PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

Book 7

7 November 2001

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By authority of the Victorian Government Printer

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WEDNESDAY, 7 NOVEMBER 2001

QUESTIONS ON NOTICE

WEDNESDAY, 7 NOVEMBER 2001

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Wednesday, 7 November 2001

The PRESIDENT (Hon. B. A. Chamberlain) took the chair at 10.04 a.m. and read the prayer.

DISTINGUISHED VISITORS

The PRESIDENT — Order! I welcome to the Legislative Council a delegation from the National Conference of State Legislatures from the United States of America. The delegation is led by the Honourable Jim Costa, the immediate past president, who is a California state senator. It includes the Honourable Stephen Saland, the current president, and a New York state senator, and Mrs Linda Saland; the Honourable Angela Monson, the president-elect of the NCSL, and an Oklahoma state senator, and Mr Robert Kennedy; the Honourable Paul Mannweiler, a past president, and an Indiana state representative, and Mrs Kim Mannweiler; the Honourable Richard Finan, a past president, and Ohio state senate president, and Mrs Joan Finan; and the Honourable John Hurson, a Maryland state delegate.

The delegation is accompanied by officers of various legislatures: Ms Ramona Kenady, the staff chair and chief clerk of the house in Oregon, and her son, Todd Kenady; Mr Gary Olson, staff vice-chair and director of the fiscal office of the legislature of Michigan, and Mrs Theresa Olson; Mr Tom Tedcastle, the past staff chair and director of house bill drafting and general counsel, Florida; Mr Bill Pound, the executive director of the NCSL, and Mrs Margie Pound.

I welcome back a number of those members — I know that Mr Saland and Mr Pound have been here before. On behalf of all members of the Legislative Council I welcome the delegation.

ROYAL ASSENT

Message read advising royal assent to:

Building (Amendment) Act
Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act
Fundraising Appeals (Amendment) Act
Mineral Resources Development (Further Amendment) Act
Statute Law Further Amendment (Relationships) Act
Unclaimed Moneys and Superannuation Legislation (Amendment) Act

STATE TAXATION LEGISLATION (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

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

HEALTH SERVICES (CONCILIATION AND REVIEW) (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. M. M. GOULD (Minister for Industrial Relations).

LEGAL AID (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. M. R. THOMSON (Minister for Small Business).

QUESTIONS WITHOUT NOTICE

Intergraph: union coverage

Hon. BILL FORWOOD (Templestowe) — I refer the Minister for Industrial Relations to the application by the United Firefighters Union of Australia to have the Intergraph demarcation order revoked so that it can have union coverage in the emergency services call and dispatch centre. Does the government support the application by the firefighters union?

Hon. M. M. GOULD (Minister for Industrial Relations) — The application by the union would be before the Australian Industrial Relations Commission. The union would have to put submissions to the commission to have such an order revoked. The order would have been put in place by the commission and cover that union and other unions that possibly have membership there. It will be a matter for the Australian Industrial Relations Commission to decide under the Workplace Relations Act what union ought to have the appropriate coverage based on their rules, which are certified in the commission.

Hon. Bill Forwood — On a point of order, Mr President, the transcript clearly shows that the

government is required to be a respondent to this because it is taking over the dispatch centre, and the issue becomes: does the government support the firefighters union or not? It is a very simple question.

Honourable members interjecting.

The PRESIDENT — Order! The question was very specific. The minister has given a response, but it does not respond to the question.

Hon. M. M. Gould — It is not a question.

The PRESIDENT — Order! I am sorry?

Hon. M. M. Gould — That is not appropriate.

Honourable members interjecting.

The PRESIDENT — Order!

Hon. M. M. Gould — It is not appropriate under the act, which is what I said.

The PRESIDENT — Order! That might be the response, to say that it is not appropriate to make a submission.

Industrial relations: working hours

Hon. JENNY MIKAKOS (Jika Jika) — Will the Minister for Industrial Relations inform the house of what position the Victorian government is taking with respect to the Australian Council of Trade Unions reasonable hours test case?

Hon. M. M. GOULD (Minister for Industrial Relations) — I thank the honourable member for her question. The Bracks government recognises that working time is emerging as a key social and industrial issue in Australia and internationally. In May this year the Australian Council of Trade Unions lodged an application to conduct a test case on reasonable hours of work. This case is before the Australian Industrial Relations Commission. The ACTU's application seeks to develop a test-case standard for reasonable hours with a view to any such standard being reflected in federal awards.

In brief, the ACTU claim has two parts. The first part seeks to regulate hours of work, to prohibit employers from requiring employees to work unreasonable hours and to provide compensation when unreasonable hours are worked. In the context of the growth of non-standard employment arrangements, the Bracks government recognises that the current regulation framework no longer adequately deals with the issue of working time. As such, the ACTU's reasonable hours test case provides an appropriate forum for the examination and assessment of work-time arrangements and how they may be improved. To this end the Bracks government will act decently and responsibly on behalf of Victorian workers in seeking to intervene in support of the key principles of the ACTU's reasonable hours test case.

The changes in the shape of the work force and work arrangements highlight the need for these new standards. Such standards should provide a safety net to control excessive work hours while still providing flexibility for employers.

The Bracks government, through my division of Industrial Relations Victoria, has also commissioned research into working hours in Victoria and Australia. The Bracks government is committed to ensuring Victorian employees have a fair and balanced working life. This will assist in ensuring that our communities are strengthened throughout the whole of the state.

Real estate agents: audit

Hon. C. A. FURLETTI (Templestowe) — I refer the Minister for Small Business to her announcement in this house on 10 October that the government intends to arrange for the audit over the next two years of the trust accounts of more than 2300 real estate agents. The minister's decision about the additional audit was based on prosecutions against three estate agents. Those prosecutions related not to defalcation or fraud but to failures by agents to promptly bank funds and reconcile accounts in one instance, and the drawing of commission before settlement occurred in another. Given those relatively minor infringements will the minister confirm that the government's proposal constitutes additional red tape and cost to a small business sector that is appropriately controlled by existing trust and audit requirements?

Hon. M. R. THOMSON (Minister for Small Business) — I answered a very similar question to this around about the same day I made the announcement. I made it very clear that under the requirements of the legislation those moneys need to be promptly accounted for. As has already been demonstrated some real estate agents are not banking the moneys appropriately and in the right way.

Hon. P. A. Katsambanis — It is a witch-hunt. It is political payback!

Hon. M. R. THOMSON — The government will know at the end of this audit how well the real estate industry is complying with the legislation. It is not a witch-hunt, nor is it an administrative burden to those

businesses where the books are being kept appropriately and notice is given to real estate agents that people will be coming to look at the books to ensure funds are being appropriately placed into trust accounts. I remind members opposite that the purchase of a home is the most expensive purchase an individual makes, and consumers have a right to know their moneys are being properly banked.

We believe the vast majority of real estate agents properly account for the funds they receive, but this will give confidence to every consumer that the real estate agents they are dealing with and lodging their money with are appropriately banking their funds into trust accounts according to the real estate act that requires them to do so.

Industrial relations: working hours

Hon. KAYE DARVENIZA (Melbourne West) — The Minister for Industrial Relations referred earlier to research commissioned by the Bracks government into working hours in Victoria. Can she inform the house of the findings of that research?

Hon. M. A. Birrell — Where's Sang? Where is Sang?

Hon. R. F. Smith — Here he is!

The PRESIDENT — Order! Because of the welcome given to the honourable member who just arrived, we did not hear the last part of the honourable member's question. May I have the last sentence or two?

Hon. KAYE DARVENIZA — The minister referred earlier to research commissioned by the Bracks government into working hours in Victoria. Can the minister inform the house of the findings?

Hon. M. M. GOULD (Minister for Industrial Relations) — I thank the honourable member for her question. The new research about working hours was prepared by the Australian Centre for Industrial Relations Research and Training at the University of Sydney. The research shows that over 600 000 Victorians work more than 45 hours a week. That is an increase of 71 per cent since 1981. The research also concludes that of all employed Victorians in 2000 only one in three are working the standard hours, and the proportion of Victorian full-time employees working more than 45 hours a week has risen to 44 per cent. Among those working extended hours the biggest rise has been for those working in excess of 50 hours a week, and that excludes honourable members of this house. The majority of those working long hours are non-managerial workers.

The results of this research show that we need a new safety net to control the excessive hours of work. At a time when there is so much talk about lifelong working issues and the importance of family-friendly hours, it is ironic to see that effectively there is no longer a standard working week for the majority of workers in this state. To that end, as I mentioned, the Bracks government will seek to intervene in the reasonable hours test case to support the key principles sought by the Australian Council of Trade Unions.

The Bracks government, unlike the previous government, cares about things that most affect the lives of ordinary Victorians such as the number of hours they work in a week. We will not turn a blind eye to such issues. Instead we will continue to seek a balance for all Victorians.

Victorian youth development program

Hon. E. J. POWELL (North Eastern) — I again raise with the Minister for Youth Affairs the application by Rushworth P12 College to join the Victorian youth development program. On 10 October the minister promised he would review the decision by the Office for Youth after the initial application by Rushworth was rejected. Given that the college has now received a further rejection I ask the minister if he actually reviewed the application himself as promised and if so, why he again rejected the application.

Hon. J. M. MADDEN (Minister for Youth Affairs) — I thank the honourable member for her question, and I ask you, Mr President, to excuse me because I have a croaky voice this morning and a bit of a cold.

There are issues relating to the Victorian youth development program. Like many of the programs in the Office for Youth, it is in high demand, and I have asked the office to review the situation.

Honourable members interjecting.

The PRESIDENT — Order! The minister is having difficulty with his voice because of his cold. I am anxious to hear the minister because I could be asked to rule upon things he says. I cannot do so if I cannot hear him.

Hon. J. M. MADDEN — Thank you, Mr President, for your consideration. As mentioned, I asked the office to have a further look at that application. There is significant demand from some regions. My

understanding is that some difficulty was associated with the application from Rushworth P12 College. However, I am prepared to again ask the office to forward more information to me about that application and to provide it to the honourable member.

Minister for Small Business: regional visit

Hon. E. C. CARBINES (Geelong) — I ask the Minister for Small Business to inform the house of any announcements made during her recent regional visit to south-west Victoria.

Honourable members interjecting.

The PRESIDENT — Order! If the information is already on the public record normally questions are not to be asked. I am not sure of the nature of this question and whether it will just repeat something that has appeared in the newspaper. I just make that point to the minister for her answer.

Hon. M. R. THOMSON (Minister for Small Business) — Thank you, Mr President. Last Friday I had the pleasure of heading down to south-west Victoria to meet with small businesses. This followed the very successful community cabinet meeting that was held in Warrnambool just over three weeks ago now. I was fortunate enough to meet with the Economic Development Committee at Warrnambool.

Hon. Bill Forwood — Did you give them a golf course?

Hon. M. R. THOMSON — They didn't ask for one! Members of the Economic Development Committee were very keen to see a business planning workshop for the businesses in Warrnambool and surrounding areas.

Last Friday I was happy to announce that $22 500 would go to the Warrnambool City Council to develop business planning workshops in Warrnambool. It is always a pleasure to work with local government to be able to provide this very necessary grant to small business. This contrasts drastically with the federal government which does not believe in consultation nor working to ensure policies meet the needs of small business.

It is nothing but policy on the run when the federal government actually states that business assistance offices will be expanded, without even contacting the state government nor business enterprise centres that operate throughout Victoria about the best way to ensure there is no duplication in the provision of services to small business. The last thing that small business wants is to see government money being spent on duplication of services.

I was also able to announce the next round of e-commerce exhibition projects funding to the value of $900 000, which will go to businesses that have a project that develops business-to-business e-commerce programs that can be used as an example to other businesses. The Bracks government is committed to ensuring that all small businesses throughout Victoria have the opportunity to have access to the kind of information they need to make them competitive and able to survive into the future.

Port of Melbourne: Appleton Dock

Hon. PHILIP DAVIS (Gippsland) — The Minister for Ports would be aware that for two and a half years the further development of Docklands has had the slipway near Appleton Dock on notice. Duke and Orr, the current operator, is on a 30-day licence. If a new site is not found more than 80 vessels presently serviced in Victoria would have to go interstate, which would involve significant penalties in employment, costs and safety. Will the minister advise the house if the current slipway closed in 30 days where the new facility would be located in the port of Melbourne?

Hon. C. C. BROAD (Minister for Ports) — In response to the honourable member's question I am aware of the significance of the slipway in the port of Melbourne. I was acquainted with the significance of this facility very soon after taking on responsibility for the ports portfolio. Unfortunately, nothing had been done about this under the previous government.

Hon. G. R. Craige — That is not true.

Hon. C. C. BROAD — I am interested to hear the interjection by the former ports minister.

Hon. G. R. Craige — It has taken you two and a half years. We started the process.

The PRESIDENT — Order! The minister and the former minister might like to chat about this on another occasion, but in this case the minister is answering a specific question. I ask her to conclude her answer.

Hon. C. C. BROAD — In relation to the current circumstances and actions by this government, the Melbourne Port Corporation and the ports and marine division of the Department of Infrastructure have been pursuing a number of alternative sites within the port of Melbourne. Those sites, to date, unfortunately have not proved to be available and suitable for that purpose. However, this is a matter that is continuing to be

pursued because these facilities are necessary for the operations of the port and they are matters that the government will continue to pursue vigorously in the search to find a suitable site within the port of Melbourne.

Environmental management and renewable energy: strategic audit

Hon. R. F. SMITH (Chelsea) — Will the Minister assisting the Minister for State and Regional Development inform the house how the release of the environmental management and renewable energy industries strategic audit report, commissioned by the Bracks government, will assist these industries?

Hon. C. C. BROAD (Minister assisting the Minister for State and Regional Development) — I am pleased to advise the house that the environmental management and renewable energy industries audit report, which was commissioned by the Bracks government, has been released today. This report delivers on the government's election commitment to audit key industries and to develop industry policy to promote industry growth and new jobs in Victoria.

The environmental management and renewable energy industries include businesses that produce goods or services to measure, prevent, limit, minimise and correct environmental damage to water, air and soil as well as problems related to waste, noise and ecosystems in addition to the renewable energy industry — industries that I have a particular interest in. Nationally the industries are worth approximately $9 billion annually and employ more than 123 000 people. The audit report identified that 21 per cent of all environmental industry enterprises operate in Victoria and are responsible for one-third of all exports.

The report concludes that the environmental management and renewable energy industries have very significant growth potential that is certainly comparable to the biotechnology sector. It highlights key actions that could be undertaken by industry and in partnership with government to build on current strengths, to pursue opportunities for further export growth and provide the base for knowledge, skills, products and services to establish an environmentally sustainable economy in Victoria. In the near future the industries can expect substantial increases in demand for their products and services that can be met by the use and clever adaptation of existing technologies and the application of new and emerging technologies.

The report also recommends a series of actions by the industries, and government in partnership with industry, to create industry coherence; to build business capability and expertise; to promote research, development and commercialisation; and to build demand for the products and services of these very important industries. Importantly, the report has been developed from extensive industry involvement and considerable assistance from the industry reference group that was established to assist with the audit.

I take the opportunity to place on the record my thanks to all the members of the industry reference group for their efforts and the energy that they have dedicated to the process. I welcome comments on this audit report, which is accessible on the department's web site at www.dsrd.vic.gov.au.

The environmental management and renewable energy industries audit report is another illustration of the government delivering on its commitments and working towards improved sustainability development while supporting new industries that will deliver high-skilled jobs across Victoria.

Legislative Council: sittings

Hon. K. M. SMITH (South Eastern) — I address my question to the Leader of the Government.

Honourable members interjecting.

Hon. K. M. SMITH — Members opposite get excited when I get to ask a question!

What can the minister do to improve the process of advising honourable members as to the sitting days and times of the Legislative Council, given that a member of her party attended last Thursday expecting the chamber to be in session?

Hon. M. M. GOULD (Minister for Industrial Relations) — Mr President, at the end of each sitting day I move the adjournment of the house — —

Honourable members interjecting.

The PRESIDENT — Order! This is the second-last question. I am sure we are anxious to get through this part of the day, and I am sure the minister is anxious to answer the question.

Hon. M. M. GOULD — Mr President, as I said, at the end of each day I move the adjournment of the house, and when it is not the next day, I give the time and date. So, Mr President, it is on the record.

Youth: rural services

Hon. D. G. HADDEN (Ballarat) — Given the Bracks government's commitment to ensuring adequate services for young people in regional Victoria, can the Minister for Youth Affairs inform the house about how the government is working to create skills, jobs and facilities in regional Victoria?

Hon. J. M. MADDEN (Minister for Youth Affairs) — I thank the honourable member for her question. Last Friday, as part of a visit to the region, I was able to go to Inverloch, where I was happy to be able to launch the Inverloch skate facility development, part of which is the involvement of the community jobs program. Under that program a number of participants will help to build the skate facility for youth in Inverloch, and of course for visitors who attend there during the summer months. It is a very pretty tourist destination.

Try Youth and Community Services has been allocated just over $106 000 by the Bracks government to fund the wages and associated costs of employing 13 people for 16 weeks to ensure the delivery of the project. As well as that, just over $12 000 has been provided to deliver accredited training to each of those participants throughout the project so that at the end of the project the community has a significant skate facility for young people and a number of people in that program not only have had work experience but also have some accredited training to help them open doors to future employment. In addition, Sport and Recreation Victoria has provided $50 000 through the community facilities funding program with the Bass Coast Shire Council to assist in the development of the Inverloch skate facility. Parks Victoria is also involved in the project, providing the use of storage sheds for the community jobs program. As well as that, the Rotary club of Inverloch has indicated it is prepared to donate $3000 to ensure the project is completed prior to the end of the year so that it is up and going for the visitors.

What is most important about this project is that the young people of Inverloch have shown enormous determination over a long period of time to ensure that they will have a local skate facility. That has come about not only because of the commitment of the young people but also the commitment of their parents, who have provided their support, as have a number of interested parties in the community. The facility will be supervised by the YMCA on behalf of the Bass Coast shire.

This project is really an example of how we are able to bring together a whole number of partners in regional towns to have a significant and lasting impact on jobs, recreation and social infrastructure. Again we are showing that we are able to do things the previous government did not care to do, was not able to do and did not want to do — that is, we are growing the whole of the state.

QUESTIONS ON NOTICE

Answers

Hon. M. M. GOULD (Minister for Industrial Relations) — I have answers to the following questions on notice: 2065, 2070, 2082, 2084, 2090–1, 2093–4, 2098–2100, 2102, 2112–14, 2157, 2159, 2161, 2224, 2236–7, 2239, 2241, 2243, 2269, 2281–4, 2287, 2289–91 and 2341.

The PRESIDENT — In relation to answers previously given to questions on notice, the Honourable Gordon Rich-Phillips has written to me seeking my ruling in relation to the answer to question on notice no. 2213 concerning ministerial officers. In my opinion the first part of the question has been answered. However, I do not believe parts (i) and (ii) have been answered, and I therefore direct that those parts of the question be reinstated on the notice paper.

The Honourable David Davis has written to me seeking my ruling in relation to answers to questions on notice nos 2127 to 2138 inclusive, relating to community cabinet meetings. I have previously provided a ruling on answers to questions nos 2127 and 2138. In relation to questions nos 2128 to 2136 inclusive, I am of the opinion that parts (i) and (ii) of those questions have not been answered, and I therefore direct that each of those parts of those questions be reinstated on the notice paper. In my opinion question no. 2137 has been answered by the response provided by the minister in answering question no. 2126.

LOCAL GOVERNMENT: LEGAL DEFENCE

Hon. E. J. POWELL (North Eastern) — I move, by leave:

> That this house calls on the government to urgently legislate to ensure that municipal councils in Victoria can continue to rely upon the defence of non-feasance, which has been jeopardised by recent High Court decisions.

The PRESIDENT — Order! Leave granted. Before the honourable member starts, I indicate to the house that the 3 hours allowed for general business commences now.

Hon. E. J. POWELL — I am bringing this motion before the house at this time because of the National Party's great concern about the impact municipal councils in Victoria have already felt, particularly in country Victoria, from the High Court decision on 31 May this year to abolish the defence of immunity from non-feasance, which is part of the common law of Australia.

I hope the government will support this motion. During the last state election campaign the Labor Party made a number of commitments to and said it was a strong supporter of local government. The government can now prove its support for local government by supporting this motion. I hope it does so, because this situation will impact very heavily not just on local government but on the communities councils serve, both country and metropolitan.

The abolition of the defence to non-feasance will impact on all councils, as I said earlier, especially those that cover large geographical areas with small populations. The income of those councils is fairly limited, yet the expectation of the services provided and the infrastructure looked for is intense.

Before I talk more about the impact of the decision on councils and their communities, I will firstly give a brief explanation and history of the immunity from non-feasance. The non-feasance immunity was established in England more than 200 years ago. The rationale for the immunity was simple: local municipalities were encouraged to build roads within and between local communities or, as they were called in those days, villages, but they did not have the ongoing resources to adequately repair and maintain such roads. I think some councils would say that nothing much has changed. It was considered inappropriate for a council acting as a road authority to be held liable for failure to repair or maintain these roads. Therefore where a council acts as a road authority over a road in its own municipal district, provided it does not cause or contribute to the defect or problem that causes a liability claim for loss or injury, a council is immune from lawsuit. This immunity has been abolished in the United Kingdom now for about 40 years. The belief is that councils now have enough money to be able to repair and maintain roads and footpaths to the standard the community expects.

In Australia the situation is slightly different. Because of our size and small population, there is still is not enough money in councils to keep our roads, bridges and footpaths in perfect condition. People would not want to pay the money needed to expose councils to that level of perfection, if you like. I believe communities would resent councils spending all their money on just the maintenance of roads and bridges. I know in the old days people used to say that councils were only roads, rates and rubbish, but as time has gone on people's expectations have risen and councils are now expected to be much more than providers of those services. They also provide other programs.

Councils will have to spend the majority of their money on upkeep and maintenance for all sorts of reasons. If there was a requirement that roads, footpaths and bridges, in particular, were to be kept to a level where there would be no risk of unsafeness to a person, that would cost councils, particularly rural councils, a lot of money. Some of the other services and programs councils provide that would be put in jeopardy are things the community expects — things like Meals on Wheels, library services and human services such as home handymen and home help. A council provides many services. If councils must spend all of their budget to meet an expectation that everything is exactly right and that there is no responsibility on the community, they will find that very much to their disadvantage.

Put simply, non-feasance means not doing. For example, if the infrastructure wears out or there is a small crack in a footpath that the council is not aware of or there is any wear and tear, if an accident happened and somebody tripped, the council could defend that case, but since the High Court judgment that immunity is now in doubt.

On the other hand, misfeasance means wrongdoing. For example, if a council is digging up a footpath and a person trips and injures themselves because of the council's negligence, the council is liable, and nobody says it should not be liable. It is understandable that if an accident happens because of a council's negligence the person should be able to receive compensation.

On the issue of the High Court decision, some legal opinion was sent around to all councils. A couple of councils have sent me a copy of it. It is only a legal opinion — it is not really advice — and it was sent from Russell Kennedy, solicitors. It is on highway immunity. It is headed 'Councils and highway authorities no longer protected by highway immunity'. It goes on to say:

> A recent High Court decision has effectively overruled what was known as the 'highway rule', which gave councils immunity from liability in limited circumstances.

It goes on to talk about the landmark decision of 31 May.

… the High Court of Australia by a majority of four to three, abolished the common-law rule exempting highway authorities from liability for non-repair of roads. The decision was made in the cases of *Brodie v. Singleton Shire Council* and *Ghantous v. Hawkesbury City Council*. Until now councils could be liable for negligently performing work on roads (misfeasance), but not for failing to perform any work at all (non-feasance). The majority in Brodie's case stated the law now to be that:

> Where the state of a roadway, whether from design, construction, works or non-repair, poses a risk to that class of persons, then, to discharge its duty of care, an authority with power to remedy the risk is obliged to take reasonable steps by the exercise of its powers within a reasonable time to address the risk. If the risk be unknown to the authority or latent and only discoverable by inspection, then to discharge its duty of care an authority having power to inspect is obliged to take reasonable steps to ascertain the existence of latent dangers which might reasonably be expected to exist.

The majority of the High Court considered that Singleton shire had been negligent but that the matter should be referred back to the Court of Appeal for decision. It is interesting to note that the Singleton council did not put up a defence when it went to the High Court because it thought it was protected under the non-feasance rule. Now it will have an opportunity in the New South Wales Court of Appeal to defend its decision against claims of negligence. Hopefully it will win that case, but if the council was negligent obviously it will not win the case.

In *Brodie v. Singleton Shire Council* the bridge suffered from piping, which is the rotting-out of the centre of the timbers because of dry rot. On 19 August 1992 Mr Brodie drove a truck onto a bridge which was built 50 years earlier. The bridge was designed to carry a load limit of 15 tonnes and Mr Brodie's truck was 22 tonnes. The bridge collapsed and the truck fell into a creek. The truck was damaged and Mr Brodie was injured. Earlier that day Mr Brodie had safely driven across another bridge on the same road that was signed with a 15-tonne limit. It could be said that Mr Brodie had a duty of care to himself. The first bridge had a sign saying it had a 15-tonne limit and he knew that his truck was 22 tonnes. He was able to get across that bridge safely and then got to the second bridge, which was not signed, and his truck went through the bridge. The solicitor said that that happened because:

> … the bridge suffered from 'piping' — namely, the rotting out of the centre of the timbers because of dry rot or white ants. All timber bridges in the shire were inspected four times a year by experienced carpenters and others. However the inspection only consisted of visual appraisal. As this was insufficient to detect the piping, they should have hit the girders with a hammer or driven a spike into them.
>
> The council had patched the bridge by replacing planks running across the girders but, by doing so, had created a superficial appearance of safety, without attacking the fundamental problem of the piping.
>
> …
>
> The Brodie case was decided on the basis of New South Wales legislation although other states, including Victoria, argued before the HCA for retention of the highway rule.
>
> Section 205(2)(c) of the Victorian Local Government Act 1989 is not identical to the NSW act and expressly provides that a council that has the care and management of a road 'is not obliged to do any particular work on the road, and in particular, is not obliged to carry out any surface or drainage work on an unmade road'.
>
> It could be argued that this section will preserve the immunity of highway authorities from actions for non-feasance. We think that this is unlikely. It is probable that the decision in Brodie's case will apply equally in Victoria.
>
> If it is not overridden by an act of Parliament, the Brodie decision is likely to substantially increase the number of cases brought against councils for negligence and lead to higher insurance premiums.
>
> The issues of risk management and budget allocation based on risk will undoubtably move upwards in council's priorities in the future.

The decision there was based mainly on the Brodie case. The other case tried in the High Court was *Ghantous v. Hawkesbury City Council*. Mrs Ghantous tripped on an uneven surface where the surface difference was about 50 millimetres between the council's footpath and the grass verge, or nature strip as we would call it. This happened in daylight. All of the seven judges in the High Court found against Mrs Ghantous, even the four majority judges who abolished the non-feasance defence. They stated that although the council owed Mrs Ghantous a duty of care, it had not breached the duty owed to her because there was no evidence that the footpath had been constructed negligently nor did the court believe there had been a failure to keep the footpaths and verges level. The court believed it is the duty of pedestrians to watch where they walk and to avoid obstacles.

