a count of how many government members have been present. For a bill it says is so important I would have expected all the 13 available members to have been here this evening, or at least to have been here for the commencement of the debate. I have taken a count and it shows — and let's have it recorded in *Hansard* — that it took 3 hours of debate for the government to get six of its members into the house. For the whole of the first 3 hours of the debate the government could not muster six members! Let the record show that there are now four members here, yet the government is saying that this is an important piece of legislation. Where are they? They are not here for a debate they are telling us is so important. They were not here for the start, and it does not look like they will be here for the finish!

The third count is that the government has not given one reason in the debate for introducing the legislation. Mr Jennings gave his usual grab bag of intellectual statements. Mr Smith argued the case not in the context of 2002 but in the context of 1985. Gosh, we have come a long way since then! The number of deaths in the workplace has come right down since then, but it is still too high, I agree. I agree with one thing that Mr Jennings said, and that is that one death is too many; we all feel exactly that way. Then we had Ms Hadden with her usual legal grab bag, where she gets up and

reads out definitions, legislation and judgments but adds nothing to the argument.

The bill before us is unreasonably and improperly punitive. It is unworkable and unfair. We know it is not a government bill; it is a union bill. The fundamental question about what is proposed here is: will it improve workplace safety? The answer to that is no. In fact, it could do the opposite; it could act as a dampener on business growth in Victoria and create a situation where employment opportunities are reduced.

Sadly, it will take away the cooperative approach we have had in this state for many years in trying to reduce the number of deaths and accidents in the workplace. We have had considerable success. Since 1988–89 the number of injuries in the workplace has reduced from approximately 104 700 to around 46 000 — still too many, but the number is coming down. In the same period, the number of deaths has also come down from 104 to 31. We have to drive that down further, but the way to do that is to work cooperatively — bosses, managers, union people, workers — everybody working together to improve safety in the workplace.

It is a fact that we have an Occupational Health and Safety Act, safety and health programs in the workplace, and training and supervision like we have never had before. The training in relation to health issues has increased, and will continue to increase to improve the situation further. We have a law to cover manslaughter where a corporation can be prosecuted if it owed a duty of care to an employee, breached that duty and thereby caused the death of an employee.

As the Honourable Mark Birrell indicated, the Victorian Farmers Federation says this about the bill:

> Its provisions are punitive and will turn accidents in the workplace into 'crimes' under Victorian law …

The opposition undertook a survey which showed that many people are against this punitive legislation. I will read a couple of quotes:

> Who will want to be a company director? I have two young children — why should I have the risk of going to jail.

That is from somebody employing 15 people. Another who employs 10 people in cabinet-making says:

> I employ a deaf person — extra responsibility? Will have to carefully consider any thoughts of growth — maybe more machinery and not people.

I have a cousin who is 100 per cent deaf and he was taken on in a cabinet-maker's workshop — not the cabinet-maker quoted here. Would someone like that be able to get a job with a cabinet-maker if this legislation with a punitive jail sentence hanging over somebody's head goes through? Are employers going to put on disabled people, people with disabilities that could cause a higher rate of accidents in the workplace?

What will be the results of this legislation? This is a disincentive to invest in Victoria, and to employ inexperienced or disabled staff and it is an incentive to reduce employment. The VFF has said that there will be a reduction in employment. We all have to work together to eliminate accidents in the workplace but this legislation would turn an accident into a crime where the first thing you would do is ring your lawyer and then you would ring the ambulance.

This legislation should be defeated. The government has shown by its inability to muster even half of its members in this place at any time during the debate that it really does not have its heart behind this legislation and that it does not really want it to go through either. If it wanted to go through it would be fair dinkum. There would be 13 people over there shouting at me and not the 5 who are in the house at the moment.

Honourable members interjecting.

The ACTING PRESIDENT (Hon. R. H. Bowden) — Order! This is a debate that requires concentration and careful consideration and I ask honourable members to consider the ability of each honourable member to make their contribution. I ask that Mr Lucas continue with a minimum of assistance.

Hon. N. B. LUCAS — To sum up, we do not need an adversarial approach in the workplace. We do not need farmers' wives wondering whether they are going to end up in jail. We do not want something that is going to drive employment down in this state. What we want is a cooperative workplace where everybody can work together whether they are unionists, bosses, management — no matter who they are. We all have to drive deaths in the workplace down together through a cooperative approach. This proposed legislation is not going to achieve that, so I do not support the proposal.

Hon. KAYE DARVENIZA (Melbourne West) — I would like to say how pleased I am to have the opportunity to rise this evening to make a contribution and speak in support of this very important bill. Can I say how sad and disappointed I am that this bill which will deliver workplace safety is being opposed by both the Liberals and the Nationals in this place.

The Bracks government is indeed serious about improving workplace safety in this state. This government, together with the Victorian community, believes that one death in the workplace is one too

many, as a number of colleagues in this place have said before me. We introduced this bill into the house today because we do not want to see another avoidable death or serious injury in the workplace. Thirty-one people were killed and 3711 people were seriously injured in Victorian workplaces last year. I understand that the number of individuals who have been killed in workplace accidents this year is up to 15. This is totally unacceptable to us.

We should not forget as we rattle off the figures and statistics that what we are talking about is real people who have had their lives tragically cut short or who have not been able to fulfil their dreams or perhaps reach their potential and that this has come about unnecessarily because of unsafe work places and negligent employers. I am talking about the loss of human life. In the case of a workplace death this tragic loss occurs in the context of a crime which often goes unpunished and which only adds to the long-lasting effects that such a death has on the victim's family, friends, and workmates.

We have heard the criticisms that have been levelled by the opposition and some of their employer supporters. Mr Lucas in his contribution just prior to mine raised the criticism that we do not really need this legislation because the number of workplace deaths and serious injuries is decreasing compared to previous years.

This argument simply does not stand up. It does not make sense because if the number of deaths decreases as a result of fewer road accidents or armed robberies there would be no expectation by any honourable member that we should soften our drink-driving laws or change the offences in the Crimes Act regarding armed robbery. The fact that there has been a reduction in workplace deaths is a good thing, but it certainly does not mean that we need to in some way lessen the burden of legislation or lessen the punishment that should go with such deaths.

I wish to refer to a number of accidents that have resulted in deaths, and I know some honourable members have already done this in the debate. Two of those deaths have been mentioned previously by prior speakers. What I want to do is not only talk about the accident itself, negligence in the workplace and the fact there was little consideration to health and safety which resulted in the accident, but to focus on what that means when a death in a family occurs in that way, and the tragedy that it brings to the family, friends and work colleagues.

This has been mentioned by previous speakers, particularly the Honourable Bob Smith. To give some understanding of the reasons why the government believes the bill is so important, I refer to the death of Anthony Carrick and his friend and work colleague, Barry Ward, who was seriously injured.

An article in the *Herald Sun* of 9 March 2001 under the headline 'Son's death haunts devastated mother' states:

> Anthony was killed and a school friend Barry Ward, 18, seriously injured when a 5.5 tonne concrete slab fell on them at a grain warehouse operated by Drybulk Pty Ltd on 12 November 1998.

The facility is in my electorate of Melbourne West. The article continues:

> The two teenagers, who attended Sunshine Secondary College, were employed as casual labourers.
>
> It was their first day on the job.

Another article appeared in the *Herald Sun* of 24 February 2001 dealing with the same matter. Barry Ward, although he was not killed, was permanently disabled as a result of the accident. His injuries included a broken pelvis and broken bones in his back. The prosecutor at the time said that:

> Mr Carrick and Mr Ward —

Mr Carrick died as a result of the accident and Mr Ward was permanently disabled —

> had been hired as casual labourers at the dry goods storeroom in Coode Road to sweep grain into piles to be scooped by a front-end loader.
>
> The accident occurred when the loader dislodged one of 16 slabs that formed an inner ring in the shed.
>
> The freestanding slabs protected the walls of the corrugated-iron shed, but were unsupported.
>
> It was known the slabs would wobble if hit with a shovel or from vibrations caused by traffic outside.

There had been an earlier occurrence where one of these slabs had been bumped, had wobbled and had fallen. At that stage it did not fall on anybody and the slab was propped up and again it was unsupported and people continued to work there. The article continues:

> … no effort had been made to secure the slabs.
>
> Everyone knew a hazardous situation existed … the consequences were extremely serious and the mechanism by which the consequences could have been avoided were simple and cheap …
>
> Judge John Barnett said an inadequate system of safety self-regulation had failed to protect the teenagers.