That decision will be interpreted in courts in times to come. If I can give an example that I would put on record for myself, in my flat in Melbourne I have a driveway made of cobblestones which are very uneven and not the same size. Many places in East Melbourne have these wonderful old, historic cobblestones. I would not expect the Melbourne City Council to pull up those cobblestones and make them more even. I walk over them in high heels and I know the dangers at night and even during the day and I take care for my own safety. That will become more relevant in time to come; the onus and responsibility should also be on the person using the footpaths and driveways to look after their own safety.

Concern has been felt for a number of years about councils' legal liability responsibilities. We see that even more so at the moment with public liability premiums rising dramatically and local government trying to come to terms with these issues and put in place some form of protection for the organisations and bodies running programs in their municipalities while ensuring effective and appropriate public risk premiums. That is becoming more difficult. Local councils across Victoria have teamed together and established a mutual liability insurance scheme called Civic Mutual Plus (CMP). The scheme commenced on 30 September 1993 and is now owned and operated by the Municipal Association of Victoria (MAV) on behalf of councils. It provides self-insurance cover for councils in the areas of public and product liability and professional indemnity. Of the 78 councils in Victoria, 77 are members of the scheme. The one council that is not a member is the City of Greater Dandenong which has decided not to be part of the scheme. The scheme offers some protection for the 77 councils but even Civic Mutual Plus is concerned about the ramifications of the decision made recently by the High Court.

CMP was established because of the unstable position of local government. As I said earlier, there has been a lot of concern in communities and particularly in rural communities because sometimes they run only one or two major events in a year. The organisers of those events are coming to me now and saying there is a problem — some of their insurance premiums have risen by four or five times and some insurers will not sign up those organisations to allow them to run their events or functions. This is of concern to local government and people in the community because in country Victoria there are probably not as many opportunities for communities to hold a function or event in their electorate. It is becoming more and more important that local government take that on board. I know that CMP and the MAV are looking at this problem of increased insurance premiums and the impacts on organisations and sporting bodies and the like.

Fewer underwriters are prepared to write local government premiums because the insurance risks rise or fall dramatically from year to year. There is also a concern that some councils may have inadequate cover at a time when more and more litigation is being initiated. That is an issue that all insurance companies are looking at. The councils are pooling their risks, so to speak, and have joined the CMP scheme. Hopefully they will be able to get major benefits from that. However, as I said, CMP is still very concerned about the issue of non-feasance.

CMP is so concerned that it sent an email to all Victorian councils. One of my councils sent me a letter containing an extract from that CMP email. This letter is from Phil Pearce, chief executive officer of the Shire of Campaspe. It states:

> The following is an extract from a CMP email to all Victorian councils … we need to bring to your attention a condition of any insurance coverage (including our own CMP policy, and indeed our own R/I policy) to the effect that any material increase in risk allows any underwriter the opportunity to vary the terms of its cover whether it be by way of increased premium, increased deductible or restriction in cover. In the current case the abolition of the common law defence is such a significant change to the law effecting councils that it certainly falls within the definition 'material alteration of risk'. The existence of the defence has been a major reason for insurers (and indeed reinsurers) being prepared to offer any coverage to Australian councils and its removal is of major concern to the local and international insurance and reinsurance markets.
>
> Since 31 May, following the High Court decisions, we have been negotiating with our reinsurer to determine its stance in respect to future cover and, if applicable, any increase in its premium. However, we are not in the position at this time to formally advise you of our reinsurers' attitude to this change in the common law of Australia applying to councils.
>
> In view of the above, we feel obliged to bring these issues to your attention.
>
> In the event of any change in the cover provided, and indeed an additional premium our reinsurer may require to cover this additional risk, we must formally advise you that these changes in cover and/or any additional premium will have to be passed on to individual councils.

I have spoken with the scheme manager of Civil Mutual Plus, Mr Graeme Lemmer, who informs me that much has been done in working with the reinsurer to negotiate cover. The decision has not yet been finalised, but they are working and negotiating with the reinsurer to ensure that costs to council will be kept to a minimum. In the same letter, Mr Pearce goes on to say:

> The MAV is addressing the issue with the Department of Infrastructure and in particular requesting retrospective legislation be introduced to amend section 205(2)(c) of the Victorian Local Government Act 1989 to remove any ambiguity from the provisions thus ensuring the doctrine of non-feasance is enshrined in a proper legislative form.

I have received advice that that may not be the best way to go, but I shall touch on that later in my contribution. Since the High Court decision councils have been concerned about costs associated with it. The High Court decision was delivered on 31 May, and I received the first letter on 16 July. As soon as the High Court decision was handed down the ramifications were felt throughout all Victorian councils. I have received numerous letters concerning the ramifications, such as the one I received from the Shire of Campaspe.

I know my National Party colleagues have also received letters, a number of which have been passed on to me to ensure that I understand the ramifications. The main concern of councils, particularly in the first letter I received, was about the abolition of the non-feasance defence, which it says has been available to councils acting as a road authority for more than 100 years. At the time this was happening I was unfortunately overseas on a Commonwealth Parliamentary Association study tour and unable to deal with it directly. I asked my office to send a letter to the Leader of the National Party in the other place, the Honourable Peter Ryan, to ensure that the Minister for Local Government was aware of some of the issues.

On 25 July the Leader of the National Party wrote to the Minister for Local Government, the Honourable Bob Cameron, bringing the matter to his attention and asking him to take steps to accommodate the High Court's decision. On 10 September the minister responded to the Leader of the National Party, stating:

> Thank you for your letter dated 25 July 2001 inquiring about the steps being taken by the government to accommodate the High Court's decision in *Brodie v. Singleton Shire Council* and *Ghantous v. Hawkesbury City Council*.
>
> I appreciate the concerns of councils regarding this decision.
>
> I am advised that an investigation of the decision and the implications for councils and other highway authorities has begun. The investigation is being coordinated by executive and legal branch, Department of Infrastructure, with the local government division, Department of Infrastructure, and key stakeholders participating. Until the investigation is completed, it would be premature to discuss legislative changes. However, all options will be canvassed.
>
> I also understand that the local government division plans to hold a meeting with representatives from a number of councils and the Municipal Association of Victoria on this issue to deal with the specific concerns councils throughout Victoria face. Participating councils will be contacted directly about the meeting when details have been finalised.

I shall raise a number of issues about the letter, the first being the investigation. I am concerned that it seems to be an intergovernmental committee with the Department of Infrastructure taking the key role and that nobody from the Municipal Association of Victoria, the Victorian Local Governance Association or members of any councils are participating. Maybe all the advice and experience will not be given to that committee. I know it is probably still investigating the matter, but I should like to know at what stage that committee investigation is currently. My concern is that it is an intergovernmental committee which should have had outside members on it. I understand the local government division, councils and the Municipal Association of Victoria will be contacted directly, as stated by the minister. I wonder whether they have been contacted and what the outcome is. A number of issues must be gone through.

As the National Party shadow Minister for Local Government I have written to 47 rural councils as well as the MAV and the Victorian Local Governance Association to bring them up to date with the National Party's work on their behalf and the minister's response. The National Party will continue to support local councils.

The motion today is about fulfilling our commitment to those councils to urge the government to legislate so that councils are not vulnerable in certain circumstances. I received a number of letters of thanks and many letters of concern. I know my National Party colleagues are also being told of the concern of councils about the ramifications for many councils and, more importantly, the community. The expectation is that there will be an increase in the level of insurance claims for which councils will now have to budget. Council budgets may look much different from how they originally looked with the community expecting many more services and programs. Councils may now have to allocate much more of their budgets towards meeting their litigation obligations.

The Hindmarsh Shire Council wrote to me suggesting that an all-party parliamentary committee of interested members be established to consider the crisis in liability insurance, something the Minister for Local Government could take up given that crisis.

I also received a letter dated 19 October 2001 from the chief executive officer of the Municipal Association of Victoria, Rob Spence, regarding the legal liability non-feasance rule, in which he says:

> Thank you for your letter of 3 October 2001.
>
> Having communicated with the Attorney-General and the Minister for Local Government we are now meeting with a small group of local government representatives and representatives from our insurer, Civic Mutual Plus, to develop a submission to the Honourable Rob Cameron in support of the call for retrospective legislative amendment.
>
> The group is initially gathering material about the specifics of the issue in terms of lengths of roads (sealed and unsealed), numbers and status of bridges, lengths of footpaths etc. Risk management strategies are being reviewed and information on costs being sought.
>
> The material will be used in identifying the potential impact of the decision, including the insurance and potential community impacts.

I also received letters from other councils asking for that retrospective legislation and to amend section

205(2)(c) of the Local Government Act. I have spoken with the insurance company and understand that as the insurer for councils it is trying to obtain legal opinion on the strength of section 205(2)(c). Uncertainty still exists about the strength of that section to bring about councils' requests. It may not stand alone as a common-law defence. While councils and a number of people have alerted us to amending the act, it may not be the way to go. I urge the government to examine that matter and the Tasmanian legislation, to which I shall refer later. I hope the government will take into account all that advice when it is received.

As I said earlier, there is an impact on councils due to the abolition of the non-feasance rule, but more importantly there is an impact on the community. Some of the issues councils will now have to look at include retrospective resurrection of damage claims from injuries that were rejected or not pursued because of the non-feasance rule for incidents that occurred between 31 May 1996 and 31 May 2001, and the recovery of costs by the Transport Accident Commission (TAC) and the Victorian Workcover Authority where the injury occurred between 31 May 1996 and 31 May 2001. These claims were to try to recover damages costs where the injury occurred on local government roads, footpaths or bridges, where there was an accident either on the way to work or during working hours. There is concern that there could be retrospective claims on local government where the TAC or the Workcover authority has paid out claims and is now going to be asking for those expenses to be recovered. There will also be an increase in insurance claims for injuries that occurred on council assets, something that was formerly covered by the non-feasance rule.

The councils will now have to look at all aspects of asset management. While they do that, the expectation by the community and, more particularly, under the law is going to be even higher. There will be increased damages payouts because councils may not be able immediately to meet the new standards of care to make sure all foreseeable risks are eliminated. At the moment councils have a maintenance program for which there is a new duty of care or new legal liability. Where councils were able to defend themselves using the non-feasance rule, there will now be some concern about the impact of councils being more open to liability because the rule that used to be some sort of a defence for a council was that it did not know an asset was unsafe. Councils are now going to have to make sure they are made aware of all these issues, and it will be a fairly large impost on councils and their budgets.

There will be increases in the allocation of resources and expenditure on the maintenance of roads, footpaths and bridges to meet the new standard of care. I shall provide a couple of examples I was given by councils, particularly councils in the north-east. The Rural City of Wangaratta has more bridges than any other municipality in the state. It has 350 bridges, and approximately 60 of them are made of timber. There are many gullies, creeks and rivers in Wangaratta and across country Victoria, and they have the same needs. The maintenance, inspection and upkeep of those 350 bridges is going to be a fairly big impost on the Rural City of Wangaratta. The council has put in place a long-term program to replace the timber bridges, and it understands that it will now be required to have a higher level of safety for the travelling public. It has put a replacement program in place to gradually convert those timber bridges.

In the Shire of Indigo there are some 1400 kilometres of unsealed road and 750 kilometres of sealed road. Some of them are Vicroads roads, and the state government should provide more funding for their upkeep and maintenance. Victorian legislation requires the shire to maintain Vicroads-declared main roads, which are owned by Vicroads. There will also be a requirement on the state government to provide appropriate funds to make sure that roads that are managed or maintained by the shire are in a safe condition. It is not fair for councils to have the responsibility not only of looking after their own roads but also of putting some of their funds into state roads just to be able to protect themselves from litigation. There is going to be quite a large impost on the state government because it will have to provide appropriate funds to local government to enable councils to maintain the Vicroads road infrastructure.

The Municipal Association of Victoria is preparing a submission to the state government, and it is also sending a survey to all councils requesting information on bridges, road length and so on. This information will be very important to show what sort of burden the abolition of the non-feasance rule will impose on councils, particularly on rural councils that have large areas of roads and many bridges. There will be a fairly strong indication of the impost on councils when the reports are sent back and the MAV is made aware of the state of council bridges, roads and so forth.

The public has an expectation that roads, bridges and footpaths are safe, and councils must make sure they act responsibly. They have a duty of care to their communities, and none of us believes that by supporting this motion we are saying that councils should act negligently or irresponsibly. We are saying there must be an expectation in the community that if

councils do everything in their power they should not be liable for certain conditions.

A number of councils have said to me that over the past couple of years they have introduced a number of initiatives to make sure public risk is minimised. A number of risk-management strategies are in place, and inspection programs conducted by experienced people are in place. There is a big cost to councils that have many bridges. They have to inspect those bridges and make sure that they are safe to cross. Asset management and maintenance programs are in place, as well as increased or appropriate insurance cover. As was said by Civic Mutual Plus, some councils do not have the appropriate amount of insurance cover, and that needs to be looked at because councils can no longer absolve themselves of their responsibilities. They must make sure that every risk is minimised and that they have appropriate insurance cover to deal with litigation.

Budget allocations are in place for replacement or maintenance. Protocols are in place to allow the community to be warned of unsafe infrastructure. Some councils tell me that they now have in place protocols that include people ringing to alert them to unsafe footpaths or roads or to situations such as a tree that has fallen across the road or any instance where people feel there could be danger of an accident.

The councils are now putting in place appropriate signage, particularly on bridges where load and height limits are required. The legal advice is that if councils cannot ensure safety they must close the road or bridge in question. That is in contravention of section 205(2)(a) of the Local Government Act, which states:

> A Council that has the care and management of a road —
>
> (a) must ensure that if the road is required for public traffic, it is to be kept open for public use (subject to the exercise of any powers that it has to the contrary under Schedules 10 and 11) …

We have seen that even though a bridge is signed people sometimes disregard that signage. When I was a councillor in the Shire of Shepparton there were a large number of wooden bridges. One bridge that had been inspected had a design where the planks had substantial gaps, which was okay for vehicles crossing it. The council inspector decided to put a sign up saying that cyclists were not to ride across the bridge because it was apparent that if the tyres of a bicycle went parallel with the planks an accident could happen. The sign was put up. However, a young girl rode across the bridge, even though she had been alerted by the sign that people should not ride bicycles across it. The young girl fell off the bike and hurt her chin. It was not a major drama, but it illustrates that even though councils try to do the right thing by putting up signs, sometimes members of the public either choose to ignore the signage or perhaps are just doing other things at the time and do not notice it. It is important that we understand that sometimes signs are not the only answer.

I talked earlier of the Tasmanian legislation. A number of people have said to me that this legislation is much stronger than the Victorian legislation. The Tasmanian legislation is Section 21(4) of the Local Government (Highways) Act 1982. It contains an exemption provision that could be looked at as a possible model for legislative answer to the abolition of the non-feasance defence. The rule is:

> Except as otherwise provided in this Act, a corporation is not liable for any injury or loss arising from the condition of a highway unless that condition results from the improper carrying out of highway works that are carried out by, or at the direction of, the corporation.

A number of organisations and individuals are looking at this problem for a solution. I would like to personally thank Debra Hollingworth and the Municipal Association of Victoria; Mr Graham Lemner, the scheme manager of Civic Mutual Plus, for the assistance that he provided, even on Melbourne Cup Day; and the councillors who provided me and my colleagues with important information and feedback.

There may well be other amendments that need to come before this house in legislation as well as the reinstatement of the non-feasance rule — such as, no retrospectivity after 31 May 2000, stopping other statutory bodies claiming costs, and a cap on awards of damages. The government needs to look at all of these issues.

Finally, I ask the government to urgently legislate to ensure non-feasance immunity for Victorian municipalities is entrenched in Victorian law.

Hon. D. G. HADDEN (Ballarat) — I move:

> That all the words after ‘house’ be omitted with the view to inserting in place thereof ‘calls on the Australian Transport Council of ministers to consider the High Court decision regarding the defence of non-feasance, with a view to reaching a consensus about action to be taken as it applies to all roads throughout Australia’.

The law of tort and negligence and nuisance is very complex and the recent High Court of Australia decision, which was handed down on 31 May, gives one an understanding upon a proper reading of that decision as to the law of negligence as well as the

common-law doctrine of immunity, sometimes known as the highway rule. It is correct that the two High Court decisions of Brodie and Ghantous have opened a new chapter for highway authorities and their liability to road users in negligence.

The citation for both cases is *Brodie v. Singleton Shire Council* 2001 High Court of Australia 29 and *Ghantous v. Hawkesbury City Council* 2001 High Court of Australia 29. The cases were heard simultaneously before the High Court. The majority justices were Justices Gaudron, McHugh, Gummow and Kirby; and the minority justices were Chief Justice Gleeson and Justices Hayne and Callinan. The High Court majority judges decided not to follow previous decisions of the court that had upheld the common-law doctrine of immunity from liability for damage which flowed from the negligent failure to repair, maintain or render safe a highway. These local authorities are still subject to the tort law of negligence and nuisance, as are other persons.

The High Court was asked to reconsider and overrule a long line of cases that establish a rule of immunity with respect to the tortious liability of a public authority when sued by a road user who suffers damage to personal property as a consequence of the condition of a highway. Such an authority may be liable for the negligent act of misfeasance, but is not liable for non-feasance.

Mrs Ghantous was a pedestrian who was injured when she tripped and fell while walking on a concrete footpath. In England the common-law rule, which both applicants in the matters before the High Court sought to challenge, was abolished by statute in 1961. It then became easier for a pedestrian to succeed in an action for damages. However, when the general principles of negligence were applied the courts insisted that an injured plaintiff had to show that the road or footpath was dangerous.

Justice Cumming-Bruce, in the case of *Littler v. Liverpool Corporation* (1968) 2 All ER 343 at page 345, said that uneven surfaces on a footpath may cause a pedestrian temporarily to stumble and fall, but that has to be accepted. A highway is not to be criticised by the standards of a bowling green.

The case of *Brodie v. Singleton Shire Council* concerned personal injury as well as property damage, which resulted from a partial collapse of a bridge — namely, the Forresters Bridge — while a fully loaded heavy concrete truck was crossing it.

Mrs Ghantous was not successful in her High Court appeal, and Mr Brodie's appeal was successful and his case has been remitted to the New South Wales Court of Appeal for determination on issues on appeal. That matter is still to be determined.

Justices Gaudron, McHugh and Gummow were three of the four majority justices in the High Court decision. They went through the law and the common-law doctrine of immunity and referred in particular to Mahoney AP in the case of *Hughes v. Hunters Hill Municipal Council* (1992) 29 NSWLR 232. On page 236 Mahoney AP suggested that, although not formulated as such in the 1936 High Court Buckle decision, the highway rule is a mechanism to accommodate competing interests. His Honour saw these as the cost to the community of maintaining highways, the allocation of priorities for expenditure of public moneys and the interests of individuals in the safe use of those highways. To require expenditure sufficient to remove most if not all risks would be too extreme in His Honour's view, and to abandon citizens to hazardous road conditions also would be unacceptable.

The three justices — Gaudron, McHugh and Gummow — also considered in their judgment the highway rule as it is today in Australia. They said that the authorities are said to establish the highway rule in the High Court and present the problem of the present status of the common-law doctrine and that the circumstances and assumptions upon which it depended in England were never fully applied in Australia and have disappeared or significantly changed. They gave as examples federal law, such as the National Roads Act 1974, the States Grants Roads Act 1977 and the Roads Grants Act of 1981, which bear out Professor Fleming's point that the assumption by several central governments of significant financial responsibility for road construction and maintenance means that the immunity is always necessary because all local authorities require it for the protection of the pockets of their ratepayers.

In the 8th edition of *The Law of Torts* 1992, Professor John G. Fleming looked at the public authorities under the law of nuisance and the law of tort. At page 435 Professor Fleming said:

> Although public authorities enjoy no immunity as such from ordinary tort liability, a protective screen has long remained in the vestigial 'non-feasance' rule that mere failure to provide a service or benefit pursuant to statutory authority would ordinarily confer no private course of action on persons who thereby suffer loss.

He went on to say:

> More far reaching and anomalous is the immunity which has survived to shield road authorities from liability for accidents caused by their failure to maintain highways in proper repair.

In relation to immunity, he said:

> This immunity, created by a series of English decisions during the last century —

by this he means the 19th century —

> and applied in Australia despite a very different history of highway authorities, negates both a general duty to repair (sounding in nuisance) and any specific obligation to exercise care in control and management even with respect to known dangers (negligence).

Professor Fleming also went on to say:

> In the first place, the immunity can be claimed only for non-feasance, not for accidents caused by misfeasance. The inherent ambiguity of this distinction has introduced a large element of unpredictability and become a foil for eviscerating the principal rule.

At page 439 he continued:

> It remains to note that the immunity is confined to highway authorities proper and does not avail dock or railway companies charged with the maintenance of roads such as approaches to bridges under their control. The distinction has been justified on the ground that the non-feasance rule was originally designed as a shield for the local inhabitants of a parish or a county and that only genuine successors of their public road maintenance functions can claim its benefit in modern times, not private organisations carrying on business for profit.

The exemption does not even appear to cover contractors acting for a highway authority.

Three of the four majority justices in this High Court decision — Justices Gaudron, McHugh and Gummow — also looked at what other common-law jurisdictions are doing or have done with the common-law doctrine of immunity. Since the two High Court decisions — *Buckle v. Bayswater Road Board* (1936) 57 CLR 259 and *Gorringe v. Transport Commission of Tasmania* (1950) 80 CLR 357 — the law in other common-law jurisdictions has moved away from the path of the common-law immunity. The other common-law jurisdictions of Canada, the United States of America, New Zealand and the United Kingdom are considered. The justices describe Canada as similar to Australia in its environment and geography, and the highway rule and the distinction between misfeasance and non-feasance in exercised statutory powers are not observed there. However, the reasoning in the case of *Anns v. Merton London Borough Council* in 1978 has been influential in the Supreme Court of Canada. The prevailing view in that court is that there is a general duty of care on a province to maintain its highways, but that the traditional law of tort and the duty of care applies to government agencies in the same way as to individuals and that liability is only avoided by establishing that a particular case falls within a recognised exception to the general duty.

In the United States the matter has been discussed long in the cases that come before the courts, and one reason is the distinction between cities and counties as units of government and how municipal corporations are treated as bodies exercising some governmental functions and thereby entitled at least to some extent to an immunity. However, most jurisdictions in the United States accept that the construction and maintenance of streets and public highways is not within the immunity.

In New Zealand the justices noted that there must be doubt whether such an immunity for highway authorities would now be upheld, given the adoption in New Zealand of the reasoning in *Anns v. Merton London Borough Council*, a 1978 appeals case decision in England. However, for the time being it appears that now the New Zealand court has specifically rejected the immunity.

In the United Kingdom the rule of law exempting inhabitants at large and any other persons as their successors from liability for non-repair of highways was abrogated by statute — in section 1(1) of the Highways (Miscellaneous Provisions) Act 1961. The state of repair of highways is now dealt with by sections 41 and 58 of the Highways Act 1980 in the United Kingdom. It is a defence that the authority take such care as is reasonable to ensure that the relevant part of the highway is not dangerous to traffic. Their Honours noted that what is of particular significance for present purposes is that the statutory duty by shifting the burden of proof on the issue of reasonable care to the defendant involves an even more stringent liability for defendants than would apply under ordinary negligent principles, but they also noted that the floodgates do not appear to have collapsed.

In *Street on Torts*, 5th edition 1972, Professor Street considers 'highway authorities', and he notes that:

> Persons who suffer injuries caused by the defective state of a highway may have causes of action against highway authorities in negligence, in nuisance derived from public nuisance, or for breach of statutory duty: often they will have a choice of action.

That stems from an English decision in *Simon v. Islington Borough Council* (1943) KB 188. The liability of all highway authorities for all these torts is regulated, as I said, by the Highways (Miscellaneous Provisions) Act 1961, and that section 1(1) abrogated the rule of

law which exempted highway authorities from liability for non-repair of highways. However, the section proceeded to define some of the criteria in deciding whether the highway authority had discharged its burden of proving that it had taken reasonable care, and those criteria are: the character of the highway, the standard of maintenance, the state of repair, whether the highway authority knew of dangers to users of the highway, whether the highway authority could not reasonably have been expected to repair that part of the highway before the cause of action arose and what warning notice of its condition has been displayed.

It was believed the enlargement of liability effected by that 1961 United Kingdom legislation would open the floodgates for speculative litigation but that was not — and is not — the case, because the United Kingdom courts deliberately curbed that tendency by insisting that a plaintiff must prove to the court that the highway is dangerous and the plaintiff must further prove that the danger was caused by a failure to maintain; and once the plaintiff has established those points the onus is then on the defendant to prove that it took reasonable care. Proof that the local authority inspected the footpath of even a minor residential road every three months did not exempt them from the liability when the court concluded that their resources — staff resources, financial resources — permitted more frequent inspection. That is in the case of *Pridham v. Hemel Hempstead Corporation* (1970) 60 LGR 113.

The three justices in the majority in the High Court of Australia decision of the cases of Brodie and Ghantous considered the content and breach of the duty of care and looked at the duty arising under the common law of Australia; and where the state of a roadway, whether from design, construction, works or non-repair poses a risk to a class of persons then to discharge its duty of care an authority with power to remedy the risk is obliged to take steps by the exercise of its powers within a reasonable time to address the risk; and also if the risk be unknown to the authority or latent and only discoverable by inspection then to discharge its duty of care the authority has to have taken reasonable steps to ascertain the existence of the latent danger that might be expected to exist.

The three justices, Gaudron, McHugh and Gummow, while considering that the common-law duty of care provided guidelines as to liability in different situations, looked at construction and design, repair, maintenance and works, pedestrians and inspections. They also importantly looked at the financial impact on a local authority. The formulation of the duty of care also includes consideration of competing or conflicting responsibilities of a local authority in that if their resources are available for construction and maintenance of roads, including the availability of skilled labour and other resources, then that may dictate the pace at which repairs may be made and affect the order of priority in which they are to be made. The justices said that even so it may well be reasonable for the authority to exercise other powers including, for example, erecting warning signs by restricting road usage or in extreme cases by closing the road in question.

Justice Kirby in his judgment in the High Court cases of Brodie and Ghantous spoke on the so-called highway rule and its acceptance as a common-law doctrine in Australia with immunity from legal liability for negligence and nuisance. He said that such immunity arises not from express conferral of what he terms a privileged position by statute but as a result of judge-made law. He asks three basic questions:

> Is the highway rule a defensible rule of the common law in Australia? …
>
> If not, should this High Court now re-express the common law? …
>
> If the common law should be re-expressed to abolish the immunity hitherto enjoyed by highway authorities, did a duty of care of a relevant scope apply to the authorities in question in the present proceedings? If so, was each applicant's respective damage caused by the breach of such duty so as to give rise to recovery in either matter?