That says something about the situation that existed in that workplace and the issues that the employer was

aware of and did nothing about. He could have done something about it but did not. This is not only a story about the tragic circumstances under which the boy died and another boy was permanently disabled but about the effect on the family. The article of 9 March further states:

> Anthony Carrick was a sporty, generous and outgoing teenager, with an infectious smile, who planned to do a hospitality course at TAFE. He had taken the labouring job to earn some spending money for Christmas.
>
> That fateful day plays like a constant slow-motion movie in Mrs Carrick's head.
>
> 'It's a nightmare', she said yesterday. 'When you close your eyes at night, you dream of it'.
>
> …
>
> Each member of the family has responded to Anthony's death in different ways.

As I said, it affects the whole family, not only the individual who has been killed or injured. The article continues:

> Mrs Carrick said Anthony's father, Barry, had bottled up his motions and was in denial.
>
> Older sister Tanya was devastated, while Anthony's brothers had never been the same.

She goes on to say:

> This has torn my family apart so much that I used to have a home with a family in it, and now I've just got a house with four people in it.
>
> It's no longer a family.

It was a union at that time, which has been undermined in the contributions by opposition members, that called for the introduction of the crime of industrial manslaughter for the worst workplace accidents.

Mrs Carrick goes on in an article that was published in the *Age* of 22 March 2001 under the headline 'My son's bosses paid just $65 000 for his life', and says:

> … my family and I have gone to hell and back. We have experienced the worst kind of pain, suffering and emotional trauma, and continue to do so.
>
> We've lost our friends and extended family — they have simply stopped coming around. I guess they don't know what to say to us any more.

She then talks about the panel that fell on her son and says:

> It was one of these panels that crushed my son to death and permanently injured another young worker.
>
> The company, the manager and a supervisor were charged with breaches of the Occupational Health and Safety Act, which has maximum penalties of $250 000.
>
> All my hopes for any form of justice for Anthony were crushed on Friday, March 9, when Judge … of the County Court gave his finding: fines of $50 000 for Drybulk, $10 000 for the managing director and $5000 for the supervisor.
>
> Anthony and his co-worker had been directed to undertake dangerous work. They had not been given any occupational health and safety training, no site safety induction, no information about potential hazards of the work involved.

She goes on to say that she wished the judge could have been at the coroner's office when she had to identify Anthony because she says:

> … it will be in my mind for as long as I live.

She continues:

> I felt betrayed, and I know so many other grieving families feel the same.

That really demonstrates the sorts of feelings and effects that such accidents and deaths have on a family and the friends of the family. I have other examples as well; I will not go into all of them but another example comes from an article in the *Herald Sun* of 28 October 2001. It deals with three accidents and states:

> A 33-year-old man was killed … in one of three horrific industrial accidents in country Victoria.

It goes on to say that the first accident involved:

> … a casual worker … on a construction site at Oz Bulk … at which a grain bunker was being built …

It continues:

> The man who died was operating a big road roller. For some reason he came off the road roller and then it rolled over him …
>
> …
>
> … the man's workmates went to his aid, but he had sustained massive injuries.

In another horrific accident at Benalla a fitter aged 38 was crushed at a chipboard manufacturing company. The article states:

> Police said the accident happened soon after midnight, but the man could not be freed from the machine until 2.15 a.m.
>
> … the maintenance worker was called to fix the machine which applies a coating to chipboard.
>
> He thought the machine was not in operation … jumped on the conveyor belt. The conveyor belt started to move. He got pulled into the press part of the machine. He was apparently trapped up to his waist.

> A seven-tonne forklift had to be used to pry the machine open and free the man …

The other accident in country Victoria involved a seven-year-old boy who was standing behind a plough and a tractor on a farm when his mother accidentally reversed over him. Fortunately the boy was not killed but sustained severe abrasions and bruising.

Those are horrific deaths, and as a former nurse with many years experience I have always known that there are good ways and bad ways to die. These accidents are examples of bad ways to die. The deaths are made much worse by the fact that they could have been avoided with proper health and safety practices.

The government is committed to improving health and safety in the workplace. It is an issue that it went to its constituents with and campaigned on in the last election. It is an area where it has worked hard to bring about change and has successfully brought about a whole range of changes, including this bill. The bill is a good bill which deserves the support of all honourable members in this place. Safe workplaces benefit both employers and employees. For employers it has beneficial effects on productivity and costs. It means that Workcover premiums are lower and there is higher staff morale, a happier and more productive work force and it makes the workplace far more attractive to potential employees.

The government's main concern is the effect workplace injuries have on workers, their workmates and their families. I pointed out earlier the very real and long-lasting effects of such workplace tragedies on families and family relationships.

The offences set out in the bill make employers more accountable for the safety of those who work for them. The new range of penalties — which I have not gone into in any detail, but previous government speakers have — will provide much stronger additional incentives for those who need them to comply with their health and safety obligations. The only people who need to fear this legislation are corporate cowboys who do not give a damn about the safety of their employees. The vast majority of employers provide safe workplaces, and they have absolutely nothing to fear.

There are always a minority who think they are above the law, but criminal behaviour should not go unpunished. This bill introduces far more effective mechanisms for holding corporate cowboys accountable to the standards which good corporate citizens already comply with today. By opposing this bill the Liberal and National parties are sending an ugly message to all Victorians that they do not care about workplace health and safety. For every death that occurs because of criminal negligence and goes unpunished, people will question those who sit on the opposition benches who did not support this important legislation. It is important for our workplaces and the safety of workers in our workplaces. It is important because it will ensure that those who are responsible and have a duty of care to their workers abide by and live up to their obligations. I commend the bill to the house.

Hon. B. N. ATKINSON (Koonung) — I rise to indicate that I will oppose the Crimes (Workplace Deaths and Serious Injuries) Bill with the opposition on this occasion. I am, however, very mindful, as are most of my colleagues, of the importance of achieving safer workplaces. There is absolutely no dispute that one accident in a working environment is one too many or about the fact that we should be vigorously pursuing safer workplaces. In my view, and I believe in the view of most of my colleagues in the opposition, there is also no place for employers who flagrantly abuse their responsibilities to their employees or in some cases to members of the public by failing to secure the safety of their premises or their equipment and who create circumstances in which accidents could all too easily happen.

I do not believe, however, that this legislation is the way to address those issues. When I heard the cases mentioned by the Honourable Kaye Darveniza, who preceded me, I could not help but wonder how many of those cases might have been taken to court, and if any were taken to court how many would have fit the definitions that have been suggested by the government in the legislation and achieved prosecution. Many of them were very sad cases. Indeed as has been rightly said any circumstance that results in a death or an injury of any description, but particularly a serious injury, has an impact on many people and not just the individual.

It affects families, friends and the community, and it affects them not just financially. Very often because many of those people who suffer are also people who contribute to the community in other ways such as coaching football or as members of other organisations such as Rotary and Lions clubs there is a very real and genuine social cost associated with such accidents quite apart from the direct cost to the family and the individual, which may be loss of life or loss of lifestyle through serious injury and a life ahead of serious pain and suffering. The question is whether the legislation will address those issues and stop those accidents from happening, and whether it is right to take up a piece of legislation as is framed here and try to make punitive

provisions against corporations, directors or senior officers of companies as are defined in the bill by making them culpable for the results of accidents.

The problem with the bill is that it is the sort of legislation that whilst setting a range of possibilities does not define them anywhere near well enough to ensure that the courts will have sufficient guidance in the way they might approach the legislation if it were to pass into law.

I do not want to cover all the things that have been mentioned by my colleagues in this debate because we are tight on time so I will make a fairly radical suggestion. One of the real concerns I have about the legislation is the thinking behind it. It occurs to me constantly in the context of workplace safety and workplace management that the whole bill is predicated on the basis that the employer is the bad guy and the only bad guy. This may be a bit radical but perhaps we should be looking at a situation where all employees are made to front up each day to be tested to see they are not on drugs or suffering from the effects of alcohol — and when I say 'drugs' I do not mean just illicit drugs but also that workers might front up and explain prescription drugs they might be taking at a particular time. Many of the accidents that happen in the workplace can be directly attributed to the taking of drugs, including and probably especially normal medication, and the use of alcohol.

Some cases are due to fatigue because of lifestyle factors. People go out and party in clubs until 4.00 a.m. and 5.00 a.m. and then turn up at work at 8 o'clock or 9 o'clock and try to run an assembly line project or work on a construction site and so forth. It is hard for me to criticise those people because I can remember during one period of my life doing the same thing. You would party all night and then turn up for work and get through another day. In certain areas of employment, however, that is an extremely dangerous practice. In extensive consultations we have had on the bill I have become aware of some people who have contributed to and in fact caused accidents in those circumstances.

I am also aware of one particular incident that concerned me and would concern most honourable members where an employee turned up in a construction business to drive a forklift while under the influence of alcohol. His employers deemed that he was not fit to drive that forklift and that in fact he would create a safety hazard and would incur difficulties for them or leave them exposed under workplace safety laws so they said he was not to drive the forklift truck that day. The employee was not too happy about that because that was his job so he kicked up a fuss. The employers insisted and he kicked up a bigger fuss. They said, 'Look, we are sorry, but because of the sorts of obligations that we have to our other employees we have to let you go. You will not abide by our directions on this and you are clearly not fit for work for the particular job you have to do'. That employee then went on to take the employer to court on an unfair dismissal case and he won — the employee won!

Here is an employer who is beggared no matter what he does. He lets that employee stay on the forklift, obviously unfit for duty for that particular job, at a risk to that employee and to other employees in that workplace, or he actually takes a stand, as he did, and then he gets hit with other legislation because he has not been supportive enough of that employee to put up with this sort of behaviour.

This cuts both ways. I think we have to start looking at some of these issues. As I said, there are a great many workplaces — and honourable members would find it hard to dispute this, as most would be aware of incidents — where employees turn up to do work under the influence of drugs, including prescription drugs, which can make them weary. There are warnings on the packs. But how many of them turn up for work and say to their boss, 'Excuse me, but I am on such-and-such medication today. I think we had better vary my work'? How many of them turn up with a blood alcohol reading over .05 or with a significant amount of alcohol in their bloodstream and then undertake work which is hazardous to themselves and to others?

Under this legislation, such an employee could turn up and do exactly that and the employer could be charged with industrial manslaughter and put through the wringer, when in fact the key cause of what was a very sad and tragic accident was in fact the employee's own diminished responsibility in that circumstance.

We have to be serious about this and we have to look at these things very carefully. We have to make sure that we do not try to find scapegoats for accidents. We have to address the issue of the accidents. I am aware the government has had an extensive program to try to educate employers. Frankly, I think there have been some very effective advertisements and some effective educational material produced by the government in this very field. It is one area where I would commend the government for some of the work it has done. I think some of the TV advertising in this area has been very effective. I believe that sort of work needs to be developed further. I think what is missing very much from that program at the moment is the same sort of education factor for the employees: advising them of their responsibilities and their need to make sure that

when they turn up to work they are fit to carry out the dangerous work that in some cases they do carry out. If they do not, they are at enormous risk to themselves and to their workmates and in some cases to the public.

In this situation I wonder about the culpability that a court might attribute to a truck driver, for instance, because many trucking companies send truck drivers on interstate and country runs and we know from evidence that has been presented in different safety forums and other places that those truck drivers pop pills to stay awake, to keep themselves high, and to get through the long drives that they make.

At the moment in many cases the accidents that result from some of that behaviour are dealt with under our road traffic laws. In these circumstances they might well be dealt with under these laws. An employer can be held culpable where in fact he had absolutely no control over that behaviour. We have to stop. What worries me about this legislation is that it is looking for scapegoats and we have to stop looking for scapegoats but rather attack the problem, which is to get rid of accidents from workplaces.

The government would be surprised at just how much this legislation would affect investment in this state. As a member of Parliament I have not had any issue that has given me as many communications in terms of letters, phone calls and faxes from business owners of a range of sizes, but particularly smaller and middle-range employers, and no other issue that I know of has brought out all of the representative associations of businesses, including organisations as diverse as the Victorian Farmers Federation, the Australian Retailers Association, the Victorian Employers Chamber of Commerce and Industry and the Victorian Automobile Chamber of Commerce. All those organisations say with one accord: first, not enough consultation; and second, this punitive legislation is simply not the answer to the problem that the government has identified.

Like my opposition colleagues I stand with those associations and those people who are opposed to this legislation.

Hon. JENNY MIKAKOS (Jika Jika) — I wish to make a relatively brief contribution to this debate, given the hour and the fact that my colleagues on the government side have already covered the legislation in considerable detail. I want to begin by saying that it is on occasions like this when we are debating important legislation such as the Crimes (Workplace Deaths and Serious Injuries) Bill that we see exactly how irrelevant this chamber has become.

I am quite ashamed of the fact that I am a member of this house when this house will be the reason why Victorian workers will not have the opportunity to see this bill become law in this state and ensure that Victorian workers have the benefit of the most groundbreaking workplace health and safety legislation that this government is seeking to introduce.

This government went to the last election with a commitment to introduce this type of legislation. It had a commitment to improve the system of occupational health and safety inspectors. It has delivered on that commitment with an increase in the number of those inspectors. Now it is seeking to introduce something that will go a long way towards not just preventing deaths and serious injuries but ensuring a whole culture shift in Victorian workplaces to ensure that Victorian employers turn their minds to the issue of safety and adequately put in safeguards and adopt risk management practices that will ensure that their employees are able to work in a safe environment.

This government is not about scaring employers or scapegoating employers. Victorian employers have nothing to fear from this legislation. Most Victorian employers already adopt very good workplace health and safety practices. However, we know that there are a number of rogue employers in particular industries that continue to be a problem. The particular industries that we are seeing, in accordance with the Workcover authority statistics, are those industries that seem to have a disproportionate number of workplace deaths and serious injuries.

In my electorate I have a very significant manufacturing industry and for that reason I would be very keen to see this type of legislation pass — to ensure that those people working in those factories have the benefit of a safe workplace environment.

We know that education and training can go some way towards preventing workplace deaths and serious injuries. However, it cannot go all the way. Members on the other side who were putting this argument today must be kidding themselves! I do not think they are actually kidding themselves; I do not think they actually believe that assertion they are making. They are seeking to oppose this legislation purely on ideological grounds. They cannot bring themselves to support any type of legislation that seeks to protect Victorian workers in this state, and that is a very sorry state of affairs.

I note that in previous contributions made by members of the opposition they sought to assert that there was going to be a flight of capital away from Victoria —

that Victorian employers would shut up shop and move state if this legislation were passed.

I categorically reject that assertion, which implies that the majority of Victorian workplaces and the majority of Victorian employers are currently engaged in some sort of rogue unsafe work practices. That assertion implies that workplaces in this state are currently treating their employees in a very shoddy way, and I reject that implication. In the majority of Victorian workplaces employers make a genuine effort to ensure the safety of their work force and they are genuinely committed to ensuring that the best possible workplace environment is made available. However, in a number of instances that is unfortunately not the case.

Hon. M. A. Birrell interjected.

Hon. JENNY MIKAKOS — I will also address the assertion made by some members of the opposition that this legislation is in some way especially unique. I am pleased that this is groundbreaking legislation, and I inform Mr Birrell that that is not a reason in itself to oppose this legislation. Precedents sometimes need to be created, particularly when they are good pieces of legislation, as this bill is, and they form a model on which other states in this country can base their future legislation. I hope other states and other Labor premiers around the country will take up this initiative.

Hon. M. A. Birrell interjected.

Hon. JENNY MIKAKOS — Mr Birrell will be pleased to know that my understanding is that Queensland is currently looking at introducing a crime of dangerous industrial conduct. Currently the Queensland legislation has very severe penalties under its health and safety legislation — for example, where an employer breaches his or her duty to ensure workplace health and safety and where that breach causes death or grievous bodily harm, a penalty of $60 000 or two years imprisonment applies. Although that does not quite match our penalties it is quite a significant penalty, and it is certainly an indication that other states have been prepared to tackle this issue and provide an effective deterrent to rogue employers.

I note also that the United States of America, France, Germany, Canada and the commonwealth government also have hefty health and safety fines under their respective occupational health and safety legislation. This is groundbreaking legislation and it is important that Victoria leads the way. I hope other Australian states will follow Victoria's lead in the future.

I will turn briefly to the primary reason why we are seeking this legislation. A number of members on the other side have sought to assert that in some way this is a huge step beyond what the common law provides. Honourable members should remember that currently corporations are able to be held liable for criminal manslaughter. The problem is that the common law is not effective and it is not an effective deterrent. In order to get a corporation convicted of industrial manslaughter under common law you need to be able to demonstrate that there is a directing mind and will of the corporation. That is pretty hard to do when you have a major corporation with a number of people involved in decision making in that corporation.

Hon. Bill Forwood interjected.

Hon. JENNY MIKAKOS — I inform Mr Forwood that for that reason there have been only three successful prosecutions of corporations for manslaughter in this state and one successful prosecution for negligently causing serious injury. The only time we have had a successful conviction of a corporation in this state for common-law manslaughter occurred when the corporation itself pleaded guilty, and the only reason it pleaded guilty was that it was in liquidation at the time and it never got to pay the fine. We can see from that instance that the common law is not working.

Victoria already has in place a system of industrial manslaughter. Chief executive officers around this state are already familiar with that as a concept. This is not groundbreaking stuff. What the government is seeking to do here is to codify that system in this legislation to ensure that we can attribute a decision to a specific individual within a specific corporation. The bill seeks to aggregate the decision making in a corporation to ensure that we do not have this directing mind and will impediment preventing corporations from being successfully prosecuted.