In the judgment Justice Kirby's view was that:

> The highway rule is unsustainable in principle.

He gives his reasons over many paragraphs. In summary, he states:

> The immunity of highway authorities arose in England —

in the 18th or 19th centuries —

> and was received into Australian law before the tort of negligence was fully developed.

He says it was reconceptualised in the famous case of *Donoghue v. Stevenson*. He says that has influenced the law of negligence in the High Court. He states:

> … the emergence of a coherent law of negligence … had not occurred

when the High Court decision in Buckle was given in 1936 and had not been challenged in the 1950 High Court judgment in Gorringe. Justice Kirby says of the judgment:

> That decision represents the last occasion on which the immunity of highway authorities was considered by this court.

He said the 1936 High Court decision in Buckle and the 1950 High Court decision in Gorringe were at a time when High Court decisions:

> … were subject to appeal to the Privy Council and the importation into Australian law of a rule of dubious applicability to Australian conditions.

He states:

> Instead a rule was expressed conferring a large immunity on Australian statutory highway authorities. At common law they were not liable for 'non-feasance'. They were only liable for 'misfeasance'.

He draws the distinction between non-feasance and misfeasance as being highly disputable and contentious, and says that it is little wonder the immunity from liability provided only to highway authorities should be so troubling to judges. He states:

> The result has been a body of law that can only be described as unprincipled, unacceptably uncertain, anomalous, resting on an incongruous doctrine and obscure and inexplicable concepts, and giving rise to disputable escape mechanisms utilised by judges struggling to avoid conclusions so apparently unjust and repugnant to the normal policy of the law.

Justice Kirby considered the general approach to changing rules at common law, and states:

> It is obvious that the rules of the common law are in a constant process of alteration and re-expression. Far from this being a weakness of the legal system, its capacity to change is one of its greatest strengths.

Justice Kirby, as one of the majority judges in the High Court decision, set out his six criticisms of the common-law doctrine of highway immunity. They are:

> Criticism of the present rule is almost universal.
>
> … the rule exists as an exception to the general liability of tortious wrong-doers …
>
> … a re-expression of the common law would have significant cost implications …
>
> … law is now so complex as to encourage litigation …

He regarded the fifth argument as critical:

> … the duty of a court is to the law.

His criticism of the adoption of the common-law doctrine of immunity into Australia was that the English common law was simply picked up and applied without any proper regard to Australian statutory context and conditions.

His sixth criticism is that:

> … the immunity in question is exceptional.

In *Roy v. Prior* (1971) AC 470, Lord Wilberforce states:

> Immunities conferred by the law in respect of legal proceedings need always to be checked against a broad view of the public interest.

Justice Kirby states that the issues to be decided — —

Hon. N. B. Lucas — On a point of order, Mr Acting President, I find it embarrassing to have to raise a point of order, but the honourable member has spent three-quarters of her contribution quoting what judges said on everything she can think of. The motion is that the house calls on the government to do something and the response should be what the government is to do about it, not to have the honourable member spend 30 minutes or whatever quoting what justices have said over the past 100 years on the matter. We want to hear what the government thinks about the issue, not what judges have said over the centuries.

Hon. Jenny Mikakos — On the point of order — —

The ACTING PRESIDENT (Hon. G. B. Ashman) — Order! The motion refers to High Court decisions, as does the amendment. Therefore it is quite in order for the honourable member to quote from judgments. The issue Mr Lucas raises is about the nature of the debate. I note he is listed as a contributor to the debate later and he may care to take up those matters during his contribution. There is no point of order.

Hon. D. G. HADDEN — As I said at the outset, the tort law of negligence and nuisance is complex. The High Court decision expounds its complexity, if the Honourable Neil Lucas cares to read the judgment and the law of tort. Justice Kirby states:

> The issues to be decided, having regard to the statutory powers of the respondents … are … (1) Was the damage to the applicant reasonably foreseeable? (2) Was the relationship —

between the parties proximate; and:

> (3) Is it just and reasonable to impose a duty of care in the circumstances of the case?

It is important for the house to note that Justice Kirby said local authorities are not insurers for the absolute safety of pedestrians or other users of roads and footpaths, and to recover a person such as Mrs Ghantous must establish a want of reasonable care causing her injuries. Her injury was simply an accident, not negligence on the part of the respondent. In relation to Mr Brodie's case, as I said earlier that judgment was

remitted back to the New South Wales Court of Appeal for it to consider the remaining issues on appeal.

Justice Callinan, one of the judges in the minority judgment, notes the ramifications for a local authority of devising a different rule which could have financial and other ramifications far beyond what the High Court may be aware of or envisage. That view appears throughout the judgment of the High Court by the justices — that is, it is not as simple as one may at first think.

In 1987 the New South Wales Law Reform Commission considered the liability of highway authorities for non-feasance and misfeasance. Chief Justice Gleeson in the High Court refers to that in this decision, and he was the only judge who did, under the title of law reform. He states that the Law Reform Commission of New South Wales considered and reported on the liability of highway users in report no. 55 of 1987 that the nature of the recommendations demonstrated the complexity of the issues and the law, that the report examined the law in other countries and other Australian jurisdictions, and that it did not simply propose the abolition of the immunity common-law rule.

He states that, firstly, the report distinguished between two sorts of actions — those for personal injury or death, and those for property damage. In relation to actions for personal injury or death, the New South Wales Law Reform Commission recommended that the non-feasance rule should be abolished and that the duty of care owed by highway authorities should be left to be determined by general common-law principles, but that claims against such authority should be brought within the scheme of the New South Wales Transport Accidents Compensation Act 1987. That scheme provided for benefits significantly different from common-law damages.

He states that, secondly, in relation to actions for property damage, the New South Wales Law Reform Commission report said that the commission believed in principle that the non-feasance rule should be abolished but that it would be necessary for the financial consequences of that to be investigated, and recommended postponement of further consideration of the abolition for five years.

That did not occur in New South Wales. Chief Justice Gleeson notes that:

> The New South Wales Parliament did not act on the recommendations —

of the New South Wales Law Reform Commission but —

> on the contrary, in 1993 it enacted section 65 of the Roads Act.

The Chief Justice said, 'This area of law is complex', and further said:

> The step we —

the High Court —

> are invited to take in relation to property damage is a step the New South Wales Parliament was advised by …

its own:

> Law Reform Commission not to take without further investigation.

Therefore, it is a step the New South Wales Parliament should have taken but had not taken. He stated:

> These are additional reasons for concluding that it is not appropriate to change the law in the manner proposed by judicial decision.

Hon. E. J. Powell — Do you agree with that?

Hon. D. G. HADDEN — I have been telling you. State and local government road authorities can no longer assume they are immune from being sued for damages, but of course there is the law of tort of negligence and nuisance. The extent of the financial implications and possible exposure to litigation and damages claims for Vicroads, the local government authorities and the state follows this High Court decision. But it is unclear, because as I have said and as the High Court judgment has said, it is a complex issue and the law of tort is complex and evolves with the cases, and each case is determined on its own facts and circumstances.

The three justices in the majority — Justices Gaudron, McHugh and Gummow — said that evidence respecting funding constraints and competing priorities will be admissible and that the resources available to a road authority may dictate the pace at which repairs may be made and affect the order of priority in which they are to be made. Justice Callinan in his minority judgment said that it was not for the High Court to devise a different rule which could have financial and other ramifications on the local authority.

Lord Hoffmann in the case of *Stovin v. Wise* (1996) AC 923 commented that the court should be wary of undue intervention in decisions having significant implications for the budgets of public authorities. He said, and I quote:

> This would distort the priorities of local authorities, which would be bound to try to play safe by increasing their spending on road improvements rather than risk enormous liabilities for personal injury accidents. They will spend less on education or social services. I think that it is important, before extending the duty of care owed by public authorities, to consider the cost to the community of the defensive measures which they are likely to take in order to avoid liability.

As we have heard from the previous speaker, the Municipal Association of Victoria along with a number of councils, have written to the ministers calling upon the government to introduce legislation as a matter of urgency to abolish the common-law doctrine of immunity. Their concern is that the floodgates might open, and they identified the possible explosion of public liability insurance premiums as another risk of not reinstating the common-law doctrine of immunity, or the highway rule.

An investigation and analysis of this High Court decision of 31 May 2001 and its implications, if any, for both councils and other highway authorities has commenced and is being coordinated by the Department of Infrastructure and its transport branch. That investigation is not completed, and with respect I say that the investigation needs to fully analyse and investigate not only the High Court decision but also what the justices have said on the immunity rule and the financial implications that impact upon local authorities, and the New South Wales Law Reform Commission's report no. 55 of 1987. Those issues certainly need to be thoroughly investigated and analysed.

Two barristers, Richard Royle and Matthew Vesper, have written a paper for the October 2001 New South Wales *Law Society Journal*. I am a member of that law society. At page 38 they conclude:

> Cases have been fought for many years about the liability of highway authorities for misfeasance and thus considerations of the financial and other resources of … a council will not be new. However, with highway authorities now susceptible to attack for everything they do not do (as opposed to just those jobs they choose to undertake) no doubt highway authorities will rely all the more on limited funds and —

skilled labour, or lack of —

> as a defence.

As I have said, the Department of Infrastructure is analysing and investigating this very important High Court decision, which is the first decision of the High Court that has fully analysed the immunity rule since the High Court decision of Buckle in 1936 and since the 1950 case of Gorringe. So as I said earlier, there needs to be a proper and thorough investigation and analysis of all the issues and the immunity rule, as well as how it is working currently in other common-law jurisdictions. I therefore implore honourable members in this house to support the amended motion I have put to the house.

Hon. N. B. LUCAS (Eumemmerring) — We have before the house a motion moved by the Honourable Jeanette Powell which is a motion seeking to do something, then we have an amendment from the government which is an amendment seeking to do nothing. It is a procrastination amendment seeking to move this issue somewhere else so that the government will not have to make a decision.

We have just heard an extraordinary speech from the Honourable Dianne Hadden in which not once did she say what she thinks on this issue. She spoke to us for three-quarters of a hour, and in the whole time did not say what she or the government thinks about this. She read out the views on the matter of every judge in Australia, but did not give her own views or the views of the government she represents, the views of the government for which she is the lead speaker. She read out what everybody in Australia who sat on a bench and adjudicated on this matter thinks about it. That is a disgrace, because we come into this house to debate these issues and find out what the government thinks about them, not what judges around Australia think.

I am going to give a couple of quotes, but not as many as Ms Hadden gave. It seems extraordinary to me that the government is trying to get away with defending its position on this matter by quoting everybody else and not saying what it thinks. What a disgrace!

In the late 1960s I was studying local government law III at night school — I actually passed too. My lecturer at that time was a fellow by the name of Howard Nathan. He is now Mr Justice Nathan.

An honourable member interjected.

Hon. N. B. LUCAS — He has retired, has he? A good man!

There was a class of four people sitting in Owen Dixon Chambers. Out of all the things I learnt that year, I learnt about *Buckle v. Bayswater Road Board*, 1936. I did not realise back then as a young man, as I was in the late 60s, that I would be making a speech in the upper house of Parliament on such a case. The concept of non-feasance and misfeasance was something I learnt back in the late 60s, and finally it has become relevant. You know all those things you learn at school and wonder whether you will ever use, here is one that I can

use — misfeasance and non-feasance — and here we are in the upper house arguing about this issue.

I agree with one thing the Honourable Dianne Hadden said, and that was in relation to the background of where this situation arose. Of course it arose in England, and the Honourable Dianne Hadden quoted Professor Fleming as saying that is where it all came from. I agree with that. As a result of difficulties with parish councils in the United Kingdom not being able to satisfactorily resolve issues to do with liability on roads this rule was developed over a period through the Middle Ages. At that time road authorities and local people who were building and maintaining their own roads could not afford to get into difficulties. This rule came about as a result of the judicial system not wanting the individuals involved in that work to be individually liable.

It passed down through the ages in the form of a law that became quite common. It certainly did not, because of the protection it provided, impose any impossible or intolerable burdens on road authorities. It passed through into Australia as a result of the *Buckle v. Bayswater Road Board* case. I do not know whether it was Mr or Mrs Buckle, so I will just say that Buckle stepped into an open drain on the side of a road, and there was quite a discussion in the High Court in 1936 as to whether the road authority was liable. The argument revolved around whether the drain was part of the road or was part of drainage works. The confusing factor was that the authority, the Bayswater Road Board, was responsible for both drainage and road construction and maintenance, so the court had to decide whether the drain that Buckle stepped into, injuring him or herself, was the responsibility of the road authority or the drainage authority. It turns out that it was the road authority. The court then applied the law that had built up over centuries in the United Kingdom, where a lot of our law comes from. It asked whether that precedent should apply to Australia. Its answer was yes, it should.

As a result of that and other cases that have embedded that rule into our legal process, others have been able to rely on the non-feasance rule, under which a road authority does not have to do any works if it does not feel it needs to, to either maintain or construct a road. I hesitate to quote a judge, given what I have just said, but it is a fact that Mr Justice Dixon made what was a classic statement in that case. He said:

> It is well settled that no civil liability is incurred by a road authority by reason of any neglect on its part to construct, repair or maintain a road or other highway. Such a liability may, of course, be imposed by statute. But to do so a legislative intention must appear to impose an absolute, as distinguished from a discretionary, duty of repair and to confer a correlative private right.

So over a period of time the non-feasance rule has been considered around the commonwealth and has been used as a means of negating liability for road authorities, whether they be municipal authorities or authorities such as road boards or road authorities acting at the state level. Through the time that has elapsed two propositions come forward: firstly, that highway authorities owe no duty to road users to repair or keep in repair highways under their control and management, and secondly, highway authorities owe no duty to road users to take positive steps to ensure that highways are safe for normal use.

It is a fact that each state and territory around our commonwealth has its own set of laws and has the ability to affect issues of liability in relation to road authorities, whether they be councils or state bodies. In Victoria we have our own Local Government Act. Section 205 of the act says that a council has the care and management of all public highways vested in the council, all roads that have been declared, all public highways on Crown land — I am summarising — and all roads that the council has agreed to have the care and management of. It goes on to say in subsection (2):

> A council that has the care and management of a road —
>
> (a) must ensure that if the road is required for public traffic, it is kept open for public use …
>
> (b) may carry out work on the road; and
>
> (c) is not obliged to do any particular work on the road, and in particular, is not obliged to carry out any surface or drainage work on an unmade road.

What does that mean? It is interesting that prior to May this year, when the High Court made its decision, you might have thought this subsection was consistent with the non-feasance rule, in that a council ‘is not obliged to do any particular work’ and ‘is not obliged to carry out any surface or drainage work on an unmade road’.

You might think, ‘Yes, that is consistent. This act of the state Parliament of Victoria makes councils immune from liability if they do not do any work on roads’. However, as a result of the High Court decision this provision in our Local Government Act has been queried by lawyers, and it seems that in spite of those words some liability may attach to a local council in Victoria that in the opinion of the court causes injury or damage as a result of its inactivity.

To my knowledge that has not been tested, and the jury is out on whether, in the light of our legislation, if the High Court considered a case similar to the New South

Wales one that it decided in May, it would come up with the same result. We do not know the answer to that, but we have legal opinion that the council may well be liable in that circumstance. Time will tell, but only if a case is brought before a court in relation to this legislation prior to anything else happening.

If the government has its way it will be a long time before anything happens, because it has moved an amendment to the motion seeking to send the issue to the Australian Transport Council of Ministers. That is the best way the government could dream up of getting rid of it and having nothing happen. The government is seeking to push this issue off to a talkfest which will consider it and try to get a consensus. It will then probably have a cup of tea and spend as much time on it as it can while we and the councils wonder what will happen in Victoria. I will come back to that in a minute.

Over time some limitations have been placed on defining the ambit of the operation of this non-feasance rule. They can be described as reasonably nebulous, but they become relevant when the rules are applied. The first is the distinction between non-feasance and conduct on the part of a highway authority which is capable of being construed as misfeasance. Each case must be determined on its merits, and a court must decide whether a particular inaction or action comes under either of those rules. Many cases have been considered, and judges have had to make decisions in line with that distinction.

The second distinction is between a highway authority acting in that capacity and acting in some other capacity. That applied in the Buckle case I described earlier, where the authority acted as both the drains authority and the roads authority. In that circumstance a distinction must be drawn in the court as to under which responsibility an authority was acting.

The third distinction is that between works which are artificial structures and those which are part of the road itself. An example of that is a sign on a road which indicates that a curve is coming up or to stop or whatever. There have been cases in which the courts have been asked to determine whether the sign is part of the roadworks that the authority has carried out or whether it is just part of the authority's traffic management responsibilities. That is another distinction which helps courts narrow down the responsibilities of the highway authorities.

Over a period of time many decisions have made this issue more clear in some cases and less clear in other cases. Two cases provide an example of the less clear side of things. The first was *Tickle v. Hastings Shire Council* and the second was *Culcairn Shire Council v. Kirk*. In the first case Mr Tickle's truck was damaged as a result of a bridge collapsing, that bridge forming part of a highway. The defendant council had previously replaced the top decking of the bridge but had done nothing about the base, which was rotting and dangerous. The Supreme Court of New South Wales upheld the jury's decision that in those circumstances the defendant was liable for misfeasance for doing the works badly. The view taken was that if the defendant had done nothing the bridge would at some time have become impassable, and that could have happened before the plaintive had the accident. By redecking the bridge without remedying the defects underneath it the defendant created a danger on the highway. The action of redecking the bridge was negligent because the defendant should have foreseen that heavy trucks would pass over the bridge. That is a situation where the defendant council was liable for misfeasance.

In the other case, *Culcairn Shire Council v. Kirk*, the facts were reasonably similar but the court reached the opposite result. In that case the council had partially repaired a wooden bridge by replacing its central longitudinal tracks while leaving the traverse decking below unrepaired. Instead of travelling along the new longitudinal part of the bridge Mr Kirk chose to drive his truck along the traverse decking, and the heavy truck fell through the decking. The Full Court of the Supreme Court found in favour of the council in that case, the other way round from the first case. It held that the council was not guilty of misfeasance in repairing the bridge as its repairs had not created a new danger but had improved what otherwise might have been, and it could not be liable for its failure to repair the whole bridge, which could only amount to non-feasance. Although the court distinguished Tickle, the distinction is, if not illusory, at the very best undesirably fine.

The courts have had some interesting times. The Honourable Dianne Hadden read to us most of the decisions made over the past 150 years, and we will all be able to read her speech and check them out. When I was chief executive of the City of Berwick we had a situation where an officer from the then Shire of Pakenham was driving home after a very late council meeting — I think it was around 1.30 in the morning. In those days before the reforms council meetings went a lot longer than they do now. Thanks to the ministers of the time, they do not go as late now, but that is another issue. The council officer was driving in a southerly direction along Clyde Road in Berwick when he went over what he thought was meant to be a bridge, but as he went over the bridge his car dipped down quite sharply. He used his mobile phone to ring the

council I worked for and suggested it get somebody out to check the bridge. The officer who went to check the bridge found that one side was slipping into the creek. Nobody could have predicted this. The bridge had been inspected as I recall, but with the washing of the water under it the concrete structure had been slowly slipping. It was going to go and could have caused a huge problem for somebody. The bridge was closed and fixed up and nobody was injured or hurt.

I give that as an example of what can happen in real life. In real life you cannot predict every hole, gutter or trough in a road, and you cannot predict everything that is going to happen to a bridge. In one of the cases we heard about today, white ants tunnelled out the middle of the structure of a wooden bridge and it collapsed. There are so many things that can happen in real life that over time this non-feasance immunity has given a certain amount of protection against issues of the day as they occurred.

The next case I refer to is *Wade v. Australian Railway Historical Society*.

Hon. Jenny Mikakos — You said you would not discuss cases.

Hon. N. B. LUCAS — I am not quoting what the judges have said, and that is the difference with my contribution. I am telling you what I think. Ms Hadden told us what the judges thought. That is the difference between the government's contribution and what Mrs Powell has said and what I am saying. We are expressing views and opinions and what we think about these issues. Ms Hadden's contribution was taken up totally with what judges throughout Australia think. That is the difference between the government and the opposition.

The Wade case concerned a plaintiff who was injured when the motorbike he was riding collided with a steam train at a level crossing. There was evidence that the roadside adjacent to the level crossing was covered in long grass, which impeded his view of the crossing. The South Australian full court found the plaintiff's argument attractive but did not accept it in the absence of legislative intervention or express High Court authority to uphold those arguments. Further, the court held that the council was not liable in this case as its failure to clear the grass was an act of non-feasance.

The council had not cut the grass, but the fellow on the motorbike rode into the train because he did not see it coming. The council got off on the basis of non-feasance. The amount of grass growing and people's ability to ride along a road without taking due and proper care were the issues in that case. Interestingly, it was found that the council does not have to rush around cutting grass along railway tracks to ensure safety on its roads.

I shall refer to a couple of overseas issues, the first being in Michigan where there is a rule that if the footway diverts by more than 2 inches the council is liable and has to do something about it. If you walk along the footpath and trip over a crack in the footpath you have a case against the council. If the divergence in the footpath is under 2 inches the council wins and you lose because in that case you have not exercised sufficient care walking along that footpath and should expect these things to come up. In Michigan if there is a discontinuity in the defect of less than 2 inches that is a sufficient rebuttal against litigation. They get around it over there by having a standard. If the council or the road authority meets the standard set by the authority, in this case I presume it would be the state legislature, they have a defence. Instead of leaving it as non-feasance and that being the end of it, they employ a standard which has to be met. In such circumstances a court can relatively easily determine a case based on whether the standard has been met.

Another example I shall paraphrase is the municipal act in the province of Ontario, Canada, which says that the council shall keep a highway in a state of repair that is reasonable. In the case of a fault the council is liable for damages. The corporation is, however, not liable if it did not know and could not reasonably have been expected to know about the state of repair.

It goes on to say that the corporation is not liable if it took reasonable steps to prevent the default from arising. The corporation is not liable if at the time of the cause of the action arising minimum standards were applicable and those standards have been met, and the minister of transportation may establish minimum standards.

They get around it in Ontario by creating standards, and if the council does not meet those standards, and those standards are clear, liability is applicable. I would hope that in sorting out this mess consideration be given to the Wade case where people got around the issue.

I refer to another similar jurisdiction where the non-repair of highways was seen to incur liability. A number of potential issues arose such as a sewer, a manhole cover, a railway track projecting above the road surface, gravel debris spilling onto a road from a construction area, a mound of earth or sand and gravel left on the roadway, a hole in the road, undulating road surface with potholes, a drop of 3 inches from

pavement to shoulder, obliteration of double white lines, and ridges of gravel in the road.

Cases where liability was not imposed included loose gravel, small stones on a gravel road, a ridge of gravel and dirt left by a grader, sand spilled from sandbags used to stabilise traffic stanchions, a hole in the road unknown to the municipality, ruts and depressions in the highway, and a parked vehicle blocking the view of traffic. This area is full of potential liability and concern for councils for whatever happens on footways, roads or bridges. It has the potential to cause councils a great deal of bother. A range of differing legal opinions has been given. The other day I was using the Internet and saw how many opinions have been expressed about the highway rule in Australia. Much concern is being expressed. It is important to realise the potential worry for councils. In her contribution Mrs Powell mentioned what a number of councils have said to her, particularly about potential financial difficulties. Being a former municipal person I can understand those concerns.

For example, the Shire of Cardinia in my electorate has more than 1000 kilometres of unmade road. That is a huge worry for the residents. It was a worry before May of this year, and it is an even bigger worry now, because they know that if anybody has an accident on any of that 1000 kilometres of road, there is the potential for the council to be sued for damages. Based on the High Court ruling in May, and the lack of High Court interpretation of the Local Government Act in Victoria on this issue, the council knows it has the potential of loss through some action being taken against it.

It is a responsible council. It inspects its roads and has a maintenance program in place. The many bridges, many of which are made from timber, are inspected. The council does the right thing. In spite of all that, it just does not know what will happen tonight or tomorrow or next week, and it does not know what the results may be. In some cases, because of the enormous growth just to the west of that area — indeed there is enormous growth in the Shire of Cardinia in rural terms — there might be 400 vehicles a day travelling along an unmade road, which is probably four times the number this type of road is capable of taking. That number of cars may also be travelling along a made road, but the bitumen section might only be as wide as one car's length. There is kilometre after kilometre of that type of road around Victoria, which means that on that type of road every car passing another car has to put two wheels in the gravel and two wheels on the bitumen, and the driver has to hope they get past. We have all done that and seen it, and, as the honourable Jeanette Powell said, where there is a hole or rut or where there has been a bit of water that has caused a depression there is the potential for the council to end up in court.

It is not impossible for councils to predict those situations, but it is very close to it. But what is the answer? The answer is that instead of the staff sitting in the shire office collecting rates or helping people in need or whatever else the staff do — I could talk about that for hours — they will have to be put in cars and sent out to inspect roads. That is the only way to get around the problem. A huge amount of rates and other income will have to be devoted to asset management and road maintenance programs to try to get around this problem.

It is a policy issue, because there are elected councils all around Victoria that want to build football pavilions, other sporting facilities, swimming pools and libraries. The dilemma the elected members and council officers will be faced with if the situation we have had described today continues is: how are they going to do all the other things for which they are responsible if they have to devote so much of their resources to the roads, footways and bridges issue? It will become a matter of balance in each of the 78 councils. The question will be whether or not a council has reached a reasonable balance and devoted sufficient time, energy, money and staff time to ensuring it does not have a problem on the roads. That is just one difficulty.

The second problem revolves around the cost associated with this issue. The cost could be extraordinary. The house has heard what Civic Mutual Plus has stated about insurance. It has not only said that premiums will have to go up, it has said, 'We don't know whether we are going to be able to provide you with public liability insurance'. The result of that is that if you are uninsured you have a huge problem. I hope that situation will never arise, but the facts are that whatever happens the cost of insurance is going to go up astronomically. The cost of providing public liability insurance for councils across Australia will be significant. Councils will have to face up to that fact unless we get a solution.

The government is not providing a solution; it is providing a talkfest. The motion is about a solution; it is about asking the government to do something. That is something the government is not renowned for, and that is a worry. A number of questions arise as a result of this matter. What will the public liability premiums for councils across Victoria be in the future as a result of this case if the problem is not fixed up? Will councils obtain public liability cover? We have heard examples of the tourism industry not being able to get public

liability insurance. The fact is, very sadly, that the world has changed, and insurers such as Lloyds of London and other big insurance consortiums and organisations are facing up to huge demands and huge potential losses. You cannot blame them for being concerned, and you cannot blame them for putting up premiums. The fact is that premiums are going up and councils will have to find the funds to pay them.

What action will councils take if no solution is found? I suggest that there is potential for councils to close roads and close bridges. There is the potential — this is already happening — for councils to have to rip up the bitumen on made roads, because it becomes so difficult to continue patching them up, and to turn those roads into gravel roads again. There is the potential for rates and charges to be increased to meet these added responsibilities and the higher insurance premiums.