The bill will in effect put large corporations and small businesses in this state on an equal footing, because currently under the common-law system it is really only small businesses that can be pursued; potentially in common law if the business is small enough one individual can be identified as being the directing mind and will of that business.

Hon. Bill Forwood interjected.

Hon. JENNY MIKAKOS — Mr Forwood knows that there has been significant consultation with various stakeholders and he knows that the exposure draft was first put out a couple of years ago. There has been a lot of toing-and-froing and the government has made a number of changes to the original exposure draft, and

those changes go a long way towards addressing industry concerns.

The other reason why this legislation is so important is that currently under the Corporations Law if a company is convicted of an offence it can go into liquidation and leave nobody accountable for a workplace death or serious injury. As you indicated in your contribution, Madam Acting President, the corporate veil effectively prevents a company's directors from being pursued for the wrongs done by that company.

Historically corporations were set up to enable capital to be raised and to enable business and investment to flourish across all our capitalist economies. Corporations were set up primarily for the purposes of raising capital and not as a legal device to prevent people being held liable, which is effectively how they are being used today.

I have worked as a commercial lawyer and I know that all these small $2 companies are being set up to prevent people from being held personally liable. Why should the families of the Anthony Carricks of the world be prevented from seeing a corporation's directors being successfully prosecuted because that corporation has gone into liquidation? And how could that corporation then have the temerity to set up shop again under the same directors in the same office using a different company name? They are using the corporate veil to escape any liability.

These are situations that no Victorian would find acceptable. By opposing this legislation the opposition is allowing these types of legal fictions to be used as a way of preventing people from being successfully prosecuted and it is preventing an effective deterrent from being established to encourage Victorian employers to do the best they possibly can to protect their work force.

The legislation is groundbreaking stuff. I make no apology for that and the government makes no apology for that. The bill is designed to prohibit certain behaviour and to punish behaviour that is so reprehensible that it warrants criminal punishment. The bill will affect those large corporations that have previously been unable to be prosecuted under the common law. It will also affect those company directors who have used the corporate veil to escape personal liability in the past.

A number of members opposite indicated in their contributions that one death in the workplace is too many. That is a sentiment which I think all honourable members of this house would share. However, by opposing this legislation the Liberal Party is missing an opportunity to set up a legislative framework to ensure that Victorian workers do have the best possible working environment. It is an opportunity that will be sadly missed and one which will no doubt be revisited at the next state election when Victorian workers will be reminded of the opposition's position here tonight and also of its position on the Fair Employment Bill. Until now it has taken a purely ideological position in opposing every piece of legislation that comes before this Parliament that seeks to protect Victorian workers.

I commend this bill to this house, and I urge members opposite to have a good hard think about their ideological obsession against legislation that protects Victorian workers.

Hon. PHILIP DAVIS (Gippsland) — I am pleased to join this debate and make a relatively short contribution but I hope one that is to the point. Firstly, on the basis that Ms Mikakos said in her opening comments that she is ashamed to be a member of this house I say, 'Begone!', because she adds no value to the legislative process. She comes in here and derides the value of this chamber which has for more than 100 years been a significant component of the democratic processes in Victoria. The reason the opposition is debating this bill today is because it is poor legislation. It is poor legislation because the troglodytes of the Australian Labor Party, who have been described as manager-owners or a subsidiary of the trade union movement, are basically here doing the bidding of the unions without regard to the economic consequences for Victoria.

More importantly it is quite apparent that there are some grudges being brought to bear. It was clear to me in Mr Bob Smith's contribution earlier this evening that he nominated Exxon, or Esso Australia Ltd, as a target of this legislation. I know a little about what he was referring to: he was explicitly referring to the tragedy of the explosion in 1998 at Esso's Longford plant where two people, Peter Wilson and John Lowrey, were killed. I knew both those gentlemen well because I had worked with them. Peter Wilson was my plant supervisor when I worked for Esso in the 1970s and John Lowrey was a maintenance fitter at that time. It was an absolute tragedy. I regarded it so then and will continue for the rest of my life to say that it was one of the most devastating things to affect the community of Sale and the surrounding district. Everybody in that area knew that Esso had a very strong safety culture and it was a great shock to the community that such an accident could occur.

As somebody who came from a farming and agricultural background and who had worked in agriculture nearly all my life it was a big contrast for me to go and work in the oil industry and see the significant difference in a corporate industrial environment compared with the standards, attitudes and culture of safety in agriculture. It is absolutely true that there is a lack of awareness in the farming community about safety issues and it would be useful before people entered agriculture as a profession for them to work in a corporate environment where safety standards are required to be met because of the necessity to comply with law and importantly to experience issues that are relevant to the effective functioning of a large organisation where the mutual dependence of the employees means they need to look out for one another, particularly in a potentially high-risk industry such as the oil industry.

For Mr Bob Smith to have come in here and slagged off about Esso was typical of a former Australian Workers Union secretary and displayed a great deal of ignorance. Also, Mr Smith displayed ignorance about the nature of the farming industry.

It is clear that the Victorian Farmers Federation, as one of the employer organisations in Victoria that has taken a position opposed to the bill, has done so advisedly. We have to be aware of the fact that most farm businesses in Victoria are organised along fairly simple lines. They are family businesses, and generally they are either sole traders or partnership businesses. The bill does not seek to deal with that sort of business structure; it deals specifically with corporate structures.

It is also true that a number of farm businesses and not necessarily large agricultural businesses are organised as companies. To my knowledge a lot of the businesses in the area I have farmed in were organised along corporate lines simply for convenience. I can recite an example specifically and well known to me of the likely consequences of this legislation impacting on a family farming unit.

I will not name names because it is inappropriate. I shall speak of a very close friend of mine who operated a beef and sheep grazing property literally within a stone's throw of my farm. The couple were of a similar age to me, with children of similar ages to mine and who are now in their mid to late teens. They were in the situation of having a business that was a company and where the directors, the controllers of the company, were the husband and wife. Both were actively involved in the management of the business financially and on a day-to-day basis.

The husband would be perceived as the principal breadwinner and happened to go mustering one morning. He was an exceptionally competent horseman and was a former national president of the Australian Stockhorse Association. He was a regular campdraft competitor and was well known in stockhorse circles throughout Australia and also through the farming community in south-east Australia and Queensland.

My friend went mustering, as was not unusual, and he happened to be on his own. He took a horse that was not flighty but just one of the usual stockhorses. He did not come home. He was found later that evening after having been thrown and having his skull crushed on a stump. He inevitably failed to regain consciousness and after a couple of days the life support was removed. He died.

That happened about 12 years ago. The children were left without a father, and his wife was left without a husband. The farm situation was such that because it was organised as a corporate entity, the sole surviving director could easily, under the legislation that is before the house, have been charged in such a way as potentially to be jailed for negligence, and the company and the director fined excessively for what was a genuine accident, the cause of which nobody could ever explain. The most unpredictable things occur when you are working with machinery and livestock in the farming industry.

It is true that the culture in agricultural industries has not been one of high safety consciousness. As I have led in evidence here previously, I had quite a re-education when I worked in the oil industry and saw the contrasting conditions. I have always remembered how shocked I was at those differences in terms of standards. Nevertheless, there are some things you cannot control. Certainly if you work with animals it is impossible to control some circumstances.

This bill is entirely unsatisfactory in the consequences that it sets in terms of import. It is the reason that employer organisations have as one opposed the legislation. Frankly, I am mystified why the government has persisted other than delivering on a commitment to an agenda of the union movement and the fact that the Australian Labor Party had signed up to it to maintain that support. I believe the government is going through the motions. As other honourable members have pointed out, there seems to be no real commitment to this bill. It surprises me that there are only two government members on the other side of the house as we proceed with this bill at 11.30 at night. I would have thought that if there was such a raging debate on an issue of such passion and commitment by

government members they would all be here cheering on their fearsome warriors who are defending their case. The fact is that there has been an inadequate case put and members of the opposition have dealt with it quite adequately.

I do not need to say any more. The bill stands condemned by the mere fact of the implications that exist for people in small business. From my own perspective of representing rural Victoria, I could not consider supporting legislation which would have directors of family companies jailed because of accidents over which they had no control.

Hon. R. H. BOWDEN (South Eastern) — I begin my contribution by saying quite categorically that it is my belief, based on rather lengthy exposure to the work force, that companies do care. They do care for their employees! I am not aware of any company — large, small or of medium size — that does not have a very responsible attitude towards the welfare and wellbeing of its employees.

To suggest that legislation as austere, as difficult and as punitive as this is based on the premise that companies do not care or may not care is irresponsible. They do care and there is lots of legislation on the statute book to make sure that those recalcitrant people who may not want to care do so. There is an honest intention in the business community towards employees and I reject outright the premise that businesses do not care. We are dealing with legislation that would deal a full body blow to business confidence. There is no question in my mind that large, small and intermediate companies would certainly have a knock to their business confidence levels and consequently investment and employment would fall if this bill were passed.

Let us look at the size of this potential problem. According to the Australian Bureau of Statistics figures of June 2001, there are 381 000 operating businesses in Victoria. In November last year those businesses employed 2 323 600 Victorians. In June 2000 there were 37 304 agricultural establishments and 83 748 persons were employed in them. This is not a small situation. There are large numbers of businesses involved and large numbers of people — millions of them! It is not inconsequential.

Small business does not have the same resources as government or large industry. I believe that is an important part of this. We have heard this legislation is going to make all institutions equal and small business will be on the same footing as large business. It is very difficult for small enterprises to put the resources into literally conforming to the spirit and the letter of legislation. When you look at the complexity of the legislation that faces small business today — such as occupational health and safety regulations, common-law obligations, equal opportunity regulations, Workcover requirements and environment protection regulations — you see that the list goes on and on!

I am not saying that they are not necessary but I am saying that to the small business operator they add up to a level of stress. Should the bill pass — and I do not support it — there would be a layer of stress above the directors, senior management and the responsible people inside companies permanently. I think it is totally irresponsible of this government to propose that for the Victorian work force.

There are personal risks for directors and senior management based on genuine business practices and ethical standards which are of a high order in our state — and they are required to be of a high order both to be commercially successful and to conform to our laws. They are disproportionately exposed to attack by the legislation. There is no corresponding obligation on employees, and previous speakers have given convincing reasons as to why all the risk is put on the shoulders of the corporation and the people in the supervisory chain. I have looked at the bill and listened to honourable members preceding me, and there is no corresponding obligation on the employees. As a matter of fact, the employees can use a whole raft of legislative actions which can be quite punitive if employers try to impose those sensible, precautionary and conservative approaches that would mean that they could conform to the legislation, so it is counterproductive.

Government cannot control the details of the court practices. We have heard that this will not happen, that will not happen or this is not intended. If it is in the bill, the government has no control because we have the separation of powers. Once the legislation passes, the separation of powers prevents the government and the administration from interfering in what should or should not happen in the court process, so I have no confidence in the assurances given by government members so far in their contributions on the basis of, 'Don't worry about it. It won't apply to too many people'. I do worry about it because the government will have control over the finite application of the bill should it pass. It is bureaucratic and costly and it will add another layer of delay, caution, documentation and cost.

In concluding I would like to refer honourable members to an article which appeared on 18 March on page 9 of the *Herald Sun* under the heading 'Anger at safety bill'.

It provides a short list of the consequences should the bill pass:

> Critics claim the bill:
>
> Gives no recognition to health and safety being a shared obligation
>
> Makes a corporation liable for the actions of an agent, and that agent's agent, and so on, extending the chain of responsibility beyond a workable scope
>
> Forces businesses into an adversarial relationship with employees
>
> Shifts the focus of workplace safety from prevention to punishment
>
> Sets up senior officers to take the fall for the company
>
> Is not supported by evidence that increasing fines and penalties will reduce workplace deaths and injuries

I believe that those points are accurate. The whole philosophy of the legislation can be said to be sound and sensible but the detail and the potential impact would be devastating to the work force and the level of confidence. It is totally unacceptable.

In my electorate alone, there are thousands of small family businesses, particularly in agricultural enterprises and on farms. Previous speakers have given a good understanding to honourable members of the consequences of corporatisation and the difficulties that could arise from those aspects of the legislation when people are injured or lost to us through workplace injury.

In conclusion, I cannot support the bill. I think it is entirely irresponsible. It will drive away jobs and investment. If anyone external to Victoria was looking to invest here they would have to not only think twice, they would have to think at least a dozen times: do they really want to come here and have this hanging over their heads? I do not support the bill.

Hon. BILL FORWOOD (Templestowe) — I rise to make several brief points. Government members have accused the opposition of being ideological on this matter, most recently the Honourable Jenny Mikakos, and by implication having arrived at a position on the basis of that ideology and not on the basis of the legislation before the house.

The Liberal Party has been through a rigorous process in considering this legislation and many members of the party were actively involved in that process. Not all have been able to speak on the legislation in this house and the other place. However, I met many times with many people to discuss, learn and understand, as did the Honourable Wendy Smith, who represents small business, the Honourables Carlo Furletti and Mark Birrell, the honourable members for Brighton and Berwick in the other place and others. In arriving at the position we are taking today we took advice from a vast range of people on this legislation. Many members of the party conducted surveys with their constituents and with their business groups. Many met with their business groups. This was not an issue that we took lightly. The honourable member for Berwick in the other place twice met with the trade union movement. We did not treat this lightly; we did not treat it ideologically.

We spent considerable time discussing the issues with the member firms of the Victorian Congress of Employer Associations, the Australian Industry Group, the Victorian Farmers Federation, the Australian Retailers Association, the Victorian Automobile Chamber of Commerce (VACC), the Victorian Employers Chamber of Commerce and Industry, the printers, the road transport authority and, as Mr Birrell pointed out, the Australian Institute of Company Directors. We took this process seriously in arriving at the position we have.

Much information was made available by those groups to various people and some of it has been quoted here tonight. I have an essay by the VACC titled 'The Crimes (Workplace Deaths and Serious Injuries) Bill'. I wish to read a little of it to the house tonight:

> Will this bill before the house … achieve what the government assures the community it will achieve? Will this bill make workplaces safer or less safe? Does this bill pass the fair person test? Is it fair, is it equitable? These are the questions that are central to the matter and must be debated.
>
> There are, however, a number of things which are crucial to this examination, but which sit outside the argument:
>
> What is not in contention is that workplace deaths are terrible tragedies.
>
> What is not in contention is that a mother who waves her son off to work should expect to set a place for him at the dinner table that evening, and see him there, safe and secure, and in the company and comfort of his family.
>
> What is not in contention is that a wife or husband departing for work should expect to return to their door, safe and secure, at the end of the day.
>
> What is not in contention is that it is an employer's unconditional and steadfast duty to provide — as much as can be provided — a safe workplace for all employees.
>
> What is not in contention is that employers and employees should strive to improve safety in their workplaces, and should cooperate — one with the other — in the interests of safety and the wellbeing of their fellows.

> What is not in contention is that the government should pursue sensible reforms in the interests of workplace safety, and should seek solutions to the tragedy of death and injury in our workplaces.
>
> On this, there is no argument: our workplaces should never take lives away, our workplaces should never maim nor injure nor disfigure.
>
> …
>
> There is no political divide on this. We accept these matters without reservation and without qualification.
>
> This noble aim of seeking to make workplaces as safe as they can possibly be is not in contention. This is simply our duty.
>
> What is in contention is whether this legislation … is the best way to achieve safer workplaces, is the best way to build upon the gains of the past decade, and is the best way to ensure that no family faces an empty chair at a dinner table where a working son or daughter or mother or father might otherwise have been seated.

That is not in contention. We do not believe on this side of the house that the government has made the case that this piece of legislation would improve workplace safety. For that reason alone we will be opposing the bill. There are other reasons that have been canvassed widely by the members of this chamber tonight on our side and the National Party that explain other reasons, but the crucial reason is that this legislation is bad law; it will not make workplaces safer. I am afraid the government knows that.

One of the really sad parts of this debate has been the cynical manipulation of grieving people by the Attorney-General. I know and others know that they have been misused in this debate. My heart goes out to every person in this state who has had to deal with a workplace tragedy of any sort — death or serious injury. My heart goes out to them, and I find it unforgivable that they should be exploited in this way by a government that knew it did not want this bill to pass, a government that was behind the scenes saying to people, 'We have to do this but don't worry, the Victorian upper house will block it; it won't go through'. While the Attorney-General was cynically manipulating grieving people, the Treasurer and the Premier were quietly saying to people, 'Don't worry, this bill will be stopped in the upper house'. This bill is being stopped in the upper house for one reason only — it is a bad law that would not improve workplace safety.