It is a fact that there will be greatly increased costs as a result of more sophisticated asset management and maintenance programs and inspections. It is a fact that there will be higher costs as a result of councils having to put more signage in to warn motorists to slow down, to warn them about bends and to warn them of all the other hazards on the roads. It might even be necessary to put up signs that say 'Potholes on this road'. It is a very costly process because the cost of signs is enormous. You would not believe how much it costs to put signs on the side of roadways, and then hooligans come along and shoot at them, pull them down or put graffiti on them. The cost of sign establishment and maintenance for local government is extraordinary.

The solution put forward by the government is to push the issue off to an Australian Transport Council meeting, which might not take place for another three or four months. When does it next meet? The Honourable Dianne Hadden did not say when the next meeting was. These meetings are set down months in advance. When is this group of ministers going to meet? If they do meet, will the agenda be sufficiently small for them to have a good discussion on this issue? If they have their discussion and come up with a solution, when will we actually get a result? The solution put forward by the Honourable Dianne Hadden is so far into the future that I have great concerns with it.

The biggest concern I have with the government's amendment is that it does not talk about bridges or footways, it only talks about roads. It is flawed. Honourable members know, and some of us have been listening to the debate on the motion since its start, that this non-feasance rule — the highway rule — relates to roads, footways and bridges. Yet the amendment proposed by the government only refers the roads issue to the ministers of the Australian Transport Council.

Hon. E. J. Powell interjected.

Hon. N. B. LUCAS — As Mrs Powell suggests, it is because they do not understand it. The government has referred only a third of the issue to the council, not the whole issue. The amendment is flawed. I hope honourable members will not support the amendment because we need a solution and the motion provides a solution. It suggests to the government that it urgently legislate to ensure municipal councils can continue to rely on the defence of non-feasance. It is quite simple. We have heard enunciated by Mrs Powell — I have tried to add to that — the huge problems faced by councils if nothing is done.

But Victoria has a do-thing government that is not into making decisions. It is into referring issues to committees and consultants — any way of getting them out of its hair and not having to make a decision. This is a classic example where the government has come up with referring a third of the issue to the Australian Transport Council.

We have an issue here of real concern to local government. Local government has been looking to its minister, the Honourable Bob Cameron in the other place, for some guidance, for some decisions and for him to do something. He has been very short on that. Since his time in that portfolio local government has become more and more depressed with his leadership.

Today we have an opportunity for the government to actually do something. We have a key issue which is of concern to all Victorian councils, but what have we had from the government on this? The government has waited until September, some four months after the High Court decision, not to take any decisive action but to call for an investigation. It has taken four months for the Minister for Local Government in the other place to call for an investigation. The minister should be castigated for sitting on his hands and not taking up this issue earlier because it was known to local government. It knew about this straight after the decision was handed down. The issue was well publicised, yet the minister took four months to do something about it.

It is quite clear from insurers what councils are facing in the future. It is quite clear that there is a potential for litigation against councils, which is an immediate concern. Yet the minister has provided no support. There has been no suggestion to councils as to how they should take on this issue and no guidance as to

what they should do. The minister has not taken this up in an appropriate way, and I think that is disappointing.

A lot of other things have not happened with the Minister for Local Government, and I will not dwell on them now. I do not know where he is spending his time and whether it is on Workcover, although I do not think it is in that area either. Sadly, he is a do-nothing minister, as is this government. That is a shame. The government prefers to pass these issues off and not make decisions, which is a shame because it is not providing the leadership that the people of Victoria need.

The High Court's decision in May has enormous implications for local government in Victoria. It has enormous implications for a range of reasons which I have indicated in my speech today. I support Mrs Powell's motion; the detail that she provided in her speech summarised the position really well. In support of that we need to have some action out of the government. The amendment deals with only part of the problem. We have a lack of action by the government. That is not what local government is looking for.

The government should support the motion and should not persist with this half amendment that does not deal with the whole problem. It should consider local government in a better light than to just have this matter passed off to some council of ministers. We do not know when they will meet, how long they will take to deliberate on the matter, when they will come up with any solution, what sort of a consensus they could get any way, and what will be achieved by referring the issue to them. I support the motion and I ask honourable members to vote against the amendment, which does not get us anywhere.

Sitting suspended 12.56 p.m. until 2.01 p.m.

Hon. R. M. HALLAM (Western) — My colleague the Honourable Jeanette Powell has brought a very simple proposition to the chamber. She argues that the government should develop a one-line legislative amendment to clarify the question of whether Victorian councils still have a non-feasance immunity — that is, the defence those councils have traditionally relied upon in any action arising from deterioration of their roads, footpaths or bridges. She argues that it is appropriate for that amendment to be brought forward to put beyond doubt the recent High Court decision in respect of two New South Wales councils and to clarify whether the decisions in those cases constitute a precedent for Victorian councils, or, if they do constitute a precedent, that the Victorian government re-establish the original position.

I am amazed because here is a golden opportunity for the government to be not only supportive of the motion brought by the Honourable Jeanette Powell, but for it to jump at the opportunity that it provides. I find it absolutely bizarre to hear the response on behalf of the government made by the Honourable Dianne Hadden, who quoted again and again from learned judgments. All that did was to confirm the fact that we have a problem. What we are seeking in this chamber — certainly on the opposition benches — is not a confirmation that we have a problem, but to find some solutions. It strikes me that the Honourable Dianne Hadden has not even commenced the conversion from being a country-based lawyer to a practitioner in this place. She has to understand that it is no longer appropriate to hide behind a learned judge's comments. She is responsible for the law of this community. She is a member of government. She can no longer say, 'This is what the judge said'. She is required to have an opinion as a legislator, and she dodged that responsibility completely. In any event, she came up with what I think is the most wishy-washy amendment I have come across.

Over lunch there was a conversation at my table as to whether it was the worst contribution that I have heard in my time as a member of this place. I could not conclude whether it was the worst, but it is very close to being that. It was absolutely off the mark. I sat here and listened to three-quarters of an hour of rubbish from you, Ms Hadden — —

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

Hon. R. M. HALLAM — And you have to learn that you are a legislator, not an apologist for some — —

Hon. K. M. Smith — Legal aid!

Honourable members interjecting.

The DEPUTY PRESIDENT — Order!

Hon. R. M. HALLAM — The amazing thing is that there are plenty of upsides for government in this debate. The first one is that it should be recognised that councils are in trouble. No-one is going to argue that case. This High Court decision about New South Wales councils represents an enormous shot across the bows of Victorian councils. It has put the frighteners on them and it means an enormous impact in terms of potential costs to a point where there is not even any pretence

that it can be budgeted for — it is in the too-hard basket.

We must leave aside the question of whether councils can afford the potential costs and the question of where that falls within this government's structure of best value. Let us make it very clear that the councils are not jumping at shadows, that their concerns are not unreasonable and that they have every reason to be terrified at the precedent, which is now offered by the High Court decision. What is worse is that instead of seeking protection through a demonstrated inspection of their asset registers, I fear that more and more councils will seek relief through restricting their infrastructure, not by bringing roads and bridges up to standard but by closing them because of the inherent risk in doing the reverse. Is government saying that is a rational response to the High Court decision?

There is another upside: government is saying, 'Trust us! We support local government'. This is the same government that went to the last election saying, 'The Kennett government is at fault because of the extent to which it did not support local government. We will be better. We will support you, friends in local government'.

And here is the first test, Mr Theophanous — I am pleased to see you in the chamber — and you have failed it miserably. You have turned your back on local government. Here was a chance to do more than simply talk. We need more than warm, cuddly rhetoric and platitudes. We need some action. We need a government to do something; 'something' would be appropriate. There is another upside. Here is a government smarting at the do-nothing tag.

Hon. N. B. Lucas interjected.

Hon. R. M. HALLAM — I hear the Honourable Neil Lucas offering some comments in respect of that!

Here is a glorious chance for the government to take some decisive action and to protect ratepayers. It is clear we do not need another review, another investigation, another working party, another committee. We do not need the government sitting on its hands as it has done for the last four months.

Hon. T. C. Theophanous interjected.

Hon. R. M. HALLAM — I for one, Mr Theophanous, am certainly not persuaded by the government strategy of sending this issue off to the Australian Transport Council of Ministers, because all that does, as Mr Lucas said, is defer the evil day. It simply reinforces the notion that this government is not prepared to take any decisions at all. I acknowledge that we would be better to have the response standardised across the states.

Hon. T. C. Theophanous interjected.

Hon. R. M. HALLAM — I want to come to that. I am pleased you are in the chamber, Mr Theophanous. You hold that thought and give it to me later.

Perhaps it is appropriate to have the response to this High Court decision standardised, but someone somewhere will have to take some initiative, and here is an opportunity for the Bracks government to demonstrate that it has something beyond platitudes and rhetoric. Let us see some action.

There is another upside, because the remedy in this case is very simple indeed. All the government would need to do would be to enact the existing common-law defence. That is a good place to start. Just simply encode what already applies. You do not have to take any bold new initiative. You simply need to go out and say, 'We shall encode the defence that has been there for 100 years'. That is not exactly a big deal.

Why do you want to run for cover? Why do you want to rely upon reams and reams of dissertations from learned judges? Why not decide to do something, rather than hide behind the rhetoric and the platitudes? That defence has been there for 100 years and has now been, questionably, at least to some extent rolled. All we are saying in this motion is to convert the common-law immunity currently out there to statutory immunity. It is not hard, nor is it complicated or even controversial, and it would be very well received by local government. There would be an enormous sigh of relief, and it would be one way in which this government could demonstrate that it would mean something more to local government than pretty words.

There is another upside. The timing of this would be absolutely propitious, given the chaotic background of the community's recent public liability experience. Let us just look at the general trend for a moment. We have a community becoming ever more litigious. We are following the American disease, much to my sadness.

Hon. J. M. McQuilten interjected.

Hon. R. M. HALLAM — Thank you for the interjection. It is now expected that we sue for everything, and we are following the American precedent to the letter. I might say it is egged on by an increasingly mercenary legal profession, or at least the no-win, no-fee brigade, which I suggest is a blight on

the legal profession and I also suggest a blight on the community.

I offer this to the legal profession because I know the hackles will go up: the legal profession should show more concern for its professional status and integrity other than to accommodate the no-win, no-fee minority. But that is a debate for another day. The community I am proud to represent is now being enticed to rely upon public liability as opposed to personal responsibility, and I suggest to the chamber that if I had time to develop that argument I could demonstrate that the ramifications of that are quite insidious. We are having an attitudinal shift. The genie is out of the bottle, and we now have expectations across the community that every time there is an accident someone else should pay for that; there should be compensation in every circumstance.

We also have a community that is becoming quite indifferent to the massive payouts being granted by our courts. Only last week we saw a medical negligence case result in a $13 million grant to a poor — a very poor — claimant. My heart goes out to the claimant, but it also goes out to the community that must now find $13 million as a result of that judgment. I suggest that we now have a profession across our court structure who see justice to the complainant as quite distinct from justice to the community. We need our judges to be reminded that someone has to find the costs of their judgments. As I said, I feel sorry for the victims, but I acknowledge that someone has to pick up the tab.

So that is the general background to the circumstance against which the Honourable Jeanette Powell brings her motion to the chamber. However, I then add the specifics — the HIH Insurance disaster. If that was not bad enough in isolation let us reflect that it camouflaged to some degree the extent to which the costs of public liability had been underpriced and camouflaged — artificially deferred — and so the true cost of public liability cover has in fact blown out as a direct result of HIH being removed from the market.

How is that for one incredible anomaly? It is a fact that more and more of our not-for-profit organisations are going belly up, simply because they cannot afford the public liability premiums, and that — for those honourable members of this chamber who have not worked it out — represents an enormous risk to our country communities, which are more heavily reliant upon not-for-profit organisations and volunteerism. The bottom line, as you well know, Mr Deputy President, is that more and more of those volunteers who have been the mainstay of those communities are now saying the risk is not worth while because the prospect of them being sued directly as a result of some claim arising from their community contribution is becoming greater and greater.

If you are not convinced, add the cream in the coffee — the unspeakable atrocity of 11 September and the massive flow-on effects of that, especially for our insurance industry and even more especially for the concept of public liability. I am told that Lloyd's of London has faced a potential loss of A$15 billion just in respect of the Australian fallout from 11 September. So what we have in front of us is the realisation that the rule book is being quite clearly rewritten.

It is against that chaotic background that I suggest the government frame its response to Mrs Powell's motion, because against all that background here is local government facing the potential of a break-out in public liability premiums because the High Court judges feel that the existing immunity, non-feasance immunity, is outdated.

I say that if we wanted a remedy coming directly from government, then the timing could not be better. Even if I were persuaded by the argument that the road authorities should be subject to the same rules of negligence as other authorities, I would say to the government, 'Maybe the logic is there, but please, there is a better argument. Do not do it now because of the ramifications in the background'. I make the point that the Bracks government could then fix the local government problem, and it could do so in a way that demonstrates that it understands the importance of the symbolism in positioning this government in the run-away public liability disaster. It could draw a line in the sand and demonstrate to the world at large that it actually understands what is happening here.

I suggest to the government that it should welcome that opportunity and not hide behind the stupid submission we heard from the Honourable Dianne Hadden but go out and respond to the opportunity that is being provided. If members of the government still are not convinced, let me offer a few other arguments which I think are appropriate in respect of the specifics of the High Court judgment. I say to members of the government that they could take some comfort from the dicta of the judges. I know Ms Hadden is very fond of quoting the learned remarks of judges, but she forgot to mention that three of the seven judges gave some comfort to the government in this context by saying that this issue is of such importance, of such incredible impact, that it would be most appropriate for the decision to be taken by Parliament.

What does the government think we are doing here? We are offering it the opportunity to take up exactly what the judges invited it to do. They said, 'We do not think that this immunity should be there, but if it is not going to be there then we think it should be a judgment taken by Parliament rather than by the courts of the land'.

I suggest to Ms Hadden that she go back and look again at *Brodie v. Singleton Shire Council* and *Ghantous v. Hawkesbury City Council* and find some comfort from the decisions taken there because the judges were clearly saying, 'This issue is of such moment that it should be determined by Parliament'. I again say that I hope Ms Hadden will some day make the transition to the point where she recognises she is a legislator responsible for the law of this land, particularly as a member of a government. It is totally inappropriate for her to parrot on about what the judges think — the chamber is more interested in what she, as a member of government, thinks and what she intends to do to find a solution for local government that is under the hammer.

I acknowledge at the outset that the court, by a majority of four to three judges, held that the non-feasance indemnity is outdated and unsatisfactory. I cast no reflection on the wisdom or merit of their judgment. I acknowledge it is true that the judges said, 'We think the immunity is anachronistic and that the liability of highway authorities should be governed by the principles of negligence'. But — and it is a very big but — I am sure they would acknowledge that it is arguable whether the precedent established in the High Court on the New South Wales cases, given that it refers directly to New South Wales councils and, therefore, New South Wales law, acts to override Victorian law. There is plenty of room to argue whether the precedent is effective in Victoria.

It may well be that for this government to enact legislation to put it beyond doubt would represent belt and braces. I would love to have the belt and braces because I could go to my councils and say, 'This represents an acknowledgment by the government that there is a shot across your bows'. I might also say to government that it could take comfort from the extent to which the dissenting judges held that the issue was of such importance that it should be determined by Parliament. In fact, the judges were holding up an invitation to Ms Hadden, among others, to say, 'Pretty please, will you hear what we have to say and make a decision?' — not to send it off to some third-level bureaucracy but to make a decision as a Parliament of the land.

I might also say, in case somebody has misunderstood, that non-feasance indemnity has never been absolute protection from negligence. Let us not run away with that notion — for example, it has never protected a council or road authority against claims in respect of danger that was actually caused by that authority through a poor construction or shoddy repairs. Both Mrs Powell and Mr Lucas have led evidence about that fact. It has assumed that no liability was to arise for that road authority or council in respect of normal wear and tear for roads, footpaths and bridges; the principle being — it is well understood and hardly complex, Ms Hadden — that the road authority owed no duty to remove dangers not of its own making. Ms Hadden may like to dress that up a little, but it is a very simple proposition that has now had a question mark placed over it by a High Court decision referring to New South Wales councils.

I acknowledge that what we are doing in that immunity is recognising that those road authorities or councils get a walk-up start. I acknowledge they get a privileged position vis-a-vis other authorities, but I submit to the chamber and particularly to the government that that is no reason to remove that protection but an even better reason to extend it.

Hon. P. R. Hall — To strengthen it.

Hon. R. M. HALLAM — To strengthen it — thank you, Mr Hall — because of the enormous ramifications emerging behind us in respect of the public liability debate. Here is a golden opportunity for the government to take hold of the agenda and to protect ratepayers in the process.

Hon. E. J. Powell — And they failed.

Hon. R. M. HALLAM — Government members have failed, Mrs Powell. They have actually turned down an opportunity that has been wheeled up to them and held up to the light. I ask the chamber to consider: imagine what the legal profession would do with this brand-new gravy train funded by councils that are seen to be fair game — that is a traditional view — a gravy train that has the council on the skewer but with an open-ended right to tax ratepayers.

I suggest we face the prospect of councils becoming another faceless wicket-keeper which would mean judges and juries would become even more generous, although I acknowledge it should read 'fair' in their view, with public funds. We are facing another revolution of the merry-go-round.

The bit that seems to be crucial in this debate is that in the judgment — again it was not referred to in the long

dissertation by Ms Hadden — the judges acknowledge that removing the immunity would mean the road authorities would be exposed to liability for failing to inspect for dangers. I ask the house to think that through. I repeat: the road authorities would be exposed to liability for failing to expect the dangers. You need not be Einstein to work out what that would mean in a court of law and the meal ticket it would represent for the legal fraternity. It would bring in all sorts of subjective tests and questions about what constitutes reasonableness and so on. Imagine what the lawyers would do with that. It is no wonder the legal profession is salivating in the background because of the High Court decision on the New South Wales cases. I suggest to the chamber that the community cannot afford the High Court's reasoned decision to shift the balance of responsibility away from the individual and further towards the public authority, or more particularly, towards the public purse.

If the government is not convinced that this is an appropriate initiative I remind government members that this is not a first in the restriction of access to common law. A couple of classic examples have been debated in this chamber ad nauseam. The first is in respect of the Transport Accident Commission where it is a fact of life that common-law entitlements were replaced to a large degree by statutory entitlements. If that is not convincing enough I refer to the Victorian Workcover Authority where Labor has just reinstated common law with all the bells and whistles in a restricted way. It is now only available to seriously injured and despite all the hoo-ha, that 'seriously injured' definition is even more restricted than that defined under the coalition government. The house should forget the rhetoric because the vast majority of Victorians injured in the workplace are denied access to common law by the direct actions of the Bracks government. That is a fact of life.

So, the government has already acknowledged the appropriateness of restricting access to common law. I would demonstrate the inconsistency in the position taken in respect of accidents on the road and accidents in the workplace, and compare that with the position taken by members of the government on this debate. Here is a classic opportunity for the government to demonstrate both a practicality and a recognition of community benefit so far as public liability relates to local government. As I said earlier, the government does not have to embrace a brand-new concept. All it has to do is institutionalise the status quo. This is the amazing thing: the only fight the government is likely to have is with the compensation lawyers. I find it intuitive that the two contributors to the debate on behalf of the government happen to be representatives of that profession.

I suggest it is time compensation lawyers were stood up anyway. I would be delighted at the prospect of doing so. I suggest that the proposition brought to the chamber by the Honourable Jeanette Powell is all upside for the government. I cannot understand why it wants to run away. Here is a glorious opportunity for the Bracks government to demonstrate its support for local government.

Hon. P. R. Hall — We are trying to help them.

Hon. R. M. HALLAM — We are trying to help them, Mr Hall. Here is a walk-up start; here is a gift wrapped for Christmas — but it denies it.

Hon. D. G. Hadden interjected.

Hon. R. M. HALLAM — You laugh, Ms Hadden.

Hon. D. G. Hadden — I do.

Hon. R. M. HALLAM — Shortly I will turn to your so-called amendment, Ms Hadden.

On the government's being prepared to do something, I am reminded of the words of the very famous Australian Football League coach who castigated his ruckman at three-quarter time because the team was behind. This well-known coach, who was very excited, went out and was so desperate that he said to the ruckman, 'I want you to do something!'. I don't care what; just do something!'. It is the same sort of advice as I give the government. It might help to shake off its do-nothing tag. I know that rankles; I understand that. Here is a golden opportunity for the government to demonstrate that there is something it can do, and that it can do it enthusiastically, cheerfully and quickly.

The remedy the Honourable Jeanette Powell is suggesting is very simple and well understood by all the players. There are no hidden bits here; out there in the marketplace local government understands it very well indeed. And I bet the same agitation that comes to opposition members will have been directed to government members as well. I bet those who have an interest in local government will have been imploring government members to do something about the current circumstances.

I suggest to the government that if all else is not persuasive it thinks about the timing, because the timing is absolutely terrific. It should also think about the symbolism that would be equated with such a view when public liability is becoming such a community

nightmare. Then if it is still not persuaded I suggest the government goes back and looks at the dicta in the judgment and acknowledges that the overturn of the non-feasance indemnity is held to be of such importance by the judges that they say — not me, they — that it should be determined by the Parliament.

I offer to the chamber plenty of examples where access to common law is restricted on the basis that Parliament needs to recognise that you cannot extend a right to an individual and do so in a vacuum. There is always a trade-off to the community at large. I suggest to the chamber that it is the proper role of Parliament to determine the balance of that trade-off — and that is the message I offer more than anything else to the Honourable Dianne Hadden.

I suggest that this offers an enormous opportunity for the Bracks government to do something. I am not impressed at all with the amendment. I do not feel the need to rebut it, because the lead speaker for the government did not mention it; she forgot about it altogether. It did not even come up in the course of conversation, so why should I set about rebutting it?

Hon. W. R. Baxter — She did not have any quotes to go with it.

Hon. R. M. HALLAM — Well I acknowledge that Justice Kirby is a learned member of our community and I rely very heavily upon what he says. But I remind the Honourable Dianne Hadden that she is a member of Parliament and meant to be responsible for the law rather than responsible for the comments of others. I am not persuaded that we should send this off to another ministerial council because, as the Honourable Neil Lucas says, that would simply be deferring it and hiding behind a delaying tactic. In any event, I am not sure that it should go off to the Transport ministerial council, because that would restrict the solution to roads and footpaths. I think it should be wider than that.

I hear of the enormity of the impact of the challenge to the Warrnambool City Council with its adventure playground at Lake Pertobe and the fact that it has decided to restrict that playground, not because it thinks it is a bad idea but because it is not prepared to run the gauntlet of a massive claim in the future. So my view is that maybe it is not appropriate to amend section 205, because that would restrict the solution to roads and footpaths. I think the liability of council should be restricted in all of its infrastructure. I think that would be an even better place to start. So it is not just about roads and footpaths but all infrastructure facilities.

I am not persuaded by the notion that we should be referring to other jurisdictions. I think we should be taking account of the difficulty facing our councils. Local government is a creature of the state. Members of the government are responsible for the administration of councils. They cannot hide from it; they are directly responsible — and I think it is time they picked up that responsibility.

In conclusion, I congratulate my colleague the Honourable Jeanette Powell on the research she has obviously undertaken and the logical structure of her presentation. I think she has brought a compelling case to the chamber today, and I commend the motion to the house.

Hon. JENNY MIKAKOS (Jika Jika) — I wish to make a short contribution to this debate and to reiterate the government's position on this matter as it has become quite apparent that the members of the Liberal and National parties who have contributed to this debate have missed the essence of the government's position — that is, that the Victorian government understands the concerns of local councils following on from the recent High Court decision in May this year and is seeking a solution to this problem at a national level.

It is important to put on the record that following the High Court decision in May this year the Department of Infrastructure immediately commenced investigation of the implications of the High Court decision, which has been coordinated by the executive and legal branch of the Department of Infrastructure. In addition to that, Vicroads, the local government division of the Department of Infrastructure and other key stakeholders are also participating in the investigation, and the department and relevant government agencies and authorities are seeking to consult with local government in this state to ensure that a proper and comprehensive solution to this problem can be found.

That is why the government feels the motion moved by the Honourable Jeanette Powell is overly simplistic in its approach. For example, it essentially calls on the government to reintroduce a defence of non-feasance, which the High Court clearly indicated was overly complicated and uncertain in its scope. The Honourable Neil Lucas suggested that the government's amendment failed to address issues to do with bridges and footpaths, but if one were to read the High Court decision it would become quite clear that the decision itself casts doubt on whether the non-feasance rule applies to bridges and footpaths. It talks about an exemption for artificial structures, which includes such things as bridges.

So it is clear that perhaps while well intentioned the motion moved by the Honourable Jeanette Powell is overly simplistic in its approach because, quite clearly, the High Court decision itself indicated that the scope of the immunity is overly complex and uncertain at the current time.

The government has taken a position that it is important to ensure that there is a national approach, because in this country federal, state and local governments all share financial responsibility for the maintenance of roads, bridges and other infrastructure. For this reason it has commenced discussions and, as I have indicated, the Department of Infrastructure is looking at this issue. In fact, the Council of Australian Governments has referred the issue of the High Court's decision to the transport ministers council for consideration. A national officers group has been formed to address the issue, and its report was due to be considered at the next meeting of the Australian Transport Council, which was postponed because of the federal election.

So I reject the assertion made by the Honourable Neil Lucas that the solution is some far way off, because it is anticipated that this issue will be dealt with by the next meeting of the Australian Transport Council, and all governments across this country are currently looking at finding a proper and considered solution to the implications of the High Court decision.

Until the investigations and reports are completed it would be premature for the government to discuss legislative changes. However, that is one of the options that will be canvassed in our considered response to the High Court decision.

While we are not ruling out legislative change in the future, we acknowledge that this is a very complex issue that needs a national approach. Unlike the opposition, we on this side of the house are prepared to adopt a cooperative, federalist approach to find solutions to problems that impact on all state governments and on federal and local government alike. That is the approach this government is taking. It has moved the amendment because it regards the opposition's motion as overly simplistic in its approach. In the short time available to me I will indicate why that is so. In his contribution the Honourable Neil Lucas referred to a possible solution. He said that the state of Michigan in the United States of America had legislated a standard of care. He gave an example of cracks appearing in footpaths and said that it was permissible to have cracks in footpaths up to a certain height, but where the crack exceeded that height the local council would be liable.

I share the concern of the Honourable Roger Hallam that we are becoming a more litigious society, but we need to ensure we have adequate support for people in our welfare system or that there is redress for people by virtue of a legal claim against a particular government authority or whoever the responsible party may be.