House divided on motion:

Ayes, 12

Broad, Ms	McQuilten, Mr (*Teller*)
Carbines, Mrs (*Teller*)	Madden, Mr
Darveniza, Ms	Mikakos, Ms
Gould, Ms	Nguyen, Mr
Hadden, Ms	Romanes, Ms
Jennings, Mr	Thomson, Ms

Noes, 27

Ashman, Mr	Forwood, Mr
Atkinson, Mr	Furletti, Mr
Baxter, Mr (*Teller*)	Hall, Mr
Best, Mr	Hallam, Mr
Birrell, Mr	Katsambanis, Mr
Bishop, Mr	Lucas, Mr
Boardman, Mr	Olexander, Mr
Bowden, Mr	Powell, Mrs
Brideson, Mr	Rich-Phillips, Mr
Coote, Mrs	Smith, Mr K. M.
Cover, Mr	Smith, Ms
Craige, Mr	Stoney, Mr
Davis, Mr D. McL.	Strong, Mr
Davis, Mr P. R. (*Teller*)	

Pairs

Smith, Mr R. F	Ross, Dr
Theophanous, Mr	Ms Luckins

Motion negatived.

CASINO (MANAGEMENT AGREEMENT) (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. J. M. MADDEN (Minister for Sport and Recreation).

STATE TAXATION ACTS (FURTHER TAX REFORM) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. C. C. BROAD (Minister for Energy and Resources).

ADJOURNMENT

Hon. C. C. BROAD (Minister for Energy and Resources) — I move:

> That the house do now adjourn.

Bail justices: immunisation

Hon. N. B. LUCAS (Eumemmerring) — I wish to raise with the Minister for Energy and Resources for the attention of the Attorney-General in the other place a matter to do with the immunisation of bail justices. I raised this issue in October last year, seven months ago, when I sought the Attorney-General's consideration of

providing immunisation against hepatitis for the approximately 350 bail justices in Victoria.

Hepatitis infection is at a high level among those associated with the drug scene, and people from that scene are some of the people with whom bail justices have to deal. In November last year the Attorney-General advised that he had requested his officers to make the necessary arrangements. Because I had heard nothing further, in February this year, just on five months ago, I wrote to the Attorney-General and asked what steps had been put in place. I suggested that if bail justices obtained the immunisation for hepatitis from their general practitioner perhaps a system could be put in place for reimbursing the costs.

My letter of 4 February was acknowledged but I have heard nothing further, so I raised the matter again by writing to the Attorney-General on 2 April. Again I had an acknowledgment — it would appear that the Attorney-General is good at acknowledging letters but not at answering them.

Given that it is now six months since the minister agreed to direct his officers to put some processes in place, I am wondering whether this is another example of inaction and procrastination by the government or whether a review is being undertaken into this issue. Indeed, I am wondering what is the hold-up.

I ask the Attorney-General when the arrangements for the immunisation of bail justices against hepatitis will commence, and what those arrangements will be.

Gippsland: harvesting and haulage funding

Hon. P. R. HALL (Gippsland) — Tonight I wish to raise a matter for the attention of the Minister for Environment and Conservation. It follows a letter of 16 May written to me by the East Gippsland Harvesting and Haulage Restructure Group. The letter states that in January this year the government announced financial assistance of $800 000 as interim support funding for timber harvesting and haulage contractors in East Gippsland.

The funding was certainly welcome. Some of it has been used by harvesters and haulers in East Gippsland, but because of the fluctuating market in residual roundwood not all of it has been expended. In fact some $570 000 of the $800 000 is yet to be spent. The Department of Natural Resources and Environment, which administers this money, has been instructed by Treasury that all of the $800 000 is required to be expended by the end of this financial year, and it proposes to spend the remainder of those funds to develop and implement a major road improvement program. While that is welcome, the people involved in the harvesting and haulage restructure group believe that that money will be better carried over to the next financial year and spent by its members when there is a further downturn in the market. Already there are indications that the residual market is again on the decline.

I put a simple request to the government that the remaining funds of $570 000 be rolled over until the 2002–03 financial year and used as originally intended by the people involved in harvesting and haulage in East Gippsland until such time as the restructure of the hardwood industry is in fact finalised. This is a most reasonable request, and I ask that the request be conveyed to the Minister for Environment and Conservation.

Road safety: speed cameras

Hon. R. H. BOWDEN (South Eastern) — I seek the assistance of the Minister for Police and Emergency Services through the Minister for Energy and Resources. In the recent state budget there is a large increase of $337 million in the provision for fines and penalties mainly based on the use of speed cameras, which are often used in unmarked and disguised locations.

The *Herald Sun* of Tuesday, 28 May, reports that in the United Kingdom to avoid accusations that it is revenue raising through the use of speed cameras the UK government is legislating to ban the disguised locations and secret siting of traffic speed cameras as part of its accent on safety on UK roads and to make sure that the UK public are clearly able to understand that revenue raising is not a priority. Under the UK legislation cameras will need to be out in the open, clearly marked, clearly visible and operated by police staff in visibly recognisable uniforms and vehicles.

Will the state government examine the results of the UK experience and legislation in relation to road safety and location of speed cameras so that the UK practices and results can be compared directly with the operation of speed cameras in Victoria?

White Wreath Day

Hon. E. J. POWELL (North Eastern) — I raise an issue with the Minister for Health in another place through the Minister for Energy and Resources. Today is National White Wreath Day. At 1 o'clock today in Queen's Hall a memorial service was held for victims of suicide. People were invited to lay a wreath in memory of colleagues, family and friends and to hear

speakers tell of their personal stories. I know a number of members of this house attended that service.

Heather Creighton, the coordinator of the Melbourne sub-branch of the White Wreath Association, talked about how important today was in raising community awareness of suicide and its effects on family and friends and the broader community. The White Wreath Association is a voluntary association and receives no funding from governments. Funds are raised by volunteers to give support to those who have been touched by suicide.

John McGrath, a former National Party member of Parliament and Deputy Speaker in the Legislative Assembly spoke about his family's personal tragedy. John's son died as a result of suicide. He also spoke about the alarming statistics. One in five Australians will be affected by mental illness, including one in four adolescents. He is concerned that the treatment for young people does not involve parents — for example, hospitals do not contact parents when a child is released and doctors do not talk to parents about their child's treatment.

This month I launched the mental health forum in Shepparton and speakers spoke about the link between mental health and suicide. The suicide rate is much higher in country Victoria. I know of a number of families who have been touched by suicide. I know of three well-respected and high profile men and four young men who in the prime of their lives have suicided.

I ask the Minister for Health to address the issue raised by John McGrath, to work with organisations like the White Wreath Association and with mental health associations to investigate appropriate treatment plans in partnership with the families of people with mental health problems in an effort to prevent suicide.

HMVS *Cerberus*

Hon. C. A. STRONG (Higinbotham) — The issue I raise this evening through the Minister for Ports is for the attention of her colleague the Minister for Planning in her role in looking after shipwrecks, or it may be even for the attention of the Minister for Ports herself. It refers to HMVS *Cerberus* — 'HMVS' stands for Her Majesty's Victorian ship — which was once the pride of the Victorian navy and for many years the most powerful battleship in the Southern Hemisphere.

In 1926 the ship was sunk at Black Rock as a breakwater. Because of the vessel's historic significance — she was a monitor class vessel and is relevant to the transition from wooden ships of the line to the metal battleships of today — there is an understandable desire to preserve what is left of the ship as an important part of Victoria's and Australia's maritime history. That is something I support.

Unfortunately this is a multimillion-dollar undertaking. Locally much ratepayers' money has been spent over many years looking at the question of preservation. For instance, between 1985 and 1992 the former Sandringham council spent $40 000 on various studies; in 1996, $16 700 was spent by Bayside City Council on further studies; and just a couple of weeks ago Bayside City Council voted another $12 500 for more studies.

I ask the minister to indicate clearly whether the government will support the multimillion-dollar expenditure to preserve the HMVS *Cerberus* so that a stop can be put to these ongoing studies which are draining the local ratepayers' purse.

Mildura: hospital site

Hon. B. W. BISHOP (North Western) — My adjournment issue is directed to the Minister for Energy and Resources for the attention of the Minister for Finance in the other place. There has been a lot of media and community attention directed to the old Mildura hospital site of late. A great deal of that interest has been driven by debate about where the future accommodation of the Mildura Rural City Council might be positioned. The hospital site has been vacant for about two years now, and I for one have no clear information on exactly what will happen with the site which, if my memory serves me right, is almost 17 acres in size — quite a large site.

I understand the Sunraysia Community Health Service has been allocated a portion of the site, and I commend that move. I also understand that Princes Court Homes, an excellent aged care facility, is also expected to gain some extra space as it is adjacent to the site, which is also to be commended. I am not sure what else is allocated. However, time is marching on and an increasing number of my constituents are raising the issue of the cost of the 24-hour surveillance of the old hospital site, which must be costing an absolute fortune! No doubt this money could be better used in providing additional health services around the community.

Another issue is what heritage orders have been imposed on the old hospital building and what needs to be done and can be done to manage that process. I ask the Minister for Finance to inform me of the government's final plans for the old hospital site and the time lines associated with those plans.

Consumer affairs: email scam

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — I wish to raise a matter with the Minister for Consumer Affairs in the other place. Last night I received an email from Miracle Sankoh, who purports to be a person from Sierra Leone. The email was apparently sent from Ghana, West Africa. The content of the email is something that we would all be increasingly familiar with. Among other things the email says:

> … I solicit … your assistance to transfer this fund into your account …

It asks for bank account details, assistance in obtaining travelling papers and also for introductions to profitable business ventures. Not surprisingly, it goes on to say that if I am forthcoming with bank account details, this person will deposit US$28 million into the account, of which I will ultimately receive 15 per cent, which is roughly A$6 million, for providing bank account details.

Frankly I was surprised at the audacity of this person in sending an email like this to a member of Parliament. We have heard of these things in the general community from time to time, but the fact that they are now being sent to members of Parliament I found quite extraordinary. Given that, I ask the Minister for Consumer Affairs to again highlight this issue as a problem that is occurring in the community, that people are running these scams, and to ensure that as few people as possible are pulled in by them.

Fishing and hunting: regulation

Hon. R. M. HALLAM (Western) — I raise a matter for the attention of the minister responsible for the regulation of hunting and game management in this state, the Minister for Environment and Conservation. It concerns a submission that has recently been lodged with the Bracks government by the Game Management Council of Victoria, or Gamecon (Vic), which advocates that a statutory body be established to develop our hunting and game management strategy and that a trust fund be established from shooters licence fees to support this general proposition.

I do not intend to argue the merits of the submission — that organisation is quite competent to do that — but as a keen hunter I have an interest in this and have travelled enough to know that we in Victoria and Australia are wasting a valuable tourism incentive — for example, I have seen at first hand what New Zealand does to entice international fishermen and hunters to try its magnificent trout streams and its trophy game varieties. It is a very big part of New Zealand's tourism strategy and indeed its domestic economy.

My view is that we in Australia have a far better and wider hunting and fishing opportunity to market but, far from actively pursuing this market, we actually make it hard for international visitors to participate. For example, a visiting hunter must not only take out a Victorian shooters licence and pay for the authority to hunt before he or she can participate, but also to participate in our annual duck season a visitor must pass a waterfowl identification test (WIT), which is not easy to arrange and is very time consuming. That effectively means that our most qualified international visitors are barred from participating, whereas the logical compromise would be for us to simply require him or her to shoot under the direct supervision of a fully qualified local guide — in other words, someone who does hold a WIT. That is hardly a novel suggestion because it applies in almost every other country around the world.

I commend the Gamecon submission, particularly insofar as it advocates a subtle but critical shift in the focus of government. I respectfully ask the Minister for Environment and Conservation to seriously consider the Gamecon message that what we need is realistic management of all facets of recreational fishing and hunting in this state rather than pedantic regulation of those who participate, or, more specifically, those who would participate in this popular pastime.

Consumer affairs: airbag scam

Hon. ANDREW BRIDESON (Waverley) — I raise a matter for the attention of the Minister for Consumer Affairs in another place — namely, an emerging scam developing in the smash repair business. I will explain how the scam works. It begins with a dishonest repairer's quote that includes, along with labour and spares, replacing the airbag or airbags triggered in a crash. The repairer orders them from the dealer's spare parts counter and the airbag kit is invoiced and duly delivered.

The repairer then obtains a stolen airbag at a fraction of the new price, returns the unused, legally obtained airbag kit to the dealer and is duly credited with the price. This, of course, is not noted on the original invoice. The stolen airbag is then fitted to the repaired car and the repairer is paid in full by the insurance company for the price of the legitimate airbag and pockets the difference. Just to give you an example of the size of the scam, a replacement airbag for a Ford or a Holden is roughly $300 to $400, and for more

expensive imported cars it costs in the vicinity of $1000.

I ask the minister if she will investigate the extent of the scam in Victoria and work with the insurers and the automotive industry to help stamp out this shonky practice.

Western Ring Road: speed signage

Hon. P. A. KATSAMBANIS (Monash) — I raise an urgent issue for the attention of the Minister for Transport in the other place regarding speed limit signage on the Western Ring Road. Today I have been advised by two people that there is a significant signage error that could cause extremely dangerous conditions on the Western Ring Road and could even threaten lives. It is on the part of the Western Ring Road which would affect motorists travelling south-west from the Hume Highway out towards the West Gate Freeway. It is after the Hume Highway turn-off and before the St Albans, Sunshine and airport turn-off.

There is at a point in the road two signs — one on the left-hand side of the road and one on the right-hand side of the road — purporting to indicate the speed limit for that portion of the road. The unfortunate thing is that the left-hand speed sign says that the speed limit is 60 kilometres per hour and the right-hand side sign at exactly the same point says the speed limit is 80 kilometres per hour. Honourable members would appreciate what sort of confusion this is likely to cause for drivers and how dangerous this situation would be if it is allowed to go unchecked. It is unbelievable, but unfortunately it has been confirmed to me by email and by phone cal by two residents who have travelled on that road today.

I ask the minister to immediately correct this issue and to advise the public of Victoria whether this is a regular occurrence and to explain why it has happened, because it is just unacceptable.

Child care: regulations

Hon. W. I. SMITH (Silvan) — I raise a matter for the Minister for Community Services in the other place in regard to children's services and some of the regulations that are being made, particularly for community houses. Community houses have been a source of occasional child care for many years, but what is happening with some of the new regulations is making it difficult for community houses to keep running occasional care for kids.

There is no denying that there is a need for occupational health and safety standards, space standards and a whole range of standards, but the increasing number of standards and the amount of funding that needs to go with these standards is going to close some community houses. In particular, I refer to a letter from the committee of management of the North Ringwood Community House, which has written to me on the children's services regulations, saying it has concerns about the new regulations that will come into effect on 1 June 2003. The committee of management has three basic problems: access, employment and financial.

Concern has been expressed about the additional amount of staff it will have to put on in regard to the new staff-child split ratios, the availability of suitably qualified staff, the cost of training existing staff to reach new qualified standards, and the access to training that is not available in the area. The committee is saying that the impact will be considerable on neighbourhood community houses, which are the main providers of occasional care across Victoria, and in some areas may be the only facility offering child care.

Bill Port, the chairperson of this committee of management, believes the impact of these regulations will end up directly infringing state government policy to protect the health and wellbeing of all Victorians, emphasising vulnerable groups and those most in need. He believes these centres will start closing down or start running in a manner which will be a problem for the safety of children. I ask the minister, as these needs are growing and the funding for space and extra staff training is growing, if she will provide extra funding to neighbourhood and community houses which are having problems meeting these new standards.

Goulburn Valley Water: management

Hon. G. R. CRAIGE (Central Highlands) — I wish to raise a matter for the Minister for Environment and Conservation. Once again I raise in this place an issue of the mismanagement and incompetence of Goulburn Valley Water.

In October 2001 I raised the issue of unauthorised entry by the water authority, the removal of trees and a waste of money on lawyers. In April 2002 I raised another matter in respect of Goulburn Valley Water about unauthorised entry, removal of trees, and a pipeline that was laid outside the 8 metre easement. I asked the minister to inquire into it, but no action has happened at all other than the fact that we have had cover-up letters from the catchment and water division of the Department of Natural Resources and Environment. No doubt they are working at the direction of the minister to try to look after their mates in Goulburn Valley Water.

The saga goes on. Gill and Rhonda Livesay are property owners on the same pipeline who have had their fence cut and whose cattle have got out. The contractor has been in and out of the property and he has ripped up the property along the pipeline. Trees have been removed, the land has now been eroded, and the final connection is a 6-foot hole on that property. That land is now eroded and unusable by cattle.

Steve and Jodie Hopper have a sewerage pipe which took 21 months for the contractor to lay and it is still not cleaned up properly and the area is being eroded. They have had a water treatment plant put on their property by Goulburn Valley Water, which promised it would be in there for two weeks; seven months later its workers are still there, with the land being eroded.

The damage and destruction caused by Goulburn Valley Water seems to go on and on with no action being taken by this government. It is time for the minister to act in respect of the management of Goulburn Valley Water and it is time the chief executive officer was held accountable for what has been occurring. If he does not want to be then clearly he should be sacked.

I ask the minister to immediately send in an investigator and an administrator to stop the water authority destroying people's lives and property.

Princes Highway–Chapel Street, Windsor: safety

Hon. ANDREA COOTE (Monash) — I raise a matter for the attention of the Minister for Transport in relation to an additional red-light traffic camera at the intersection of the Princes Highway and Chapel Street in Windsor. It is a very dangerous intersection and the traffic flow through the intersection every day is considerable. The police have a great deal of trouble trying to catch people who run the red lights at that intersection and they have to go through the red lights very quickly to catch them.