The government takes a cautious approach before it seeks to legislate away the rights of individuals. I reject the assertion and attack made by the Honourable Roger Hallam on the legal profession in this state. While I practise as a commercial lawyer, I think it was a very unfair criticism made against my colleague who made a very considered analysis of the uncertainty of the current law and said why the motion proposed by the Honourable Jeanette Powell was overly simplistic in its approach. The Honourable Roger Hallam went as far as to essentially criticise the legal profession for doing what it is employed to do — that is, to safeguard the rights of individuals in this state. The attack made on the legal profession by Mr Hallam is quite extraordinary. We are accustomed to the National Party and the Liberal Party seeking to do away with the rights of individuals without giving them proper compensation or legal redress, but I find it a bit rich to have two former local government representatives get up in this house and seek to express concern for local government when they were prepared to vote for legislation introduced by a previous Minister for Local Government abolishing local councils in this state and in fact sacking an elected council in my own electorate, the City of Darebin. I do not recall much support being given for local government by the Honourable Neil Lucas or the Honourable Jeanette Powell at that time. I find it a bit rich to hear honourable members on the other side get up here today and ostensibly say that they have some overriding concern for local government in this country.

It is important to indicate that the rule of non-feasance, referred to as the highway rule, is a very complicated one, as my colleague the Honourable Dianne Hadden has admirably indicated in her speech in this debate. The High Court, particularly in the majority judgment, indicated that there were many qualifications to this particular rule and that it would be very difficult to develop clear legislation to reinstate the highway immunity.

The Honourable Roger Hallam said it would be a one-line amendment. I find that quite extraordinary. It indicates the ignorance of the opposition parties on this issue and the overly simplistic approach they would seek to take. I would find it extraordinary and I would be interested if the opposition parties could come up with such a one-line amendment to fix this problem

because the High Court in its judgment indicated that the extent of the rule at common law had not been certain and was subject to many capricious exceptions. It would be difficult to draft legislation that duplicates the full nuances of the old common law and all its exceptions with a degree of certainty of application or interpretation. There is a risk that such legislation may exclude a wider class of legal actions than was actually intended.

Given the time available to me, it is unfortunate that I cannot go into the difficulties associated with the overly simplistic approach being put forward by the National Party, but I think its members need to have a good hard look at themselves and have a read of my colleague's speech in *Hansard* tomorrow — perhaps while they are at the races! They should spend some time reading *Hansard*, looking at the High Court case again and appreciating the difficulty of the approach they are proposing. The government is committed to finding a solution to this problem, but it wants to find a solution which takes a national approach and which would achieve uniformity across the states. It is for that reason that the government is supporting the amendment that has been moved by the Honourable Dianne Hadden.

Hon. E. J. POWELL (North Eastern) — I am pleased to welcome the opportunity to sum up. I urge honourable members to support my motion and to oppose the government's amendment. I am pleased to have the opportunity of putting some words on the record because I was given the amendment as I was speaking and did not have an opportunity to look at it. It is not just about transport issues or roads. The Honourables Neil Lucas and Roger Hallam in their wonderful presentations said it is also about bridges and footpaths. The fact that the issue is going to the Australian Transport Council would have no relevance to this particular issue.

This is not a knee-jerk reaction. The government will have enough evidence shortly to make an informed decision regarding legislation. The Municipal Association of Victoria is working with the government. They have a committee. They have put a submission forward. The government's own investigation should bring forward some answers.

Each state has its own legislation and laws and this government has a duty to protect Victorian communities. Local government is looking for leadership and at the moment, with this amendment, the community is certainly not getting it.

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

Ayes, 27

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

Noes, 14

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

Amendment negatived.

Motion agreed to.

PAPERS

Laid on table by Clerk:

Alpine Health — Report, 2000–01.

Ambulance Service Victoria–Metropolitan Region — Report, 2000–01.

Australian Food Industry Science Centre — Report, 2000–01.

Bairnsdale Regional Health Service — Report, 2000–01 (two papers).

Barwon Health — Report, 2000–01.

Barwon Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Bayside Health — Report, 2000–01.

Benalla and District Memorial Hospital — Report, 2000–01.

Boort District Hospital — Report, 2000–01.

Calder Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Caritas Christi Hospice Ltd — Report, 2000–01.

Central Murray Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Cobram District Hospital — Report, 2000–01.

Cohuna District Hospital — Report, 2000–01.

Country Fire Authority — Report, 2000–01.

Eastern Health — Report, 2000–01 (three papers).

Eastern Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Echuca Regional Health — Report, 2000–01.

Forensic Medicine Institute — Report, 2000–01.

Equal Opportunity Commission — Report, 2000–01.

Geelong Performing Arts Centre Trust — Report, 2000–01.

Gippsland Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Goulburn Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Grampians Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Grants Commission — Report, 2000–01.

Health Promotion Foundation — Report, 2000–01.

Highlands Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Infertility Treatment Authority — Report, 2000–01.

Inglewood and Districts Health Service — Report, 2000–01.

Kooweerup Regional Health Service — Report, 2000–01 (two papers).

Kyabram and District Memorial Hospital — Report, 2000–01.

Kyneton District Health Service — Report, 2000–01.

Law Reform Commission — Report, 2000–01.

Legal Aid — Report, 2000–01.

Legal Ombudsman — Report, 2000–01.

Legal Practice Board — Report, 2000–01.

Library Board of Victoria — Report, 2000–01.

McIvor Health and Community Services — Report, 2000–01.

Metropolitan Fire and Emergency Services Board — Report, 2000–01.

Mornington Peninsula Regional Waste Management Group — Minister for Environment and Conservation's report of receipt of the 2000–01 report.

Nathalia District Hospital — Minister for Health's report of 30 October 2001 of receipt of the 2000–01 report.

National Gallery of Victoria — Report, 2000–01.

North East Victorian Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Northern Health — Report, 2000–01 (two papers).

Northern Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Peninsula Health — Report, 2000–01.

Peter MacCallum Cancer Institute — Report, 2000–01.

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

Manningham Planning Scheme — Amendment C22.

Melbourne Planning Scheme — Amendment C50.

Mildura Planning Scheme — Amendment C14.

Portland and District Hospital — Report, 2000–01.

Radiation Advisory Committee — Report for year ending 30 September 2001.

Rural Ambulance Victoria — Report, 2000–01.

Royal Victorian Eye and Ear Hospital — Report, 2000–01.

South Eastern Regional Waste Management Group — Report, 2000–01.

South Gippsland Hospital — Minister for Health's report of 30 October 2001 of receipt of the 2000–01 report.

South West Healthcare — Report, 2000–01.

South Western Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

St Vincent's Hospital (Melbourne) Ltd — Report, 2000–01.

Statutory Rules under the following Acts of Parliament:

Supreme Court Act 1986 — No. 111.

Supreme Court Act 1986/Adoption Act 1984 — No. 112.

Supreme Court Act 1986/Administration and Probate Act 1958 — No. 113.

Subordinate Legislation Act 1994 —

Minister's exception certificates under section 8(4) in respect of Statutory Rules Nos. 111 to 113.

Strawberry Industry Development Committee — Minister for Agriculture's report of 31 October 2001 of receipt of the 2000–01 report.

Tallangatta Health Service — Minister for Health's report of 30 October 2001 of receipt of the 2000–01 report.

Upper Murray Health and Community Services — Minister for Health's report of 30 October 2001 of receipt of the 2000–01 report.

Victoria Police — Report, 2000–01 (two papers).

Victorian Civil and Administrative Tribunal — Report, 2000–01.

Wangaratta District Base Hospital — Report, 2000–01.

Western District Health Service — Report, 2000–01.

Western Health — Report, 2000–01.

West Gippsland Healthcare Group — Report, 2000–01.

Western Regional Waste Management Group — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Wodonga Regional Health Service — Report, 2000–01 (three papers).

Women's and Children's Health Service — Report, 2000–01.

Yarra Bend Park Trust — Minister for Environment and Conservation's report of 31 October 2001 of receipt of the 2000–01 report.

Yea and District Memorial Hospital — Minister for Health's report of 30 October 2001 of receipt of the 2000–01 report.

Proclamations of His Excellency the Governor in Council fixing operative dates in respect of the following Acts:

Environment Protection (General Amendment) Act 1989 — Section 9 — 1 November 2001 (*Gazette No. S183, 31 October 2001*).

Environment Protection (Industrial Waste) Act 1985 — Remaining provisions — 1 November 2001 (*Gazette No. S183, 31 October 2001*).

LEGAL AID (AMENDMENT) BILL

Second reading

Hon. M. R. THOMSON (Minister for Small Business) — I move:

That this bill be now read a second time.

Victoria Legal Aid (VLA) is responsible for the delivery of legal aid services in Victoria. It is required to provide legal aid in the most effective, economic and efficient manner, and to make legal aid available on an equitable basis to the community at a reasonable cost.

Grants of legal assistance are frequently made with a condition that the assisted person pay a contribution towards the cost of providing legal assistance according to their means. Client contributions are assessed by reference to a means test.

Client contributions are an important source of legal aid funding. In the last financial year, VLA recovered about $3.4 million in contributions.

Assisted persons are often not required to pay their contribution immediately. Where the assisted person owns a house or land, VLA may require that person to provide an equitable charge to secure the cost of providing assistance. These secured contributions are generally recovered only when the assisted person sells their house, unless that person's financial circumstances change markedly for the better in the meantime.

If an assisted person's circumstances do improve significantly, they may be asked to make an earlier contribution either in total or on an instalment basis. However, because VLA's clients are among the most disadvantaged in the community, this happens relatively infrequently.

This means that VLA usually recovers its secured contributions many years after the grant of legal assistance is completed. VLA estimates that over $16 million in client contributions is currently secured in this way.

This system of securing client contributions has been around since the 1960s.

A problem with this system has recently come to light. It has been established that client contributions secured by equitable or statutory charge which are over 15 years old cannot be enforced because of the operation of the Limitation of Actions Act 1958.

VLA estimates that the value of secured contributions which are currently over 15 years old is about $2.2 million. This amount is expected to increase by $1 million per annum for the next 11 or so years. Needless to say, VLA is concerned not to lose this important source of funding.

The government shares these concerns. The government is committed to a justice system which is fair and accessible to all Victorians. VLA plays a key role in that commitment. Without legal aid, the justice system would be the exclusive domain of the very rich. It is essential that VLA receives adequate funding so

that it can deliver access to justice. Client contributions are an important source of this funding.

The bill ensures that secured contributions can be collected by VLA. It does this by excluding contributions payable to VLA which are secured by equitable or statutory charges from the operation of the Limitation of Actions Act 1958.

The bill also makes an amendment to section 27(1)(c)(ii) of the act to make it clear that VLA has the power to charge any property in which the assisted person has an interest, including land. The expression 'property' in the subparagraph has always been taken to include land. The amendment clarifies Parliament's original intention in this regard.

The bill will assist VLA to fulfil its statutory charter in this regard and ensure that VLA continues to deliver legal aid services to the most vulnerable and disadvantaged members of the community equitably and at a reasonable cost.

I commend the bill to the house.

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

Debate adjourned until next day.

HEALTH SERVICES (CONCILIATION AND REVIEW) (AMENDMENT) BILL

Second reading

Hon. M. M. GOULD (Minister for Industrial Relations) — I move:

That this bill be now read a second time.

This bill amends the Health Services (Conciliation and Review) Act. The amendments expand functions performed under the act, improve the effectiveness of the act and provide the commissioner with necessary additional powers.

The Victorian act created the first Health Services Commissioner in Australia. The commissioner investigates complaints, encourages conciliation and conducts inquiries. The office of the commissioner is independent, informal and inexpensive.

A decision to review the act arose out of experience with its administration and examples of legislative innovation in other states. Concerns had also been raised about the effectiveness of the act in dealing with unregistered providers of health services. A discussion paper was distributed widely in September 2000. The paper canvassed the following issues:

whether the functions of the Health Services Commissioner and the Health Services Review Council should be expanded;

whether amendments should be made to improve the effective operation of the act; and

the capacity of the commissioner to deal with complaints against unregistered providers of health services.

The bill makes amendments to address each of these issues.

Functions of the council and the commissioner

The functions of the Health Services Commissioner and the Health Services Review Council are described in the act.

The Health Services Review Council is an advisory body that currently has a limited role. The bill gives the council a larger role in providing expertise, guidance and advice to the commissioner. The council will also be given responsibility for promoting the commissioner, the commissioner's operations and the act's guiding principles. The council requested this expanded role.

The amendments provide grounds on which a council member may be removed.

The bill confers new functions on the commissioner to provide education and training, and to conduct research. These amendments give statutory recognition to this important role.

The bill will repeal redundant provisions relating to the incorporation of the commissioner's code of practice in regulations.

Improving the effectiveness of the act

The bill makes amendments that will improve the effectiveness of the act. Broadly, the amendments address the scope of the commissioner's jurisdiction, the procedures for dealing with complaints, and the confidentiality provisions in the act.

Scope of the commissioner's jurisdiction

The act applies to all providers of health services. Amendments will clarify the range of providers and users who fall within the commissioner's jurisdiction. The new definitions, which include therapeutic

counselling and psychotherapeutic services, reflect changes in the delivery of health services since the act commenced.

Procedures for dealing with complaints

Substantial parts of the act govern the commissioner's procedures for receiving complaints, carrying out investigations and conciliating complaints. Amendments will be made to these provisions to improve the effectiveness of the act. The need for these amendments arose out of the commissioner's experience with the act.

Confidentiality

The bill amends the act's confidentiality provisions. Confidentiality is fundamental to the operation of the Health Services Commissioner. Nevertheless, confidentiality must sometimes yield to the public interest.

The bill provides that information which would otherwise be confidential may be disclosed in three circumstances. First, in the course of criminal proceedings. Second, where the Minister for Health decides that disclosure would be in the public interest. And, finally, with the written consent of both the health service user and the provider of the service.

The existing provisions that require ministerial permission to divulge confidential information in criminal cases are cumbersome and delay the criminal process. These provisions give no guidance about when confidentiality should be broken. The amendments address these issues. The amendments also clarify the ambiguity in the current drafting of the act about seeking permission for disclosure from the person to whom the information relates.

These exceptions will apply only to matters that are under preliminary assessment or investigation by the commissioner. They will not apply to matters in conciliation which continue to be protected. However, the confidentiality provisions concerning conciliation will be amended to allow conciliators to discuss cases with each other.

The bill clarifies the circumstances in which a person can be required to give evidence or produce a document to a court in relation to confidential information. The commissioner and her staff will be able to give evidence in the course of criminal proceedings, but cannot be required to do so unless the proceedings relate to offences under the act.

A new provision will give power to the commissioner to refer material received outside the complaints process to a registration board or other authority. To do so, the commissioner must have the permission of either the person who provided the information or the minister. The minister is the most appropriate person to decide when the public interest overrides an individual's interest in maintaining confidentiality.

Strengthening the commissioner's powers

The discussion paper raised the issue of whether the commissioner's powers are sufficient to deal with complaints against unregistered providers.

Although the act already applies to unregistered providers, the ultimate penalty of deregistration is not available. For this reason, it is important that the commissioner has sufficient power to respond to all complaints, including those about unregistered providers.

While it is not appropriate to give the commissioner enforceable powers, it is also not appropriate to allow providers to thumb their noses at the commissioner. The bill enables the commissioner to determine whether a provider has implemented the commissioner's recommendations following an investigation. The penalty for failing to provide a report on action taken upon a complaint will be increased.

The act will be amended to insert grounds on which the commissioner may name a person when making a report to Parliament. This will provide guidance to the commissioner on when this important power should be used.

It is envisaged that these powers will be used rarely. However, they are necessary to expose serious threats to individuals and the community, and repeated failure by providers to remedy complaints.

The Health Services (Conciliation and Review) Act has provided an independent, informal and inexpensive way of resolving complaints about health services and promoting better medical practice. The principles that inform the act have proved to be enduring statements about the values that underlie good quality health care. The amendments in this bill promote those values by expanding the functions of the council and commissioner, by improving the effectiveness of the act and strengthening the powers available to the commissioner.

I commend the bill to the house.

Debate adjourned on motion of Hon. ANDREA COOTE (Monash).

Debate adjourned until next day.

STATE TAXATION LEGISLATION (AMENDMENT) BILL

Second reading

Hon. C. C. BROAD (Minister for Energy and Resources) — I move:

That this bill be now read a second time.

This bill contains a number of minor but important amendments to the Duties Act 2000, the Land Tax Act 1958 and the Taxation Administration Act 1997. The bill will implement technical amendments to these acts that are ultimately driven by the government's determination that Victoria manage a taxation environment in which compliance costs are minimised and the relevant law is clear and transparent.

The amendments to the Duties Act are minor and are required to clarify the operation of existing policy. Taxpayers and their representatives will welcome the amendments. Indeed, the gestation of most of these proposals is in the close consultation with industry, which I am pleased to say is a hallmark of the approach of this government across the full range of its activities, including taxation administration.

I will comment briefly on each measure included in the bill.

Clarification has been made to the definition of 'collateral mortgage' in the Duties Act, to ensure that it accords with the multijurisdictional model and to ensure consistency with other relevant provisions in the act.

Following representations from industry representatives, the longstanding position that a mortgagee's interest in marketable securities is not dutiable has been confirmed. Section 10 of the Duties Act charges duty on certain transfers of dutiable property. A mortgage over land creates an interest in land but not one that is dutiable property under section 10. Paradoxically, a mortgage over shares creates an interest in shares and an interest in shares is dutiable property under section 10(1)(g). This means that a transfer of a mortgage over shares is dutiable on the amount of the value of the interest. The bill includes an amendment to section 10(1)(g) to exclude a mortgagee's interest from the definition of dutiable property.

Again, to ensure that the Duties Act retains the policy position set by the former Stamps Act 1958, section 14 of the Duties Act will be amended to ensure that an instrument of transfer of land is taken to effect the transfer of goods sold with the land.

Unlike New South Wales, where duty is chargeable on the execution of a contract of sale, a dutiable transaction in Victoria occurs at the time of transfer of the property or when beneficial ownership in the property changes.

Under the Duties Act, goods sold with the land constitute dutiable property. The difficulty with this from an administrative perspective is that the present transfer of land form only evidences the land and fixture components and does not evidence the transfer of goods at the completion of a transaction (settlement of the sale).

Therefore, the Duties Act requires amendment so that it deems a transfer of land form to evidence any goods passing with the land. This will restore the position which applied under the Stamps Act, which also deemed references to real property to include chattels.

The bill also makes a minor adjustment to the conveyancing duty provisions relating to the off-the-plan duty concession as outlined in section 21(4). Section 21(4), which mirrors section 63B of the Stamps Act, provides a duty concession on transfers of land under the Subdivision Act 1988, in respect of the refurbishment of lots within the meaning of that act. The amendment will ensure that the exemption operates as understood by both industry and the State Revenue Office and that the Stamps Act position is preserved.

Similarly, the bill contains provisions which will clarify the operation of the relevant sections setting out the time for calculating the unencumbered value of dutiable property. The current Duties Act provisions provide that the transaction (usually evidenced by the transfer being delivered at settlement) not only triggers the liability but also determines the date on which the dutiable value is to be determined. This is template legislation designed for regimes where the contract is the dutiable transaction. In Victoria the transfer (settlement of the contract) is the dutiable transaction.

The bill amends the relevant provision to ensure that the value upon which sales are assessed is determined by reference to the date of the sale (contract), whilst in all other cases the date of the transaction remains the relevant date.

A change is made to section 36 of the Duties Act, substituting for the provision currently in the act, which is modelled on the New South Wales draft, with one taken from the Stamps Act. These are the provisions providing a duty exemption for transfers of dutiable property passing to the beneficiaries of a trust.

The current exemption contained in section 36 of the act and its predecessor, exemption (10) of heading VI of the Stamps Act, provides relief for transfers of dutiable property to certain eligible beneficiaries.

The reason for providing the relief is that the beneficiaries have already borne the burden of duty, and therefore do not have to do so when they receive their beneficial entitlement. The new provision will achieve this outcome and reduce taxpayer uncertainty about the operation of the existing Duties Act position.

The bill also excludes certain arrangements from the definition of hire of goods. The current provision in the act was introduced to provide an exemption in relation to the goods hired as part of a lease of real property arrangement where duty in respect of the whole of the agreement was payable under the lease provisions.

With the abolition of lease duty, the government is keen to maintain the exemption applying to goods included in a leasing arrangement involving real property where there is no apportionment of the consideration between the right to use the goods and the right to occupy or use the land.

These amendments all clarify the operation of the law and will ensure that there is no confusion in the marketplace as to the operation of the relatively new Duties Act in areas where there is long-established and widely acknowledged policy.

One area representing a minor change in policy concerns the duty free threshold that currently applies to commercial hire arrangements for equipment financing arrangements.

Currently, the monthly duty-free threshold for the first $6000 of hiring charges received is available to all commercial hire businesses registered under the Duties Act. It equates to $45 duty per month and applies to both hiring charges under equipment financing arrangements and ordinary (that is, any other) hire of goods.

This duty relief was originally introduced to simplify administration and protect revenue by replacing with a fixed deduction the previous system that allowed hire businesses to artificially reduce dutiable income by increasing the costs of maintaining the goods in a rentable condition.

The $6000 duty-free threshold does not apply to duty payable in regard to special hiring agreements under the Duties Act, given that these arrangements are already eligible for substantial duty relief.

The Australian Finance Conference has requested removal of the duty-free threshold on behalf of its members involved in equipment financing arrangements. The current provisions create difficulty for hirers, as they cannot accurately calculate and pass on the appropriate share of the monthly 'discount' of $45 to their individual customers without excessive administrative difficulty and cost.

With this amendment, the Duties Act provisions will be consistent with those in New South Wales, the Australian Capital Territory and Tasmania. As is the case in those jurisdictions, the monthly duty-free threshold would continue to apply to hire charges received by commercial hire businesses in the course of the ordinary hire of goods.

The proposed change should generate a small revenue increase, with the maximum increase expected to be around $80 000 per annum.

The bill also makes a minor change to section 31 of the Duties Act to reflect changes in language effected by the passage of the Corporations Act 2001. Minor corrections are also made to the transitional provisions relating to mortgage duty.

The amendments to the Land Tax Act 1958 are of a machinery kind but will assist taxpayers in ensuring that there are common administrative requirements across all tax lines. The Land Tax Act is the only taxation act where the administration and enforcement provisions are not governed by the Taxation Administration Act. The provisions in the Land Tax Act relating to the service of documents and other process will be amended to bring them into line with those applying across the other taxation lines. The administration act provisions setting out when service is deemed to be effective will also be inserted into the Land Tax Act. The provisions currently in the Land Tax Act are antiquated and the cause of some confusion, both to taxpayers and the commissioner. This bill will effect some much-needed modernisation in this area.

Finally, the bill makes two amendments to the Taxation Administration Act 1997. A provision modelled on section 40 of the now repealed Stamps Act 1958 will be inserted into the administration act, which will enable

the commissioner to apply to the Supreme Court for an order requiring an agent of the commissioner to account for tax received by the agent and to pay that tax forthwith.

Section 40 of the Stamps Act empowered the commissioner to seek orders requiring the payment to him of moneys received on his behalf as duty by third parties. This provision applied to persons utilised as agents to collect duty for endorsing documents, such as banks. Such persons were made accountable for such amounts, which were deemed to be debts payable to the state. Application could also have been made to the Supreme Court for an order requiring such persons to show cause why they should not provide an account upon oath of all moneys payable and why the moneys should not be paid.

Although the TAA empowers the commissioner to recover unpaid tax, it does not enable recovery where a person, acting as an agent of the commissioner, fails to remit moneys collected. There is also no provision enabling the commissioner to apply to the court seeking an order for the remedies that were available under the Stamps Act.

Such a provision would assist recovery of outstanding tax in cases of insolvency or fraud on the part of an agent, whether in the duties or payroll tax fields.

The second amendment inserts new provisions into the Taxation Administration Act which deal with the failure by a person to comply with a notice sent by the commissioner requiring the production of documents or that a person attends upon the commissioner to give evidence under oath.

Section 73 of the TAA empowers the commissioner to require persons to produce information and answer questions on oath. This requirement is triggered by compulsory notice. The TAA provides as its only mechanism for enforcing compliance with such compulsory notices, the prosecution of the person for failure to comply with the notice. A fine may be imposed by way of penalty.

Before the court is empowered to make remedial orders directing the recipient to comply with the terms of such notices, a conviction based on the criminal standard of proof must be obtained from a court. This can be a protracted and costly process, with outcomes uncertain due to the high standard of proof required. The penalties which a court may impose in these circumstances are potentially low and, given the sums at stake, may provide insufficient inducement to comply.

It is proposed to amend the TAA by aligning it with provisions that are similar in effect to those contained in section 27 of the Casino Control Act 1991. This would enable the commissioner, where he is satisfied that a person has without reasonable excuse failed to comply with a request for information, to approach a court which may inquire into the case and, if appropriate, order the person to comply with the requirement.

It is proposed that civil standards of proof would apply. Non-compliance could then be dealt with in a timely and effective manner. The amended provisions would therefore place greater emphasis on ensuring compliance with the requirement to produce information, rather than imposing a penalty as such. It also subjects the use of the notice provisions to a proper scrutiny by the courts, and therefore strikes a proper balance between the requirements for effective administration and the principle that the exercise of administrative powers be the subject of judicial overview.

I commend to bill to the house.

Debate adjourned for Hon. D. McL. DAVIS (East Yarra) on motion of Hon. Philip Davis.

Debate adjourned until next day.

MARINE SAFETY LEGISLATION (LAKES HUME AND MULWALA) BILL

Second reading

Debate resumed from 31 October; motion of Hon. C. C. BROAD (Minister for Ports).

Hon. PHILIP DAVIS (Gippsland) — We are ready to go on the most important bill — that is, the Marine Safety Legislation (Lakes Hume and Mulwala) Bill — and I say that not out of disrespect for the issues that are in the bill because it is important in a minor way particularly to people who are involved in recreational boating on lakes Hume and Mulwala, but the bill demonstrates that the government is bereft in a legislative sense of initiative.

In addition to this bill, presumably the house will consider during the current sitting — given that legislation has been introduced in the other place — two further marine bills, which could have been dealt with under one instrument of legislation. The fact that the Marine (Further Amendment) Bill and the Marine (Hire and Drive Vessels) Bill are before the Legislative Assembly as well as this legislation indicates that the government is breaking its legislative program into

small parts specifically to create the impression that it has a significant program when in fact it does not. I will give this bill the time that I think it deserves.

The Liberal Party will support the bill because it is a sensible initiative with strong community support. I have consulted widely with stakeholders who have an interest in the legislation, including the relevant municipalities along the Murray River, the peak recreational fishing body, a number of fishing clubs and associations, the State Emergency Service, a number of yacht clubs, some boating retailers, and the Australian Volunteer Coast Guard Association.

It was an education for me to find that there is a branch — what do you call it, Ron?

Hon. R. H. Bowden interjected.

Hon. PHILIP DAVIS — A flotilla of the association.

I acknowledge that the commander of that flotilla on Lake Hume, Ferdi Sedhoff, has given strong support for this bill.

As was outlined in the second-reading speech, the bill seeks to rationalise the application of marine safety legislation in Victoria and New South Wales in relation to Lakes Hume and Mulwala on the Murray River. The purpose of the bill is to deal with the fact that the border between Victoria and New South Wales, which follows the top bank of the Victorian side of the Murray River, is submerged beneath those two lakes. When combined, the operation of this legislation and the corresponding New South Wales legislation, which will be passed through the New South Wales Parliament this spring, will ensure that marine safety laws in each state reflect one another.