The statistics for the area indicate an urgent need for attention. They indicate that over the past five years there have been 202 injury collisions and 5 fatalities at this intersection. The red-light camera that is currently installed in Dandenong Road has not been in operation for five years. One of the reasons given by the Traffic Camera Office is that the width of the roadway does not allow the photographs to identify offending vehicles on the far side of the camera. This results in the flash operating but no offender being prosecuted.

A possible solution is to use the current loop that is installed in the roadway to install a second camera in Dandenong Road, which would allow for the taking of photographs of the lanes that do not show up clearly on the photographs taken by the current camera. The cost of an additional camera is only $15 000, and given that the collection of police fines is expected to skyrocket to $336 million in the next financial year and that the Premier has said that much more funding will be going into road safety initiatives, I ask the minister to ensure that an additional camera is installed at this busy and dangerous intersection to ensure the safety of Victorian road users.

Port of Portland: fishing wharf

Hon. C. A. FURLETTI (Templestowe) — I refer the Minister for Ports to the port of Portland, which I had the pleasure of visiting in April of this year and which I am confident the minister will have visited since she has taken on her role as minister. If she has, the minister would be well aware that the trawler and crayfishing facilities of the port, which are still under the management of the operating company, the Port of Portland Ltd, are falling into a serious state of disrepair. I am sure the minister is aware that the small slipway in Portland is no longer useable and that the 300-tonne slipway, which is now being used for all local fishing and maritime pastimes, is very much overused.

In December last year the port of Portland offered to transfer the professional fishing precinct which forms part of its facilities back to public ownership. A committee to investigate the proposal was due to have been convened in March, with the transfer of the precinct to have been completed by the end of June. Given that the committee has not yet met, I ask the minister what prospect there is of this pressing issue for the Portland fishing community being resolved by the end of June.

Cycling: Melbourne–Geelong network

Hon. I. J. COVER (Geelong) — My matter on the adjournment tonight is for the Minister for Transport in the other place. I say by way of introduction that I have the good fortune to advise the house of a new cycling community organisation that has been formed in Geelong, namely Cycling Geelong. Like many other cycling organisations it is keen to promote cycling in the Geelong region and at the same time see that there is increased road safety for cyclists.

In a letter Cycling Geelong refers to the reconstruction of the Princes Freeway between Geelong and Melbourne which will provide on-road bicycle lanes on

the shoulders of the freeway carriage lanes between Geelong and Werribee. However, it is obvious that not all cyclists would wish to ride on the shoulders of such freeways for reasons of safety, particularly family groups, young and inexperienced cyclists and some older cyclists.

Through its president, Debi Hamilton, Cycling Geelong advises that the soon to be built Federation Trail will provide a high-quality off-road cycling facility between Melbourne and Werribee but that cyclists wishing to complete the journey between Werribee and Lara will be required to use a poorly maintained and circuitous network of minor roads should they not wish to or are unable to cycle along the freeway. Once at Lara they will be able to rejoin an existing bicycle path for the journey from Lara to Geelong. Cycling Geelong is asking that consideration be given to making permanent and appropriate provision for recreational cyclists along the approximately 25 kilometres of the Princes Freeway between the Werribee River, where the Federation Trail will end, and Lara, where the William Hovell Creek linear park path already exists.

There are two major issues which the organisation would like the Minister for Transport to address. Firstly, the retention of the 4.5 kilometre temporary bicycle path which is being built between the Little River overpass and Wests Road for the use of cyclists during the reconstruction of the freeway. Secondly, a commitment to the planning and funding of the completion of the off-road cycling network between Melbourne and Geelong. Off-road cycling facilities between Melbourne and Geelong have not been a high priority to date according to Cycling Geelong and it submits that this represents a great disservice to the many cyclists who would wish to cycle between the two cities and beyond to enjoy the recreational pursuits around the Bellarine Peninsula and along the Great Ocean Road.

I seek advice from the minister as to how he will address these important issues raised by Cycling Geelong.

Fishing: rock lobster

Hon. K. M. SMITH (South Eastern) — My adjournment query is to the Minister for Energy and Resources. The minister and her department are responsible for a fair amount of devastation in the fishing industry, and particularly the rock lobster industry for which she has responsibility. In April this year the Marine and Freshwater Resources Institute produced its risk assessment figures for rock lobster to Seafood Industry Victoria. The figures equate to about 16 per cent of the 60-tonne total allowable catch of the eastern zone. This would amount to about a 9.6-tonne reduction in the total allowable catch — in dollar terms about $450 000.

Honourable members should bear in mind that following the introduction of quota management eastern zone fisherman have already this year suffered an 18 per cent reduction in their catch — and no compensation was paid. This means a total enforced reduction in catch of 34 per cent for 2002–03 now that marine parks are proposed to be implemented. This equates to a $990 000 loss to the eastern zone fishermen. How can the minister justify this huge reduction in the eastern zone rock lobster industry when it will ruin a number of the rock lobster fishermen? It is most certainly going to devastate towns and the industry down there and will probably be responsible for the closing down of the San Remo Cooperative. Why is the minister doing it?

Responses

Hon. C. C. BROAD (Minister for Energy and Resources) — The Honourable Neil Lucas requested the Attorney-General to respond to his inquiries in relation to the immunisation of bail justices and asked when that would proceed. I will refer that request to the Attorney-General.

The Honourable Peter Hall requested the Minister for Environment and Conservation to roll over funding to the 2002–03 financial year in relation to certain road funding. I will refer that request to the minister.

The Honourable Ron Bowden requested the Minister for Police and Emergency Services to examine the UK legislation in relation to road safety, and specifically to speed cameras. I will refer that request to the minister.

The Honourable Jeanette Powell requested the Minister for Health to work with a number of associations regarding appropriate treatment plans to prevent suicide. I will refer that request to the minister.

The Honourable Chris Strong made a request that I think is actually for the Minister for Planning in relation to her heritage responsibilities, which include shipwrecks. He requested the minister advise him whether there is support for the expenditure necessary to preserve the HMVS *Cerberus*. I will refer that request to the minister.

The Honourable Barry Bishop requested the Minister for Finance to advise him of plans and time lines in relation to the site of the old Mildura hospital. I will refer that request to the minister.

The Honourable Gordon Rich-Phillips requested the Minister for Consumer Affairs to continue to highlight the problem of certain scams and to expose those scams. He particularly referred to a million-dollar offer he had received by email. I will refer that matter to the minister.

The Honourable Roger Hallam requested the Minister for Environment and Conservation to consider a submission in relation to certain matters to do with the regulation of hunting. I will refer that request to the minister.

The Honourable Andrew Brideson requested the Minister for Consumer Affairs to work to investigate another scam, in this case an airbag scam. I will refer that to the minister.

The Honourable Peter Katsambanis requested the Minister for Transport to rectify problems of signage on the Western Ring Road in the interests of safety and to advise him of the origins of that problem. I will refer that matter to the minister.

In relation to the request by the Honourable Wendy Smith for the Minister for Community Services to provide additional funding in relation to the implementation of new community neighbourhood houses regulations, I will refer that to the minister.

The Honourable Geoff Craige requested the Minister for Environment and Conservation to investigate certain actions by Goulburn Valley Water in relation to an impact on his constituents. I will refer that matter to the minister.

The Honourable Andrea Coote requested the Minister for Transport to install an additional red light traffic camera for safety reasons at a particular location. I will refer that request to the minister.

In relation to the matter raised by the Honourable Carlo Furletti about the fishing wharf at Portland, I have visited the port of Portland and listened to what a number of stakeholders had to say in relation to this issue.

It is the case that this is another example of a flawed privatisation by the previous Kennett government. When that privatisation took place the interests of fishing communities were entirely disregarded and not accounted for. In contrast, this government is acting to secure a solution to this problem which was caused by the previous Kennett government. The government is acting in the interest of the port of Portland, its fishing community and the people who depend on the fishing industry. I am confident the discussions that are going on between all of the stakeholders will produce some matters for the government to consider in the future.

The Honourable Ian Cover requested the Minister for Transport to advise how he intends to respond to certain matters raised by Cycling Geelong in relation to cycling matters, and I will refer that request to the Minister for Transport.

In relation to the statements made by the Honourable Ken Smith, I reiterate statements I have made to the house: that this government has acted to secure the future of the rock lobster fishery in this state. This is in contrast to the previous government's failure to act. That government watched this fishery decline to a dangerous state. It did nothing because it was too hard. This government has made the hard decisions and has implemented them, and I am confident we will see the rock lobster fishery recover.

Motion agreed to.

House adjourned 12.41 a.m. (Thursday).