The effect will be that the New South Wales marine safety legislation will apply to the waters of Lake Hume upstream of the Bethanga Bridge and to all the waters of Lake Mulwala, including the waters of the Ovens River north of the Murray Valley Highway Bridge. The Victorian marine safety legislation will apply to the waters of Lake Hume downstream of the Bethanga Bridge.

The legislation is before the house because there has been a problem for many years with boat operators identifying where the border is and which relevant laws apply. This has become more important recently with the Victorian government's introduction of boat licensing. There are some anomalies that are not resolved and are in some senses compounded by this legislation in relation to the different treatment of recreational boating arrangements between Victoria and New South Wales. I refer in particular to the exemptions for operators of motor boats who travel at less than 10 kilometres per hour. It is important to highlight this, and there are other exemption issues that could perhaps be dealt with during debate on other legislation later this session. However, there are some anomalies that will be highlighted. While the presumption is that this legislation will make it simpler for boat operators to understand what the rule of law is in respect to a particular part of the waterways on the Murray River — that is, the two lakes — the differences between boat operator licensing regimes in the two states will be highlighted.

This bill does not seek to deal with the different statutory requirements for fisheries licensing. Recreational fishermen will still have to be aware of the different arrangements in New South Wales and Victoria in the regulation of bag limits and so forth.

The recommendation for these amendments came from the New South Wales/Victoria Border Anomalies Committee, which identified the need to rationalise the enforcement of marine safety legislation on lakes Mulwala and Hume because the border is submerged beneath the waters of those two lakes. Obviously it is important to clarify that issue. We should note that the bill will ensure that there is more certainty about the relevant jurisdictions than there has been, but at the same time leaves unresolved the differences between the jurisdictions in respect to boat operator licensing.

While I could take the opportunity to repeat the concerns the Liberal opposition has about those differences and the lack of certain exemptions, I have to say that I am sure we will be discussing that issue further during this parliamentary session. However, I do note that the particular exemption that is of concern and will continue to provide incredible confusion is the exemption that is available in New South Wales to boat operators with motors on boats travelling at speeds less than 10 kilometres per hour who will not have that exemption available to them in waters that are under Victorian state jurisdiction.

Therefore, without further ado, Mr Acting President, I repeat that the Liberal Party supports this small bill but is disappointed that the government has sought to bring it in in the way that it has and not as part of a package of significant marine legislation reform.

Hon. G. D. ROMANES (Melbourne) — The bill resolves a longstanding border issue associated with boating safety for recreational boaters, an issue that has worried those who use the waters along the Murray and

the governments of Victoria and New South Wales for a long, long time.

The bill aims to make boating safer in the waters of lakes Hume and Mulwala on the Murray River through the easier identification of state boundaries for this purpose. This bill is a great achievement because it represents the fruit of interstate cooperation and increases certainty for recreational boaters and for the enforcement officers who have to implement and enforce the rules under which people participate in water sports on those two lakes. This bill contributes to improving safety on the waters of those lakes, particularly for sports in which a lack of attention to rules can endanger not only the lives of participants but also the lives of many other innocent people. This legislation is an important step forward.

The agreement between the governments of Victoria and New South Wales to proceed with this legislation results from recent recommendations of the New South Wales/Victoria Border Anomalies Committee. This agreement was reached following consultation, which was primarily undertaken by the Department of Premier and Cabinet but which also involved the Department of Infrastructure, the Marine Board of Victoria, the Department of Natural Resources and Environment, Victoria Police, Goulburn-Murray Water and relevant New South Wales departments. Opinions were also sought from the State Boating Council, which represents recreational boating in the state and, through Goulburn-Murray Water, users of watercraft in the area and municipalities in the north-east municipalities network.

There was overwhelming support for this move, and agreement to proceed with the legislation was announced in March 2001 in a joint communiqué associated with a meeting of Victorian and New South Wales ministers.

The bill overcomes problems posed by the current border situation between New South Wales and Victoria. The borders are difficult to identify. A map of the two lakes shows that the legal border follows the top of the bank on the Victorian side of the Murray River but the actual border twists and turns and winds its way across both lakes, and there is of course no visible sign of where those boundaries are and which rules for boating and jurisdictions apply when the lakes are full of water and the Victorian bank is submerged. The bill will rationalise the application of marine safety legislation in Victoria and New South Wales in Lake Hume and Lake Mulwala on the Murray River border.

The legislation will apply New South Wales laws to all of Lake Hume upstream of the Bethanga Bridge and all the waters of Lake Mulwala and the Ovens River north of the Murray Valley Highway Bridge, and it will apply Victorian law to all of Lake Hume downstream from the Bethanga Bridge and to the remainder of the Ovens River. The bill clarifies boundaries for the application of New South Wales and Victorian laws to provide for more effective enforcement of marine safety requirements under the Victorian legislation.

At the same time new and corresponding legislation will be passed through the spring sessional period of the New South Wales Parliament to bring boating operations on the two lakes into line with existing arrangements for the rest of the Murray along the Victorian border, which is under the jurisdiction of New South Wales.

Part 2 of the bill provides for the application of New South Wales marine safety legislation and associated New South Wales laws such as jurisdiction in the New South Wales courts in the transferred Victorian area. Conversely part 3 provides for the application of the marine safety legislation of Victoria and associated Victorian laws in the transferred New South Wales area. The bill will provide authorised officers in both states with the power to fulfil enforcement functions in the relevant areas. The agreement made between the two states includes a commitment to maintain effective enforcement at current levels and for the coming 2001–02 summer boating season to take an educational approach to the introduction of these changes rather than to take a punitive approach at this stage, and to induct the public into the changes that have been taken.

Under the agreement officers of the Waterways Authority in New South Wales will undertake the primary enforcement role while the Victorian enforcement officers such as Victoria Police and others authorised under the Marine Act of 1988 will also enforce New South Wales boating safety laws as necessary. So there are some differences between New South Wales and Victorian boating laws, as the previous speaker mentioned, but these are minor, with mutual recognition of boat operator licences and boat registrations.

Boating safety is a very important issue, and the Bracks government has taken a number of steps to address the various issues relating to it. Members of the house will recall that last year the government moved to introduce new licensing arrangements for operators of recreational vessels. That is to be extended to hire vessel operators in a bill that will come before the house shortly. It will address issues of risk and put

further requirements on those using high-speed vessels and on juniors, who often lack the experience of those who have been using watercraft for a long time.

As I mentioned, the changes in the bill have been well received by the boating community. That is understandable in the sense that it is in everyone's interest to ensure that those who use the waterways in this state, particularly the many young people out on the water in the summer months, have a good knowledge of marine safety and boating rules. It is in the interests of everybody to strengthen the boating safety provisions in Victoria. That is why this legislation is coming in in the spring sitting of Parliament to be ready for the 2001–02 summer season.

There is more work to be done in further collaboration and cooperation between the states. The Victorian and New South Wales fisheries agencies are currently working together to progress harmonisation of fishing laws in the areas of Lake Hume and Lake Mulwala and there are proposals afoot for Victoria to manage recreational fishing issues in Lake Hume and for New South Wales to manage Lake Mulwala. Community consultation will be held to resolve differences over issues such as seasonal closures, bag limits, size limits and gear regulations. More work needs to be done to ensure adequate pollution controls in the event of accidents and to clarify those responsible for tackling any situation or accident that might happen that could include impacts such as pollution of our waterways.

It is important in looking at the bill to understand its context. It is one important outcome of significantly increased collaboration between New South Wales and Victoria. That was advanced in March this year on the eve of the celebration of the 150th anniversary of Victoria's separation from New South Wales by the historic first joint meeting of the two full cabinets of the New South Wales and Victorian governments.

All ministers were present to look at ways to further direct cooperation and deliver improved outcomes in the environment, the economy and through the delivery of basic government services. A lot of positive measures have flowed from the increased cooperation between the two states, such as the Albury-Wodonga local government reform, the Snowy River flows, improvements in the operation of the national electricity market, a better delivery of health care services and the removal of border anomalies such as those the house is dealing with in the bill.

The March meeting of the two cabinets of the two most populous states in Australia — New South Wales and Victoria — highlighted the need for a national government that suitably engages the states and local government on major policy issues. We are on the eve of a major event in our country where we may take a major step towards having a more effective collaborative federalism should we see a change of government at the federal level next Saturday, because the commitment of the state Labor governments and the federal Labor opposition is for collaborative federalism. They are committed to cooperation and working together at state, federal and local government levels to resolve issues of difference and working together to address issues of concern to the three levels of government. Therefore it is important to look back and see what has happened since that March meeting, such as the decision to introduce legislation to clarify the border and the respective responsibilities of the state for the enforcement of boating laws, the subject of the bill.

Next Saturday the people of Australia have the opportunity to move further towards achieving effective collaborative federalism. In the meantime I commend the Bracks Labor government for bringing forward through this bill the fruits of the New South Wales–Victorian cooperation that has been effected in the past few months.

Hon. W. R. BAXTER (North Eastern) — It is a pity that the Honourable Glenyys Romanes only believes the rhetoric reported back to her down here of what allegedly happens in the regions of Victoria. She does not often get to visit those places, and she made it clear in her remarks that she has no idea what is going on in Albury-Wodonga. If she seriously believes the so-called historic joint meeting of the two cabinets was a resounding success obviously her lines of communication are unclear and her feedback is somewhat erroneous.

The two cabinets arrived and, without any consultation with the local councils and in total contradiction of their stated policies about local government restructure, the two Premiers announced that Albury and Wodonga would merge municipally. What happened? All hell broke loose to the extent that now one of the leading issues in the federal election campaign in that region is what the Bracks and Carr governments are proposing to force down the throats of the people of Albury-Wodonga, yet anyone listening to the Honourable Glenyys Romanes could have thought the announcement was the best thing since sliced bread! She also referred to other cooperation between the two governments flowing from the so-called historic joint cabinet meeting.

I invite her to explain to the house why the New South Wales Minister for Transport, the Honourable Carl

Scully, is absolutely refusing to meet his part of the partnership deal to assist in the building of the internal relief road between Albury and Wodonga. He is steadfastly refusing to put a dollar in, yet the Honourable Glenyys Romanes has told the house today that there is some great cooperative federalism or some great movement between the New South Wales and Victorian governments for cross-border cooperation. That is far from the case. That is simply rhetoric that has been fed to the honourable member, and without checking the facts unfortunately she has believed it.

I was also somewhat intrigued by her remarks on how boating safety would be improved by the bill. I am all in favour of boating safety, but I do not think this legislation has anything to do with safety per se. When talking about boating laws and the like, I would have thought that when this state moved as it did last year to bring in licensing for boats in Victoria, it may have been useful had the legislation coincided with what applied in New South Wales. Not only did we previously have an anomaly in that New South Wales required licensing while Victoria did not, now both states require licensing but on different parameters. In a sense that is a worse anomaly than we had previously when licences were not required for Victorian boat owners. It is a tragedy that some commonality was not reached at the time.

Hon. P. R. Hall — If we had commonality we would not need the bill.

Hon. W. R. BAXTER — I suppose in many respects, Mr Hall, if we had commonality we would not need this bill.

In a sense the bill gives certainty and clarity about which boating laws will apply on particular locations in Lake Hume and Lake Mulwala. It means New South Wales law will apply to large sections of both lakes that are in Victoria. Victorian law will not apply to any parts of Lake Mulwala. I am not complaining about it; I simply state it as a fact.

I am somewhat surprised that New South Wales law will continue to apply upstream in the Ovens River as far as Parolas Bridge on the Murray Valley Highway, which is well upstream and in the very upper reaches of Lake Mulwala. The Ovens River has Victorian territory on both its banks for some distance to that point. I am quite prepared to accept that as being a reasonable point, because it is clearly identifiable to boat owners, enforcement officers and others. There can be no dispute as to where the demarcation line exists. On that basis I accept it as a reasonable demarcation line simply because it is so obvious.

However, for the purposes of the legislation probably 150 kilometres of the southern part of Lake Hume, which is in Victoria, will now be deemed to be in New South Wales, and probably 3 kilometres of Lake Hume that is now in New South Wales will be deemed to be in Victoria. If somebody puts a boat into the lake at Wymah they will be putting it into New South Wales waters, as they are now, and they will be deemed to be in New South Wales waters if they cross to the southern bank. As such, they will need a licence as they do in New South Wales, but the licence will not actually apply to boats with motors of a fairly small size.

However, somebody putting a boat into the water in New South Wales at the plantation boat ramp will have to comply with Victorian law. So in a sense they will have a tighter law applying to them than has hitherto been the case. I am not complaining about that, but I state that that will be the effect. I think there is a good deal of support in the Albury-Wodonga area for certainty and clarity, bearing in mind that it is impossible to know what is the true and legal border between Victoria and New South Wales because it is so often submerged under many feet of water.

It is also clear that recreational activities on bodies of water are becoming increasingly popular. As people living near the coast enjoy boating on the sea, similarly people enjoy boating on inland waters. If you look at the development of the town of Bellbridge and at the rural residential development on both sides of the river from Walwa down to Corowa you see that more and more people are building houses and living near the river and using boats. To get some certainty about the border will clearly be of assistance to those people.

I support the legislation coming forward in the way that it has. It could well be template legislation for other border anomalies. The legislation demonstrates to the house and to the people that you can legislate to have the laws of another state apply in part of your territory. Clearly that makes sense. It seems to me that in all this argument on border anomalies it is not necessarily an amalgamation of the councils on both sides of the river that would solve some of the border issues but more of having the different state laws applying on both sides of the river. It is having different laws on each side of the river that causes tradesmen and residents, whether they are builders, plumbers, dentists or whatever, who have to cross from one side to the other to live under two regimes. This legislation makes it clear that template legislation can apply in a defined area of an adjoining territory to overcome such confusion and difficulty. To that extent it is well worth while persisting with this.

Regardless of whether the Albury-Wodonga merger occurs I look forward to legislation similar to this being used as a model for overcoming some of the anomalies those of us who live on the border confront in our daily lives. It could scarcely have been imagined by the map makers who were sitting in the Colonial Office in Whitehall in the 1830s and 1840s carving up the colonies that using a river as a border, as logical, sensible and easy as it may well have seemed to them at the time, could 150 years later cause so much difficulty and angst in administration and public policy making. I cannot blame those ancient bureaucrats, but they have certainly provided more than one government since then with some difficulties.

I noted that the Honourable Glenyys Romanes went on at some length about fishing laws, but I am not sure that the bill makes any reference to fishing laws at all. Again I would invite her to put her cooperative federalism into practice and speak to her colleagues in New South Wales, because the New South Wales Minister for Fisheries, Mr Obeid, has threatened to severely curtail, if not totally prohibit, fishing in the Murray River.

Hon. C. C. Broad — That is not true, and you know it.

Hon. W. R. BAXTER — Well, he has written a letter to the newspapers and it has certainly been canvassed in Sydney, there is no doubt about that. If cooperative federalism is as good as the Honourable Glenyys Romanes suggests, I would have thought that this would be a useful opportunity for that matter to be immediately clarified so that there is not some suggestion that people will be prohibited from fishing recreationally in the Murray River. A report or recommendation has been made to that effect, and while the New South Wales minister has backed away from it he has not yet trashed it, so I invite him to do so.

I think this legislation will work in practice. I do not foresee that there will be any difficulties with it. I think it is a step forward, and it will provide some certainty to those many hundreds of people who derive so much enjoyment from water activities at Lake Mulwala and Lake Hume. I am pleased to give it my support.

Hon. E. C. CARBINES (Geelong) — I am pleased to speak as an honourable member for Geelong Province on the Marine Safety Legislation (Lakes Hume and Mulwala) Bill.

Hon. Philip Davis interjected.

Hon. E. C. CARBINES — Marine safety is a very important issue in my electorate. I am very fortunate, along with the many other Geelong residents, to share a significant part of the Victorian coast as my home. It is a part of the Victorian coast which many Geelong residents and other people from the region enjoy very much and to which tourists come to enjoy recreational activities involving marine craft. So marine safety is very much a local issue for me, Mr Davis.

In the Geelong region we are fortunate to have a natural coastal asset for all to enjoy. As summer approaches it is very pleasing to see many Geelong residents and visitors enjoying themselves along our coast at Corio Bay and beyond. On the weekend I was pleased to attend with my family the opening of the Portarlington Sailing Club sailing season. It was terrific to see the members of the Portarlington Sailing Club and their families eagerly anticipating the start of the boating season. We enjoyed their hospitality very much. I would like to thank Commodore Bryan Kennett and the other members of the Portarlington Sailing Club for their hospitality. I wish them well and a safe boating season over the coming summer.

This bill refers to two locations that are many kilometres away from Geelong Province. I am concerned that marine safety is also an important issue on inland lakes. While I have never been to Lake Hume, in my youth I spent time in Yarrawonga and on the shores of Lake Mulwala. I had a wonderful time there enjoying the natural attractions and assets. In fact, the family of a friend from university owned the pub near the bridge that crosses Lake Mulwala. I enjoyed many holidays there while I was at university, and I can attest to the beauty of that region and of Lake Mulwala. I know it is enjoyed by many thousands of people from Victoria and New South Wales as a recreational and holiday destination, and I assume Lake Hume is equally as splendid and as well patronised.

I congratulate the Minister for Ports on her preparedness to improve marine safety on Lake Hume and Lake Mulwala, as evidenced by the bill before us today. The bill deals with a quite unusual situation in which part of the border between Victoria and New South Wales is submerged under the two lakes. The bill seeks to address the current difficult situation in which people using Lake Mulwala and Lake Hume are unable to determine exactly where Victorian law applies and, conversely, where New South Wales law applies.

The New South Wales/Victoria Border Anomalies Committee has for a long time identified the need to rectify this situation and rationalise the enforcement of marine safety laws on lakes Hume and Mulwala. In fact the committee has been looking at the situation and at options to address it for over a decade, and it has taken

the cooperation of two great Labor governments in Victoria and New South Wales to see this longstanding problem resolved.

I was very disappointed to hear Mr Baxter's disparaging comments about this cooperation, when sadly he took the opportunity to condemn my colleague the Honourable Glenyys Romanes for her support of it. I take the opportunity to point out to Mr Baxter that in the years of the Kennett government, in which he was a minister — and I notice he has run out of the chamber at this time — this situation was not resolved. The Kennett government allowed this rather unfortunate situation to remain.

I am sorry that Mr Baxter was not able to make that observation himself, but I am happy to point it out to him. The Victorian Minister for Ports and the New South Wales Minister for Fisheries signed an historic agreement and issued a joint press release dated Monday, 26 March 2001. The press release headed 'NSW and Victoria reach accord on cross-border fishing' states:

> An historic joint agreement … which would end decades of cross-border confusion for recreational fishers …
>
> The NSW Minister for Fisheries … and Victorian minister for fisheries … have jointly announced an in-principle agreement has been reached for the management of recreational fishing in lakes Hume and Mulwala.
>
> It's jointly proposed that NSW will be responsible for managing Lake Mulwala and Victoria will manage recreational fishing in Lake Hume. Outside of these waterways, NSW laws will continue to apply along the River Murray.

The New South Wales minister is quoted as saying:

> This proposal is a practical decision which ends years of frustration for local recreational anglers, tourists, local fishing businesses and the community …
>
> This proposal will now be presented to the community so that all stakeholders can have a say before any final decision about cross-border recreational fishing is made.

I will now explain the community consultation process that took place following that announcement in March this year. The State Boating Council of Victoria has welcomed this initiative and supported the agreement and the bill before us today.

The north-east municipalities network has also been consulted. Goulburn Murray Water, which manages the two lakes, has been consulted and supports the legislation. In turn, Goulburn Murray Water has consulted its own waterway users and local municipalities to ensure they all understand and have an opportunity to voice any concerns about the bill. There has also been consultation with Victoria Police, so honourable members can see that the bill before the house today has broad community support in Victoria. I understand the New South Wales Parliament introduced complementary legislation two weeks ago. Once this bill and the New South Wales bill are passed, it is intended to have the legislation commence in time for the coming boating season.

The passage of the bill this afternoon will mean that New South Wales laws will apply to all of Lake Mulwala and that part of the Ovens River north of the Murray Valley Highway bridge, also the section of Lake Hume upstream of the Bethanga Bridge. Victorian law will continue to apply on the rest of the Ovens River and on Lake Hume downstream of the Bethanga Bridge. It is important to acknowledge that officers of the Waterways Authority of New South Wales will undertake the primary enforcement role. Upon passage of this bill an educational campaign will take place to ensure that all people using lakes Hume and Mulwala are fully aware of the new status.

This bill is a sensible response to a longstanding, confusing situation for boaters and fishers who use Lake Hume and Lake Mulwala. Its passage will improve marine safety and has the support of the boating community. I congratulate the Minister for Ports on her cooperative work with the New South Wales government to resolve a confusing situation which the Kennett government chose to ignore for users of the two lakes. I therefore wish the bill a very speedy passage.

Hon. R. H. BOWDEN (South Eastern) — I rise to support this bill. I believe it will go a long way towards eliminating some confusion that has been in the area for a long time. In supporting the bill it is worth noting that for the past 20 years or so there has been a steady and regular increase in the area of recreational boating in the areas of Lake Mulwala and Lake Hume.

The bill is the product of consultations that have occurred between the New South Wales/Victoria Border Anomalies Committee and others. It will clarify the difficulties that have been in place for a long time. I intend to speak for only a few minutes to mention some of the highlights.

The main point is that there has now been an agreed position between the New South Wales and Victorian governments so that the boating community and people who use lakes Mulwala and Hume for recreational boating now have the ability to understand the requirements that will apply for future use of that area commencing with the summertime of 2001–02.

The areas that will be subject to New South Wales law will be all of Lake Mulwala and that part of the Ovens River north of the Murray Valley Highway bridge which is also known as Paralos and the section of Lake Hume which is upstream of Bethanga Bridge — as was delineated and outlined in the second-reading speech — and Victorian law will also continue to apply not only to downstream of the Bethanga Bridge but also to the remainder of the Ovens River.

The point I would like to make to honourable members is the important marine safety aspects that go with the increased use of boating and recreational activities on the water in these areas. I place on record my appreciation and recognition of the selfless sacrifice and long-time contribution to the community by the Australian Volunteer Coast Guard and by the water police and other emergency services — the State Emergency Service, ambulances, and so forth.

Boating safety in these areas has been looked after for a long time by several groups. As most honourable members know, I have the honour and privilege of being the Victorian patron of the Australian Volunteer Coast Guard, Victorian squadron. I pay tribute to the flotilla which is operating on Lake Hume and also, even though it is some distance away, the other inland operation of the Australian Volunteer Coast Guard at Lake Eppalock. It is not readily known but it is a fact that the Lake Hume flotilla of the Australian Volunteer Coast Guard is busy and very successful and does a great job — as does the one at Lake Eppalock.

In conclusion, I would like to record in my comments the need to have this legislation in place so that we can understand exactly in relation to lakes Mulwala and Hume where the different state legislation applies. I am looking forward to seeing the specific community educational material because I have heard from the government that there will be a consultation process. In order to establish this legislation in a constructive way I believe that process should begin quite soon.

I am pleased that this legislation will clarify what has for a long time been a very difficult position.

Motion agreed to.

Read second time.

Third reading

Hon. C. C. BROAD (Minister for Ports) — By leave, I move:

That this bill be now read a third time.

In doing so I acknowledge the support of the opposition and the National Party for this bill, which resolves a more than 50-year-old anomaly.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

BUSINESS OF THE HOUSE

Adjournment

Hon. M. M. GOULD (Minister for Industrial Relations) — I move:

That the Council, at its rising, adjourn until Tuesday, 20 November.

Motion agreed to.

ADJOURNMENT

Hon. M. M. GOULD (Minister for Industrial Relations) — I move:

That the house do now adjourn.

Police: Emerald station

Hon. N. B. LUCAS (Eumemmerring) — I raise a matter with the Minister for Sport and Recreation for the Minister for Police and Emergency Services in the other place. It concerns the Emerald police station. Last year I chaired a public meeting at Emerald which attracted nearly 300 people. The reason for that public meeting was the concern of the community regarding the staffing of the station, which at that time was very low. The Minister for Police and Emergency Services attended that meeting and assured the community that the station would remain open and be fully staffed with at least one sergeant and five officers.

Over the past few months, as a result of all types of leave, resignations and the fact that officers from the Emerald police station have to go to the Pakenham area to provide night shift support, policing at Emerald has been reduced to, in effect, one sergeant and two officers rather than one sergeant and five officers. Of even more concern is the fact that there has been a rumour circulating in Emerald recently that the station may close. That rumour came about prior to the recent announcement regarding the Belgrave police station.

I am seeking an assurance from the Minister for Police and Emergency Services. I ask him to provide the Emerald community with an assurance or guarantee that the Emerald police station will remain open and be fully staffed with least one sergeant and five officers.

Traralgon Secondary College

Hon. P. R. HALL (Gippsland) — I raise a matter with the Minister for Sport and Recreation in his capacity as the representative of the Minister for Education in another place. I raise this matter on behalf of the community served by Traralgon Secondary College, which has been waiting for many years for some new facilities and a major revamp and upgrade of the facilities at both its east and west campuses. The local community was delighted earlier this year when an announcement was made that the college would undertake a major facilities master planning process. As most honourable members would understand, the practice is that following the undertaking of a master planning process there is a flow of funds in subsequent years to enable the staged implementation of significant improvements to facilities.

The college was delighted that that was announced earlier this year, and it began that master plan in term 3. However, on 3 October the college was informed that the master planning process was to be put on hold, apparently pending the release of new facilities schedules for schools. The school is not sure why this funding was put on hold and there is now serious concern within the community served by this college that this will further delay the urgently needed upgrade of facilities at the school. I ask the Minister for Education why this process has been put on hold. I seek a commitment from the minister that this will not further delay the urgently needed improvement of facilities at the school.

Electricity: tariffs

Hon. E. C. CARBINES (Geelong) — I raise a matter with the Minister for Energy and Resources. It concerns a proposal by Origin Energy to increase electricity prices in the Geelong region by 20 per cent next year. Geelong residents were shocked to see a banner headline in the newspaper last Friday, 'Power bill surge: Origin plans 20 per cent price increase'. The article explains that:

> Origin's planned increase is higher than those put forward by Victoria's other suppliers TXU, Citipower, Pulse and AGL.

Concern has been expressed by the president of the Geelong Chamber of Commerce, Lawrie Miller, who said that:

> … the intended rise seems excessive and would significantly affect local traders.
>
> …
>
> 'Those businesses that are not large enough to negotiate on their own will be hit hard by this,' he said.

The City of Greater Geelong has expressed its concern, as have many local residents. Brenda McDonald, the secretary of the Geelong West pensioners group, said the group would object to the application by Origin Energy. She is reported as saying:

> We are really against this. It is hard enough for lots of pensioners to make ends meet now, especially with the GST.

I therefore ask the Minister for Energy and Resources what action the government is taking in response to proposals by Origin Energy to increase electricity prices in Geelong by 20 per cent.

Williamstown Road, Port Melbourne: traffic control

Hon. ANDREA COOTE (Monash) — My question is to the Minister for Energy and Resources for the Minister for Transport in another place. I have received a number of complaints from the people of Williamstown Road, Port Melbourne, regarding the volume of traffic and the noise created by trucks with containers rumbling in and out of the port of Melbourne. The government wants to increase the activity at the port but that will only worsen the situation for the residents.

In October last year I asked a question on this issue and was informed that a number of traffic studies had been completed by the government, the Department of Infrastructure and the City of Port Phillip, and that they were preparing a Port Melbourne development area traffic and parking strategy to identify the needs and issues associated with traffic flows in the area. I was informed that that process would take about 12 months. I was astonished to learn that in addition Vicroads is conducting a six-month survey costing $130 000. That survey began in mid-July this year and is designed to investigate ways to reduce the number of trucks using Williamstown Road.

With all these studies it is quite amazing that after nearly 13 months residents of the east end of Williamstown Road are still suffering. What temporary measures will the Minister for Transport put in place to ease the traffic problems on Williamstown Road east of Graham Street?

Campaspe: bushfire prevention

Hon. E. J. POWELL (North Eastern) — I raise an issue with the Minister for Energy and Resources for the Minister for Transport. It concerns fire prevention. An article in the *Shepparton News* of 25 September goes to the heart of this issue. The heading is 'Clean up fire hazard: shire'. In reference to the Campaspe shire it says:

> Cr Murray McDonald said the council was concerned about the lack of response from the land managers, Victrack and Freight Australia, when it asked the rail operators to do fire prevention works.
>
> Cr McDonald said with the hot summer months fast approaching, it was imperative that any land which posed a significant fire hazard was cleared.
>
> He said the Country Fire Authority Act 1958 stated that it was the responsibility of the owner of any land or road under its care and management to take appropriate steps to prevent and to minimise the spread of fires.

I telephoned the council to see whether the state government had responded because the council had rung a number of times. The Shire of Campaspe gave me a copy of a letter sent to the Minister for Transport by the manager of environmental services, Bill Denton, dated 26 October. The council is concerned that the current management practices for railway land and the lack of any planned fire prevention works in urban areas within Campaspe shire have resulted in serious community safety risks. The urban areas of Campaspe include Kyabram, Tongala and Echuca.

As I said, the staff have rung a number of times trying to get somebody to come out and eliminate the fire risk. The community does not understand who owns the land and is blaming the council for having this heavy grass there. Over a number of years the council has slashed the grass at its own cost, and the state government has allowed that to happen. The council has a responsibility for community safety but, more importantly, the land is looking unsightly. The community is getting quite annoyed about the length of the grass, let alone the safety issue.

Since this is urgent — the fire season is only weeks away — the council would appreciate communication from the government detailing fire prevention programs to be completed on all railway land in Campaspe shire and a commitment to pick up its responsibility.

Aged care: Ballarat

Hon. D. G. HADDEN (Ballarat) — I raise with the Minister for Small Business, representing the Minister for Aged Care in the other place, the shortage of aged care beds in my electorate. The Central Goldfields Shire Council has a commonwealth nursing home bed shortfall of 23 places and 39 hostel places, the Rural City of Ararat has a shortfall of 12 nursing home beds and the Shire of Pyrenees has a shortfall of 17 hostel and 2 nursing home beds.

Such a shortfall in places affects not only an aged person requiring a nursing home or a hostel bed; it also affects their families and communities. Last Wednesday, 31 October, some 40 Victorian mayors gathered outside on the steps of Parliament House and signed a joint communiqué condemning the federal government's failure to provide adequate funding for aged care in this state. They called on the federal government to increase its home and community care or HACC funding to adequate levels.

The Howard federal government is saving $170 million this financial year by denying Victoria 5000 aged care beds and refusing to match the Bracks government's commitment of $41 million to the home and community care program. With our ageing population, especially in rural and regional areas, adequate care of senior citizens within their own communities is absolutely crucial not only to their welfare but for the viability of rural and regional areas. Will the minister outline the government's actions to address the current shortages of both nursing home beds and hostel places and the improvement of the home and community care programs in my electorate?

Local government: disabled parking

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — I raise with the Minister for Energy and Resources for the attention of the Minister for Local Government in the other place the important issue of car parking access for the disabled. All honourable members would agree about the importance of the provision car parking for disabled people. Honourable members would be aware of the system that operates where permits are required to be displayed in cars so disabled people can use reserved parking spaces.

This system is administered by local government and each local government area is responsible for issuing permits and their enforcement. I have been concerned over recent weeks and months to see the level of abuse that takes place with disabled car parking spaces by a number of able-bodied people who come by parking permits and illegitimately use them to park in disabled parking spots. One is not always able to see the person with the disability, but it is often the case that a spouse who is not accompanied by the disabled person, or

another person, is using the parking permit issued to a disabled person.

Some enforcement action should be taken against people who park in disabled parking spots without displaying a permit, but there is a situation where people have access to a permit and use it illegitimately, thus denying access to a disabled parking spot to people who are legitimately disabled.

I can cite recent examples. In one case a family received a parking permit that was valid for three years for a disabled member of the family who subsequently died about six months after the permit was issued. However, they continued to use the disabled parking permit for two and a half years. Another example is of a person whose partner is disabled. However, that person has the disabled permit in the car and is able to make use of it. Will the Minister for Local Government inquire into this matter and determine whether he can put into place better guidelines by which local government can enforce this matter to ensure that only people with legitimate rights to such permits are using them?

Dunolly: speed limits

Hon. R. A. BEST (North Western) — I raise a matter for the attention of the Minister for Energy and Resources, representing the Minister for Transport. I and a number of honourable members have received representations from various groups in and around the Dunolly area relating to issues associated with local road safety.

I received a letter from Dunolly Community Action expressing concern about its members' safety being compromised, particularly by excessive speed of through traffic on the Broadway, which is the main street of Dunolly, and also on Tarnagulla Road. Separately I received representations from the school community of Dunolly, which is concerned — —

Hon. D. G. Hadden interjected.

Hon. R. A. BEST — It is not in your electorate. I hope you know your electorate, Ms Hadden.

Hon. D. G. Hadden interjected.

Hon. R. A. BEST — That is very embarrassing for you because it is in the electorate of Bendigo West, which is the electorate of the Minister for Local Government. Unbelievable! It amazes me that some honourable members do not even know their own electorates.

The school community wants a restriction sign of 40 kilometres an hour erected, and I understand the issue has been addressed. I am thankful for that because I have continually advocated that speed restrictions of 40 kilometres an hour should operate in and around schools when the flags are out.

Hon. T. C. Theophanous — Why didn't you do it then?

Hon. R. A. BEST — Do you mind, Mr Theophanous? There is some spirit of cooperation between honourable members across party lines.

Will the Minister for Transport undertake an urgent review of the road network in and around the Dunolly area to restore community confidence and remove the threat to safety for local road users?

Intergraph: union coverage

Hon. BILL FORWOOD (Templestowe) — The issue I raise with the Minister for Industrial Relations goes to the matter I raised this morning about the application under section 118A by the United Firefighters Union of Australia seeking revocation of the Intergraph (Vic.) Pty Ltd demarcation order of 1996. I have in my hand a copy of the transcript of the hearing in which a Miss Russell, representing Intergraph, in the course of her contribution said:

> … both the Victorian government and the ACTU in our submission have a vital interest in this matter …

She goes on to say:

> So, Your Honour, we say the Victorian government should be given the opportunity to put submissions, perhaps by way of intervention, about its attitude to the demarcation orders. It may well be that the government may express a view about whether there should be any change to the existing arrangements.

Later she says:

> Your Honour, I am also instructed to inform the commission that Intergraph's response to the application will be significantly influenced by the position of the Victorian government in relation to the application. The basis for that is that Intergraph is the custodian of the orders really during this interim period. So there are very sound reasons in our submission for the government to be advised of this matter and as I say the government position will be a factor in determining Intergraph's position.

I understand the union itself informed the government of its application. I suggest the minister address herself to the issue of the government's position.

Interstate migration

Hon. R. M. HALLAM (Western) — I seek a point of clarification from the Minister for Industrial Relations. I recently raised an issue during the adjournment debate with the minister in her capacity as Leader of the Government. In that particular case I sought her response as to why the government she leads in this place expected that interstate migration to Victoria would fall during this term of government to a third of that attracted in the final year of the Kennett government. But it is not the specifics of the question that I want to revisit — —

Hon. T. C. Theophanous interjected.

Hon. R. M. HALLAM — Thank you, Mr Theophanous, for your help.

It is not the specifics of that question that I want to revisit but the form of the reply offered by the minister. The minister said that the subject matter was not within her portfolio, and on that basis declined to offer any comment at all other than that she would refer my inquiry to the Premier.

In light of that response I ask the minister, as a matter of process and of public record, whether this means that she does not feel constrained to answer any question addressed to her as Leader of the Government unless it falls directly within her portfolio of industrial relations.

Constitution Commission Victoria: meeting

Hon. P. A. KATSAMBANIS (Monash) — I address my question to the Leader of the House in her capacity as the representative of the Premier. The question relates to the operation of the Constitution Commission Victoria. It is noted that in the past few days the commission has added a further series of meetings and public consultations to its schedule. In particular I draw the attention of the house and of the Premier to a media release of Friday, 2 November, in which it was advised that a further meeting of the commission would be held in Geelong. The media release, which has perplexed not only me but many members of the community, states:

> Chairperson of the Constitution Commission, Professor the Hon. George Hampel, QC, is calling on the people living in the Wangaratta region to attend the public discussion to be held at the Geelong city hall on Tuesday, 13 November 2001, from 10.00 a.m.–1.00 p.m.

I looked at the media release a number of times and saw that it was inviting the people of Wangaratta to attend a meeting at the Geelong town hall. I am from the inner city, Mr President, but even I know there is a significant distance between Wangaratta and Geelong.

Hon. I. J. Cover interjected.

Hon. P. A. KATSAMBANIS — My friend the Honourable Ian Cover confirms that there are is no suburb of Wangaratta in Geelong, so it must be a reference to the other Wangaratta. I am perplexed, and I call on the Premier to clarify this matter for the public of Victoria. Is the commission seriously interested in hearing the views of the Wangaratta community in Geelong? Is the intention to exclude the people of Geelong and surrounding regions from the meeting in Geelong and seek submissions only from the people who have travelled all the way from Wangaratta to Geelong? Is this another in a series of gaffes and guffaws that the commission has managed to inflict upon Victorians in its pursuit of the Labor Party's hidden agenda relating to the Legislative Council?

Fishing: rock lobster

Hon. K. M. SMITH (South Eastern) — I raise with the Minister for Energy and Resources concerns about the rock lobster quota allocations. I have been approached by a Mr Harry Lee Everett from Flinders, who has been a professional fisherman for 34 years. In particular he has been a licensed rock lobster fisherman in the eastern zone for some 18 years, so fishing is his livelihood.

Mr Everett wrote to the minister seeking support and a review of the amount of lobster he is allowed to fish. He holds a 37-pot rock lobster licence and previously had no maximum lobster catch. Now Mr Everett has a limit of 600 kilograms of lobster. He is a professional fisherman, and as lobster has a value of something in the order of $40 a kilogram, even if he is able to achieve that catch he has been restricted to an income in the order of $24 000 to $25 000 a year on which not only to feed his family but also to run and maintain his boat, including fuel, and on which to maintain his pots. The minister will put this man out of business. I felt quite insulted by the letter she sent to him in which she said there was a $1000 rebate to enable licence-holders to get professional advice.

This man is a professional fisherman; he knows nothing more than how to fish. He has obviously been doing it very well over the years. In the minister's letter to Mr Everett she said that the biomass of rock lobsters is being fished out. It is my understanding from talking with rock lobster fishermen in the eastern zone that it is not being fished out. The minister is putting restrictions on people and driving small business people, such as

this man, out of business. The minister is not being fair in any way, shape or form, and I ask her to review Mr Everett's situation and his rock lobster quota to ensure that he is at least able to feed his family in the future. I would appreciate it, and I know Mr Everett and his family would also appreciate it.

'Victoria's forgotten legislature' invitation

Hon. T. C. THEOPHANOUS (Jika Jika) — I have a question for you, Mr President. I have just received this very kind invitation from you and the members of the 1851–56 Legislative Council. It is an invitation to the opening of 'Victoria's forgotten legislature'. I have two questions that I would like you, Mr President, to clarify for me. Firstly, is the reference to the members of the 1851–56 Legislative Council inviting us correct, and if so, could you explain what process you used to consult them? Secondly, is the comment about Victoria's forgotten legislature meant to be a comment about the relevance of the Legislative Council?

Racing: offshore betting

Hon. I. J. COVER (Geelong) — I do not think I have ever had a warm-up like that before. I raise a matter with the Minister for Sport and Recreation as the representative of the Minister for Racing in the other place, and I do so on the day after the running of the Melbourne Cup yesterday, a day which saw some $55 million turned over by the TAB in Victoria, with $28 million of that money being placed on the Melbourne Cup itself.

I raise this matter with the Minister for Racing in light of the Racing and Betting Acts (Amendment) Bill, which was passed by Parliament in the autumn sessional period. The aim of one clause of that bill was to clarify the current range of offences with regard to unlawful betting and related activities with people betting in Victoria but the activity technically occurring outside Australia with offshore betting operators in Vanuatu. The object was obviously to stop the leakage of betting to tax-advantaged locations, which drains not only the betting money but the money that can then be returned to the racing industry in Victoria through prize money, industry development and other such things.

In speaking on this matter in the other place in February the minister pointed out that he wanted to protect the bookmakers in Victoria. He said it was absolutely crucial to expand the number of bookmakers in Victoria, and in making his contribution he asked a question of himself about whether the legislation would stop people betting in Vanuatu. He said that that remained to be seen. He pointed out the New South Wales experience, which has not led to the end of betting in New South Wales taking place in Vanuatu because the legislation is hard to police. However, the minister believed the New South Wales figures showed that there had been a huge drop in the number of bets because people are basically honest and if they know it is illegal to bet in Vanuatu they will be reluctant to do so.

The minister said that the government believed the legislation was a way to stop the leakage overseas and that it could be enforced. I note that yesterday the TAB turnover was $55 million — up some $3 million on last year — and the bookmakers' turnover was $12.4 million yesterday, which is the same as last year. It begs the question as to whether the February legislation has had any effect yet or will at all.

I ask the minister to advise on the progress of that legislative move and its enforcement and whether it has led to a similar huge drop in the number of bets going from Victoria to Vanuatu.

Responses

Hon. M. M. GOULD (Minister for Industrial Relations) — The Honourable Bill Forwood raised with me the issue of an application in the commission for union membership at Intergraph. The government has not yet formed a view as to what position, if any, it will take on union coverage in that matter.

Hon. Bill Forwood — Has not?

Hon. M. M. GOULD — Has not formed a view as to whether it will put in a submission on the merits of the union membership cases. It is more a matter for the unions, but the government has not reached a final position on that yet. When it does, I will be happy to inform the honourable member.

The Honourable Roger Hallam asked me whether I would respond to questions outside my portfolio. The answer is no.

The Honourable Peter Katsambanis raised the matter of a typo in a press release. I will refer the matter to the Premier and ask him to respond in the usual manner.

Hon. C. C. BROAD (Minister for Energy and Resources) — In response to the Honourable Elaine Carbines I advise that the Bracks government has referred the proposal by Origin Energy for price increases to the independent expert, the Office of the Regulator-General, to see if the proposal is justified. A review by the office will ensure that any price changes are justified and that the companies are accountable for

their actions. The Regulator-General will examine changes in wholesale electricity prices, distribution costs and other factors before providing his advice to me on the proposal. The government has put in place a process for the assessment of price rise proposals, including those made by Origin Energy, which protects consumers and recognises the needs of industry.

The Honourable Andrea Coote asked the Minister for Transport to advise what temporary traffic management measures the government will put in place in Williamstown Road. I will refer that request to the minister.

The Honourable Jeanette Powell requested the Minister for Transport to provide information regarding fire prevention programs for land in the Shire of Campaspe. I will refer that request to the minister.

The Honourable Gordon Rich-Phillips raised the matter of access to car parking for people with disabilities and requested the Minister for Local Government to investigate systems to prevent abuse. I will refer that to the minister.

The Honourable Ron Best requested the Minister for Transport to take action to improve road safety in the Dunolly area. I will refer that request to the minister.

The Honourable Ken Smith raised a matter about the change to quota management for the rock lobster fishery. The government takes very seriously the impact of these changes on individual rock lobster licence-holders. After all, the whole reason the government is acting is in order to ensure the future of this very important fishery.

I have every confidence in the way the Rural Finance Corporation is managing this change, which includes an appeal mechanism. I expect that these changes, which are being implemented to take effect soon, will ensure the future of this fishery.

I urge individual licence-holders to take advantage of the systems the government has put in place through the Rural Finance Corporation and through its package to ensure that they have the proper advice in order to make the best possible decisions for their individual circumstances.

Hon. K. M. Smith — You don't even understand it, do you?

Hon. C. C. BROAD — Well you certainly don't!

Hon. M. R. THOMSON (Minister for Small Business) — The Honourable Dianne Hadden raised a matter for the attention of the Minister for Aged Care concerning a shortage of nursing home beds and hostel places in the Shire of Central Goldfields, the Rural City of Ararat and the Shire of Pyrenees and concerns about shortfalls in federal government funding in these municipalities. The honourable member seeks advice from the government as to what actions it can take to see that that funding is adequately met. I will refer the matter to the minister.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — In relation to the question asked by the Honourable Neil Lucas, who expressed concerns about the Emerald police station and associated issues, I will refer the matter to the Minister for Police and Emergency Services in the other place.

In relation to the question by the Honourable Peter Hall regarding the Traralgon Secondary College master planning process and associated concerns, I will refer the matter to the Minister for Education in the other place.

In relation to the question by the Honourable Ian Cover regarding the recent racing and betting acts amendments relating to offshore betting in Vanuatu, I will refer the inquiry to the Minister for Racing in the other place.

The PRESIDENT — Order! The Honourable Theo Theophanous asked me about an invitation he had just received. It states:

> The members of the 1851–56 Legislative Council and the Honourable Bruce Chamberlain, MLC, President … invite Mr Theophanous to —

a function on 20 November. He asked me how I consulted those members and made some reference to the forgotten legislature.

The trick in any invitation is to make it an attention getter, and we certainly got everyone's attention on this issue. I must say to the very astute honourable members in this chamber that everyone picked it up. That is the first thing.

Secondly, as someone who believes in the life hereafter I believe I have consulted widely, and I am confident that I have the support of all those individuals. Making some reference to a forgotten legislature, the honourable member made some commentary on this Legislative Council.

As Dr Ray Wright has made it very clear in his new book, which will be launched in a couple of weeks time, that Legislative Council had nothing to do with this one, but it was very much concerned with laying

sound foundations for this Parliament. There were many shifting alliances in the Legislative Council of 1851–56; therefore we thought it most appropriate to invite the Honourable Theo Theophanous.

Motion agreed to.

House adjourned 4.51 p.m. until Tuesday, 20 November.

QUESTIONS ON NOTICE

Answers to the following questions on notice were circulated on the date shown.
Questions have been incorporated from the notice paper of the Legislative Council.
Answers have been incorporated in the form supplied by the departments on behalf of the appropriate ministers.
The portfolio of the minister answering the question on notice starts each heading.

Wednesday, 7 November 2001

Planning: ministerial staff

2065. THE HON. D. McL. DAVIS — To ask the Honourable the Minister Assisting the Minister for Planning: As at 30 May 2001, how many staff were employed by the minister — (i) in the minister's office as ministerial staff, what are their names and what is the cost; and (ii) on secondment from the Victorian Public Service, what are their names and what is the cost.

ANSWER:

All staff working in my office are employed by the Premier. Therefore, there are no ministerial staff employed by me working in my office.

As at 30 May 2001, two staff working in my office were on secondment from the Victorian Public Service.

The Hon Member may wish to refer to the Budget Papers for details on expenditure.

Industrial Relations: Shannon's Way Pty Ltd — contracts

2070. THE HON. P. A. KATSAMBANIS — To ask the Honourable the Minister for Industrial Relations: Will the minister provide details of every contract entered into between the minister's department and the firm Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001 including — (i) the date the contract was entered into; (ii) the value of the contract; (iii) the nature of the tasks performed under the contract; and (iv) the process undertaken to award this contract to the firm.

ANSWER:

I am informed that:

The Department of State and Regional Development entered into one contract with Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001. The contract was related to a full page press advertisement for the synchrotron and the value of the contract was $8,844.00.

While the Department did not enter into any other formal contracts with Shannon's Way between 1 March 2001 and 30 June 2001, I am advised that Shannon's Way provided services for the 2001 Victorian Tourism Awards under an arrangement entered into by the organiser of the awards, Tourism Council Australia. When the Council was placed into voluntary liquidation, Tourism Victoria took over the organisation of the awards and, as a consequence, the Council's obligations under its pre-existing arrangement with Shannon's Way.

The nature of the work undertaken by Shannon's Way in connection with the 2001 Tourism Awards between 1 March 2001 and 30 June 2001 included letterhead artwork, booklets, award invitations and entrée cards, as well as courier costs. The value of the contract was $2,542.37.

I am advised that the Department of State and Regional Development has complied with section 54L of the *Financial Management Act* 1994. Supply policies and the associated best practice guidelines are publicly available on the Victorian Government Purchasing Board's web site at www.vgpb.vic.gov.au/polguid/polmenu.htm.

State and Regional Development: Shannon's Way Pty Ltd — contracts

2082. THE HON. P. A. KATSAMBANIS — To ask the Honourable the Minister assisting the Minister for State and Regional Development: Will the minister provide details of every contract entered into between the minister's department and the firm Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001 including — (i) the date the contract was entered into; (ii) the value of the contract; (iii) the nature of the tasks performed under the contract; and (iv) the process undertaken to award this contract to the firm.

ANSWER:

I am informed that:

The Department of State and Regional Development entered into one contract with Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001. The contract was related to a full page press advertisement for the synchrotron and the value of the contract was $8844.00.

While the Department did not enter into any other formal contracts with Shannon's Way between 1 March 2001 and 30 June 2001, I am advised that Shannon's Way provided services for the 2001 Victorian Tourism Awards under an arrangement entered into by the organiser of the awards, Tourism Council Australia. When the Council was placed into voluntary liquidation, Tourism Victoria took over the organisation of the awards and, as a consequence, the Council's obligations under its pre-existing arrangement with Shannon's Way.

The nature of the work undertaken by Shannon's Way in connection with the 2001 Tourism Awards between 1 March 2001 and 30 June 2001 included letterhead artwork, booklets, award invitations and entrée cards, as well as courier costs. The value of the contract was $2542.37.

I am advised that the Department of State and Regional Development has complied with section 54L of the *Financial Management Act* 1994. Supply policies and the associated best practice guidelines are publicly available on the Victorian Government Purchasing Board's web site at www.vgpb.vic.gov.au/polguid/polmenu.htm.

State and Regional Development: Shannon's Way Pty Ltd — contracts

2084. THE HON. P. A. KATSAMBANIS — To ask the Honourable the Minister for Energy and Resources (for the Honourable the Minister for State and Regional Development): Would the minister provide details of every contract entered into between the minister's department and the firm Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001 including — (i) the date the contract was entered into; (ii) the value of the contract; (iii) the nature of the tasks performed under the contract; and (iv) the process undertaken to award this contract to the firm.

ANSWER:

I am informed that:

The Department of State and Regional Development entered into one contract with Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001. The contract was related to a full page press advertisement for the synchrotron and the value of the contract was $8844.00.

While the Department did not enter into any other formal contracts with Shannon's Way between 1 March 2001 and 30 June 2001, I am advised that Shannon's Way provided services for the 2001 Victorian Tourism Awards under an arrangement entered into by the organiser of the awards, Tourism Council Australia. When the Council was placed into voluntary liquidation, Tourism Victoria took over the organisation of the awards and, as a consequence, the Council's obligations under its pre-existing arrangement with Shannon's Way.

The nature of the work undertaken by Shannon's Way in connection with the 2001 Tourism Awards between 1 March 2001 and 30 June 2001 included letterhead artwork, booklets, award invitations and entrée cards, as well as courier costs. The value of the contract was $2542.37.

I am advised that the Department of State and Regional Development has complied with section 54L of the *Financial Management Act* 1994. Supply policies and the associated best practice guidelines are publicly available on the Victorian Government Purchasing Board's web site at www.vgpb.vic.gov.au/polguid/polmenu.htm.

Sport and Recreation: Shannon's Way Pty Ltd — contracts

2090. THE HON. P. A. KATSAMBANIS — To ask the Honourable the Minister for Sport and Recreation: Will the minister provide details of every contract entered into between the minister's department and the firm Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001 including — (i) the date the contract was entered into; (ii) the value of the contract; (iii) the nature of the tasks performed under the contract; and (iv) the process undertaken to award this contract to the firm.

ANSWER:

I am informed that:

The Department of State and Regional Development entered into one contract with Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001. The contract was related to a full page press advertisement for the synchrotron and the value of the contract was $8844.00.

While the Department did not enter into any other formal contracts with Shannon's Way between 1 March 2001 and 30 June 2001, I am advised that Shannon's Way provided services for the 2001 Victorian Tourism Awards under an arrangement entered into by the organiser of the awards, Tourism Council Australia. When the Council was placed into voluntary liquidation, Tourism Victoria took over the organisation of the awards and, as a consequence, the Council's obligations under its pre-existing arrangement with Shannon's Way.

The nature of the work undertaken by Shannon's Way in connection with the 2001 Tourism Awards between 1 March 2001 and 30 June 2001 included letterhead artwork, booklets, award invitations and entrée cards, as well as courier costs. The value of the contract was $2542.37.

I am advised that the Department of State and Regional Development has complied with section 54L of the *Financial Management Act* 1994. Supply policies and the associated best practice guidelines are publicly available on the Victorian Government Purchasing Board's web site at www.vgpb.vic.gov.au/polguid/polmenu.htm.

Youth Affairs: Shannon's Way Pty Ltd — contracts

2091. THE HON. P. A. KATSAMBANIS — To ask the Honourable the Minister for Youth Affairs: Will the minister provide details of every contract entered into between the minister's department and the firm Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001 including — (i) the date the contract was entered into; (ii) the value of the contract; (iii) the nature of the tasks performed under the contract; and (iv) the process undertaken to award this contract to the firm.

ANSWER:

I am advised that the Department of Education, Employment and Training has not entered into any contracts with Shannon's Way between 1 March and 30 June 2001.

Education: Shannon's Way Pty Ltd — contracts

2093. THE HON. P. A. KATSAMBANIS — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Education): Will the minister provide details of every contract entered into between the minister's department and the firm Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001 including — (i) the date the contract was entered into; (ii) the value of the contract; (iii) the nature of the tasks performed under the contract; and (iv) the process undertaken to award this contract to the firm.

ANSWER:

I am advised that the Department of Education, Employment and Training has not entered into any contracts with Shannon's Way between 1 March and 30 June 2001.

Post Compulsory Education, Training and Employment: Shannon's Way Pty Ltd — contracts

2094. THE HON. P. A. KATSAMBANIS — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Post Compulsory Education, Training and Employment): Will the minister provide details of every contract entered into between the minister's department and the firm Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001 including — (i) the date the contract was entered into; (ii) the value of the contract; (iii) the nature of the tasks performed under the contract; and (iv) the process undertaken to award this contract to the firm.

ANSWER:

I am informed as follows:

I am advised that the Department of Education, Employment and Training has not entered into any contracts with Shannon's Way between 1 March and 30 June 2001

Manufacturing Industry: Shannon's Way Pty Ltd — contracts

2098. THE HON. P. A. KATSAMBANIS — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Manufacturing Industry): Will the minister provide details of every contract entered into between the minister's department and the firm Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001 including — (i) the date the contract was entered into; (ii) the value of the contract; (iii) the nature of the tasks performed under the contract; and (iv) the process undertaken to award this contract to the firm.

ANSWER:

I am informed that:

No departmental unit within the parameters of my portfolio entered into contracts with Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001.

However, inquiries of the remaining areas within the Department of State and Regional Development show that the Department entered into one contract with Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001. The contract was related to a full page press advertisement for the synchrotron and the value of the contract was $8844.00.

While the Department did not enter into any other formal contracts with Shannon's Way between 1 March 2001 and 30 June 2001, I am advised that Shannon's Way provided services for the 2001 Victorian Tourism Awards under an arrangement entered into by the organiser of the awards, Tourism Council Australia. When the Council was placed into voluntary liquidation, Tourism Victoria took over the organisation of the awards and, as a consequence, the Council's obligations under its pre-existing arrangement with Shannon's Way.

The nature of the work undertaken by Shannon's Way in connection with the 2001 Tourism Awards between 1 March 2001 and 30 June 2001 included letterhead artwork, booklets, award invitations and entrée cards, as well as courier costs. The value of the contract was $2542.37.

I am advised that the Department of State and Regional Development has complied with section 54L of the *Financial Management Act* 1994. Supply policies and the associated best practice guidelines are publicly available on the Victorian Government Purchasing Board's web site at www.vgpb.vic.gov.au/polguid/polmenu.htm.

Racing: Shannon's Way Pty Ltd — contracts

2099. THE HON. P. A. KATSAMBANIS — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Racing): Will the minister provide details of every contract entered into between the minister's department and the firm Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001 including — (i) the date the contract was entered into; (ii) the value of the contract; (iii) the nature of the tasks performed under the contract; and (iv) the process undertaken to award this contract to the firm.

ANSWER:

I am informed that:

No departmental unit within the parameters of my portfolio entered into contracts with Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001.

However, inquiries of the remaining areas within the Department of State and Regional Development show that the Department entered into one contract with Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001. The contract was related to a full page press advertisement for the synchrotron and the value of the contract was $8844.00.

While the Department did not enter into any other formal contracts with Shannon's Way between 1 March 2001 and 30 June 2001, I am advised that Shannon's Way provided services for the 2001 Victorian Tourism Awards under an arrangement entered into by the organiser of the awards, Tourism Council Australia. When the Council was placed into voluntary liquidation, Tourism Victoria took over the organisation of the awards and, as a consequence, the Council's obligations under its pre-existing arrangement with Shannon's Way.

The nature of the work undertaken by Shannon's Way in connection with the 2001 Tourism Awards between 1 March 2001 and 30 June 2001 included letterhead artwork, booklets, award invitations and entrée cards, as well as courier costs. The value of the contract was $2542.37.

I am advised that the Department of State and Regional Development has complied with section 54L of the *Financial Management Act* 1994. Supply policies and the associated best practice guidelines are publicly available on the Victorian Government Purchasing Board's web site at www.vgpb.vic.gov.au/polguid/polmenu.htm.

Major Projects and Tourism Shannon's Way Pty Ltd — contracts:

2100. THE HON. P. A. KATSAMBANIS — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Major Projects and Tourism): Will the minister provide details of every contract entered into between the minister's department and the firm Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001 including — (i) the date the contract was entered into; (ii) the value of the contract; (iii) the nature of the tasks performed under the contract; and (iv) the process undertaken to award this contract to the firm.

ANSWER:

I am informed that:

The Department of State and Regional Development entered into one contract with Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001. The contract was related to a full page press advertisement for the synchrotron and the value of the contract was $8844.00.

While the Department did not enter into any other formal contracts with Shannon's Way between 1 March 2001 and 30 June 2001, I am advised that Shannon's Way provided services for the 2001 Victorian Tourism Awards under an arrangement entered into by the organiser of the awards, Tourism Council Australia. When the Council was placed into voluntary liquidation, Tourism Victoria took over the organisation of the awards and, as a consequence, the Council's obligations under its pre-existing arrangement with Shannon's Way.

The nature of the work undertaken by Shannon's Way in connection with the 2001 Tourism Awards between 1 March 2001 and 30 June 2001 included letterhead artwork, booklets, award invitations and entrée cards, as well as courier costs. The value of the contract was $2542.37.

I am advised that the Department of State and Regional Development has complied with section 54L of the *Financial Management Act* 1994. Supply policies and the associated best practice guidelines are publicly available on the Victorian Government Purchasing Board's web site at www.vgpb.vic.gov.au/polguid/polmenu.htm.

Small Business: Shannon's Way Pty Ltd — contracts

2102. THE HON. P. A. KATSAMBANIS — To ask the Honourable the Minister for Small Business: Would the Minister provide details of every contract entered into between the minister's department and the firm Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001 including — (i) the date the contract was entered into; (ii) the value of the contract; (iii) the nature of the tasks performed under the contract; and (iv) the process undertaken to award this contract to the firm.

ANSWER:

I am informed that:

The Department of State and Regional Development entered into one contract with Shannon's Way Pty Ltd between 1 March 2001 and 30 June 2001. The contract was related to a full page press advertisement for the synchrotron and the value of the contract was $8844.00.

While the Department did not enter into any other formal contracts with Shannon's Way between 1 March 2001 and 30 June 2001, I am advised that Shannon's Way provided services for the 2001 Victorian Tourism Awards under an arrangement entered into by the organiser of the awards, Tourism Council Australia. When the Council was placed into voluntary liquidation, Tourism Victoria took over the organisation of the awards and, as a consequence, the Council's obligations under its pre-existing arrangement with Shannon's Way.

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I am advised that the Department of State and Regional Development has complied with section 54L of the *Financial Management Act* 1994. Supply policies and the associated best practice guidelines are publicly available on the Victorian Government Purchasing Board's web site at www.vgpb.vic.gov.au/polguid/polmenu.htm.

Premier: Constitution Commission Victoria contracts

2112. THE HON. BILL FORWOOD — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Premier):

(a) What are the names of all organisations and individuals who have received contracts from the Constitution Commission Victoria from the date of its inception to 16 August 2001.

(b) What is the purpose and value of each contract.

ANSWER:

I am informed that:

The table below sets out the names of the people and organisations contracted by the Constitution Commission for the provision of goods and services in the period since the Commission's establishment and end-August 2001. The table details the nature of the contracts, in summary form, and the value of the respective contracts.

Contractual Expenditure
Constitution Commission
Amounts Expended on contracts end-August 2001

Contractor/Supplier	Nature of Contract	Value
Shell Australia	Premises and facilities support	$19,353
Uecomm Operations Pty Ltd	Internet Services, Cabling installation	$8,800
Spark Communications Group Pty Ltd	Public relations and media placement services	$26,765
Blue Connections Pty Ltd	Computing, File Servers and Communications equipment	$46,208
Dr Spencer Zifcak	Check read of Discussion Paper	$770
Malpass & Burrows Design	Logo Design, Printing Design	$15,763
L&R Printing	Printing Contractor	$9,692
Transformation Systems Pty Ltd	Web Page Design, Internet hosting and Support	$13,200
Monash University, Sir John Monash Business Centre	Research Support	$20,000
Media Monitors	Broadcast and press media monitoring services	$1,362
Bryony Cosgrove Editorial Services	Proof reading and editing of Discussion Paper	$2,112
Transformation Systems Pty Ltd	Web Hosting and Internet presence maintenance	$2,600
Hoban Recruiting	Casual data entry services	$1,937
Copytone Business Equipment	Photocopier Hire	$924
Optus Mobile Limited	Telephone equipment	$1,342

Premier: Constitution Commission Victoria consultancies

2113. THE HON. BILL FORWOOD — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Premier): Who is undertaking consultancies for or on behalf of the Constitution Commission Victoria from the date of its inception to 16 August 2001.

ANSWER:

I am informed that:

The Commission has not employed any consultants since it was established.

Premier: Constitution Commission Victoria consultancies

2114. THE HON. BILL FORWOOD — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Premier): In relation to the Constitution Commission Victoria:

(a) How many consultants has the Commission employed since its inception.

(b) What are the names of each of the consultants.

(c) What is the purpose of each consultancy.

(d) How many people have been contracted to the Commission and what are their names.

(e) Are the consultants on fixed-term contracts or on a retainer.

ANSWER:

I am informed that:

The Commission has not employed any consultants since it was established.

Aged Care: division 2 nurses

2157. THE HON. B. N. ATKINSON — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Aged Care): How many registered Division 2 nurses were there in Victoria working in aged care as at 30 June 2001.

ANSWER:

The data related to Victorian nursing statistics is collected through an annual survey issued in December of each year to nurses registered with the Nurses Board of Victoria.

This information is available on the public record.

Aged Care: division 2 nurses

2159. THE HON. B. N. ATKINSON — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Aged Care): How many registered Division 2 nurses working in aged care were required in Victoria as at 30 June 2001.

ANSWER:

The Department of Human Services Nurse Labourforce Projections of 1999 are based on national data collected by the Australian Institute of Health and Welfare (AIHW) and specifically upon the information gained from the annual survey of nurses registered with the Nurses Board of Victoria.

This information is available on the public record.

Aged Care: division 2 nurses

2161. THE HON. B. N. ATKINSON — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Aged Care): What was the required number of registered Division 2 nurses in aged care as at 30 June 2001 in metropolitan Melbourne and rural and regional areas of Victoria, respectively.

ANSWER:

The data related to Victorian nursing statistics is collected through an annual survey issued in December of each year to nurses registered with the Nurses Board of Victoria.

This information is available on the public record.

Women's Affairs: ministerial staff — pecuniary interest

2224. THE HON. G. K. RICH-PHILLIPS — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Women's Affairs): Have all ministerial officers currently or previously

employed by the minister signed a pecuniary interest form; if so, on what date — (i) was the declaration signed; and (ii) did the employee commence employment.

ANSWER:

All staff working in my office are employed by the Premier. Therefore there are no ministerial officers employed by me.

Housing: ministerial staff — pecuniary interest

2236. THE HON. G. K. RICH-PHILLIPS — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Housing): Have all ministerial officers currently or previously employed by the minister signed a pecuniary interest form; if so, on what date — (i) was the declaration signed; and (ii) did the employee commence employment.

ANSWER:

All staff working in my office are employed by the Premier. Therefore there are no ministerial officers employed by me.

Aged Care: ministerial staff — pecuniary interest

2237. THE HON. G. K. RICH-PHILLIPS — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Aged Care): Have all ministerial officers currently or previously employed by the minister signed a pecuniary interest form; if so, on what date — (i) was the declaration signed; and (ii) did the employee commence employment.

ANSWER:

All staff working in my office are employed by the Premier. Therefore there are no ministerial officers employed by me.

Planning: ministerial staff — pecuniary interest

2239. THE HON. G. K. RICH-PHILLIPS — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Planning): Have all ministerial officers currently or previously employed by the minister signed a pecuniary interest form; if so, on what date — (i) was the declaration signed; and (ii) did the employee commence employment.

ANSWER:

All staff working in my office are employed by the Premier. Therefore there are no ministerial officers employed by me.

Industrial Relations: ministerial staff — pecuniary interest

2241. THE HON. G. K. RICH-PHILLIPS — To ask the Honourable the Minister for Industrial Relations: Have all ministerial officers currently or previously employed by the minister signed a pecuniary interest form; if so, on what date — (i) was the declaration signed; and (ii) did the employee commence employment.

ANSWER:

I am informed as follows:

All staff working in my office are employed by the Premier. Therefore there are no ministerial officers employed by me.

Youth Affairs: ministerial staff — pecuniary interest

2243. THE HON. G. K. RICH-PHILLIPS — To ask the Honourable the Minister for Youth Affairs: Have all ministerial officers currently or previously employed by the minister signed a pecuniary interest form; if so, on what date — (i) was the declaration signed; and (ii) did the employee commence employment.

ANSWER:

All staff working in my office are employed by the Premier. Therefore there are no ministerial officers employed by me.

Health: registered nurses — superannuation

2269. THE HON. D. McL. DAVIS — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Health): What is the total contribution made by the Government to the superannuation of registered nurses employed by public hospitals that are operated and/or funded by the Government in 1996–97, 1997–98, 1998–99, 1999–2000 and 2000–01 respectively, and what is the total number of registered nurses employed by public hospitals that are operated and/or funded by the Government on whose behalf these contributions were made in each of those financial years.

ANSWER:

The Department of Human Services within its funding arrangements provides for payment of the employer's statutory superannuation contributions and additional payments in respect of defined benefit superannuation schemes. Data is not collected on payments by agencies for individual industry groupings.

Finance: Victorian Public Service — superannuation

2281. THE HON. D. McL. DAVIS — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Finance): What is the total contribution made by the Government to the superannuation of members of the Victorian Public Service employed by the Government in 1996–97, 1997–98, 1998–99, 1999–2000 and 2000–01 respectively, and what is the total number of members of the Victorian Public Service employed by the Government on whose behalf these contributions were made in each of those financial years.

ANSWER:

I am informed that:

The total superannuation contribution paid on a cash basis is as follows [1]:

1996-97	$1.213 billion (actual)
1997-98	$1.257 billion (actual)
1998-99	$2.083 billion (actual)
1999-2000	$1.370 billion (actual)
2000-01	$1.305 billion (revised)

The number of Victorian Public Service (VPS) staff members at the end of each of these financial years is [2]:

1996-97	28,447
1997-98	26,322
1998-99	26,255
1999-2000	28,511
2000-01	30,635

These figures are not directly comparable due to differences in coverage. The VPS staffing numbers relate to the 8 core departments and 12 administrative offices. The superannuation costs relate to the 8 core departments and 12 administrative offices plus all schools, TAFEs, hospitals and health services.

[1.] Source: Table C1 of 2001-02 Budget Paper No. 2

[2.] Source: Office of Public Employment Annual Reports

Finance: Victorian Public Service — salaries

2282. THE HON. D. McL. DAVIS — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Finance): What salary and benefits (excluding superannuation) are estimated to be paid by the Government to members of the Victorian Public Service employed by the Government in 2001–02.

ANSWER:

I am informed that:

Estimated expenditure on employee entitlements in 2001-02 on an accrual basis is $8.412 billion[1]. Employee entitlements include salaries and wages plus annual and long service leave. The estimate relates to the 8 core departments, 12 administrative offices plus all schools, TAFEs, hospitals and health services.

[1.]Source: Table C1 of 2001-02 Budget Paper No. 2

Finance: Victorian Public Service — superannuation

2283. THE HON. D. McL. DAVIS — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Finance): What superannuation is estimated to be paid by the Government to members of the Victorian Public Service employed by the Government in 2001–02.

ANSWER:

I am informed that:

The estimated total superannuation contribution to be paid on a cash basis in 2001-02 is $1.372 billion[1]. The estimate relates to the 8 core departments, 12 administrative offices plus all schools, TAFEs, hospitals and health services.

[1.] Source: Table C1 of 2001-02 Budget Paper No. 2

Health: hospital acquired infection

2284. THE HON. E. J. POWELL — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Health):

(a) What budgetary allocation has been dedicated to the eradication of hospital acquired infection.

(b) What results and trends have been recorded to demonstrate the effectiveness of this investment.

ANSWER:

(a) This Government identified infection control in public hospitals as a priority issue over 4 years. $33 million has been for improved infection control and cleaning. The Victorian Government's approach is marked by its coordinated approach public health care providers. Details are as follows:

- The total infection control and cleaning allocation for 2001-2002 is $8.9M.
- $3 million is being allocated on a recurrent basis for improving cleaning standards and auditing the standards.
- $5.6 million has been allocated for hospital infection control, including:
- the state-wide survey of infection control practices and protocols,
- the training of 32 additional infection control practitioners and;
- infrastructure to support infection control strategic plans.
- $1.1million is being allocated over the next 3 years for the establishment of the Victorian Nosocomial Infection Surveillance Centre.
- $46 thousand has been allocated for the Victorian Hospital Pathogens Surveillance Program (VPSP)
- $240 thousand has been allocated to the Victorian Infection Control Advisory Committee (VACIC).

(b) **The *Victorian Hospital Pathogens Surveillance Program***

The Victorian Hospital Pathogens Surveillance Program was established over 10 years ago to collect data on significant hospital microbes. This program has provided Victorian hospitals with valuable baseline and trend data and has assisted in monitoring the effectiveness of infection control guidelines and policies. Data from this Surveillance Program is publicly available and published twice a year. Data available through this program include:

- The monitoring of bacterial antimicrobial resistance in hospitals
- The monitoring of specific community infections
- Antimicrobial resistance in food-borne organisms (for example, the National Salmonella Surveillance Scheme)
- The monitoring of bacteria causing nosocomial (hospital-acquired) bloodstream infections in Victorians
- The monitoring of Methicillin-resistant *Staphylococcus aureus* (MRSA) and Vancomycin-resistant *enterococci* (VRE) in Victorian hospitals.

Victorian Hospital Pathogens Surveillance Program Results and Trends:

- Overall, the rate of new MRSA (or Golden Staph) in Victorian hospitals has been stable for over 10 years.
- There has been downward trend in the cases of new VRE (Vancomycin resistant enterococcus, a significant antibiotic resistant bacteria) in 2001 compared to the 1998-2000 period.

Victorian Nosocomial Infection Surveillance Coordinating Centre

- This Government will launch the new Victorian Nosocomial Infection Surveillance System (VICNISS) shortly.

Strategic Infection Control Plans

- All Health Services, hospitals and Rural Regions have developed Infection Control Strategic Management Plans for the next three years, which identify key priorities for effective infection control and prevention.
- Agencies will report annually to the Department on expenditure and implementation of the Strategic Plans.

Infection Control Re-survey

- The Department has developed a new infection control survey instrument, in conjunction with infection control and sterilisation experts, and experts in survey and research design.
- The survey instrument will be used to re-survey infection control in all acute Victorian public hospitals (and multipurpose centres) over the period from October 2001 to June 2002.

– The purpose of the re-survey is to evaluate the effectiveness of current infection control programs, policies and procedures and to allow comparisons with key findings of the initial survey conducted in 1996/97.

Victorian Advisory Committee on Infection Control (VACIC)

– The Victorian Advisory Committee on Infection Control held its first meeting in February 2001. This committee replaces the previous Standing Committee on Infection Control (SCIC) which was disbanded in November 2000.

– VACIC is made up of members from various professional associations and groups, and membership has been broadened from the previous committee, to include hospital management and consumer representation.

– The role of VACIC is to provide professional advice and support to the Department on a range of issues involving infection control and prevention in Victoria.

Preventing the Emergence of Antibiotic Resistant Micro-organisms

– Developmental research on computer-assisted antibiotic prescribing model at the Royal Melbourne Hospital is ongoing.

– The 2001 Quality Improvement and Best Practice Funding (QIF) round of the Acute Health Division of the Department of Human Services has funded 4 multi-centred hospital based projects of 6 months to 3 years duration aimed at improving prudent antibiotic use, and hand washing. Results will be made publicly available upon completion of the projects.

– The Government acknowledges that success depends on the work of many professional staff in hospitals, with support from management, and welcomes their enthusiasm and support for the current initiatives.

Housing: high-rise public housing

2287. THE HON. ANDREA COOTE — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Housing): In relation to the Government's commitment to provide a better standard of public housing, what strategies will the Government employ to improve safety in high rise public housing.

ANSWER:

The Government is committed to improving the living environment for residents in all inner city public housing estates. Last year, the Government spent $150 million upgrading public housing in Victoria. This year, a further $154 million will be spent, including $54 million on the high-rise estates.

The Government has initiated a number of measures over the past eighteen months to address safety and security concerns. It is important to realise that incidents on inner city estates often involve non-public housing tenants accessing the estate and committing crimes on and around the grounds. Public tenants have most often been the victims, not the perpetrators, in these cases.

It is therefore important that access to public housing estates becomes more controlled so that residents and their guests can feel safe in their units and in the common areas such as foyers, car parks and external grounds.

Strategies being considered include the use of identity cards for tenants and residents; increased physical deterrents such as video surveillance of public spaces; and a concierge security model. Such initiatives have been trialled in the UK and Europe with excellent results. However, no such trials will be implemented in Victoria without active and appropriate consultation with public tenant communities.

Security and safety are important issues for all public tenants and regular consultative forums with Housing Office staff and security contractors provide an opportunity for issues to be discussed and addressed.

Housing: public housing tenants

2289. THE HON. ANDREA COOTE — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Housing): In relation to the Government's commitment to provide a better standard of public housing, what strategies will the Government implement to give the tenants a sense of control and ownership.

ANSWER:

Significant steps have been taken to improve opportunities for public housing tenants to participate more directly in decisions concerning the management of their housing, the services provided to tenants and their relationship to the broader community.

The Government implemented the Public Housing Advocacy Program on 1 July 2001 with the aim of giving tenants a greater voice on public housing issues and more assistance to build stronger communities.

From July 1, additional support was provided to tenant organisations to ensure that these groups can more effectively represent their constituents at a local level. Annual funding to tenant groups was increased, and arrangements made to provide groups with office equipment such as computers, printers and photocopiers. Groups are also to be provided with access to interpreting and translation services to assist them to more easily communicate with the diverse communities that they represent.

The Office of Housing is currently working with tenant groups and local service providers to transfer the management of local community facilities and gardens directly to those tenant groups interested in taking on this role. This transfer will allow tenant groups to play an active part in attracting activities to their community and ensuring these valuable community resources are managed by the local community.

The Office of Housing has also funded the Victorian Public Tenants Association (VPTA) for the next three years to continue to expand their important work in supporting existing tenant groups and the development of new groups across Victoria. As a state-wide representative and independent tenant organisation, the VPTA will play an important role in building a strong network of local tenant groups and ensuring tenants can participate in local decisions affecting their lives.

The Office of Housing is undertaking a project to examine ways in which tenant communities can have a strong voice in raising and resolving issues, setting priorities and ensuring future projects are targeted to achieve the best outcomes for tenants. Through an extensive consultative process, this project is examining ways of establishing a network of local, regional and state-wide consultative committees.

Tenants and their representatives are encouraged to participate in a wide variety of housing activities and projects impacting on their community. Whether it is designing and building community gardens, organising events and activities or undertaking a major neighbourhood renewal program, tenants are playing a key role in setting priorities and ensuring the outcomes are focused on the needs of tenants.

Housing: high-rise public housing

2290. THE HON. ANDREA COOTE — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Housing): In relation to the Government's commitment to provide a better standard of public housing, what strategies will the Government implement to ensure that high rise towers are 'child friendly'.

ANSWER:

The Government is committed to ensuring that public housing stock continues to provide appropriate and affordable housing options for a range of client groups, including families with children.

Inner city high-rise estates are generally well located with regard to access to schools and services. In many cases, schools are located in very close proximity, with a high proportion of students residing on public housing estates.

The Office of Housing is actively supporting projects that provide developmental opportunities for children living in inner city estates. For example, the Kitchen Garden Project at Collingwood College is a joint initiative between the school and the Office of Housing. This innovative program teaches students in Years 3 to 6 how to plant, produce and maintain a vegetable garden, and to experience the enjoyment of cooking their own produce and eating a balanced, healthy diet. Collingwood College is located next to the high-rise towers in Hoddle Street and has a very high proportion of students who live on the Collingwood estate. The project is being supported by one of Australia's leading chefs, Stephanie Alexander, who is concerned that many children living in cities today do not have the opportunity to experience the sense of satisfaction and enjoyment of growing and eating their own produce.

In an effort to make the inner city estates more "child friendly", work has been undertaken to improve playgrounds on a number of estates. For example, existing playgrounds in Flemington have been upgraded and repainted, and an additional playground installed. All playgrounds have been re-mulched and redesigned, with additional fencing installed where required. Other improvements include a basketball court, a rebound wall and 2 cricket nets.

The needs of children are also being considered as part of the upgrading of high-rise towers. For example, resurfacing of corridors with non-slip surfaces is currently being investigated for future upgrades, starting at 125 Napier Street, Fitzroy.

The Office of Housing is also supporting the implementation of Internet cafes in community facilities on a number of high-rise estates as a means of ensuring that children living on the estates have access to information technology for educational and recreational purposes. In many cases, after school homework support is also available. Kindergartens, after-school care programs and music classes for children are also available on some estates.

In the inner south, the Department of Human Services has funded the local Community Health Service, through the Community Strengthening Initiative, to undertake a project for young people living in inner city public housing estates in the City of Stonnington. A working group consisting of Stonnington Youth Workers, the Inner South Community Health Service Youth Program and the Office of Housing has been established

The project aims to encourage young people between the ages of 10 to 14 years to participate in a range of cultural and recreational activities, and will incorporate health promotion and education strategies to address drug use, and associated activity which impacts on other residents of these communities. The project also aims to establish stronger partnership and cooperation between agencies delivering services to young people residing in these estates.

Housing: public housing tenants

2291. THE HON. ANDREA COOTE — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Housing): In relation to the Government's commitment to provide a better standard of public housing, what strategies will the Government implement to address the different cultural needs of the tenants.

ANSWER:

The Office of Housing's 'Housing Assistance Consumer Charter' makes specific reference to the provision of interpreting services and non- discrimination on the basis of either race or religious expression. Both the Charter and the 'Housing Maintenance Service Standards' are available as flyers, posters and electronically, with messages in 16 languages advising where to obtain assistance with interpreting or translation.

Public Housing LanguageLink offers a pre-recorded telephone information service in 9 community languages. The information covers the full range of housing services available through the Office of Housing. The charge to the customer is the cost of a telephone call.

'Tenant News', the quarterly public housing tenant newsletter is available in 9 community languages. This newsletter is sent directly to all public housing tenants and is also available on the Internet.

The Office of Housing meets the costs of interpreting services for its clients, and will arrange on-site interpreters, as required. All funded tenant groups will soon have direct access to interpreting and translation services. This will

allow groups to produce meetings notices, newsletters and general information targeted to meet the needs of their diverse communities.

A number of direct service delivery staff have specific language skills. The Department of Human Services (DHS) supports an accreditation program to recognise staff with language expertise and this is reflected in the remuneration packages for individual staff members. Housing staff account for approximately 40 per cent of DHS staff receiving the language allowance. More than 50 Housing Service Officers staff speak a language other than English.

The Office of Housing delivers in-house training and policy promotional sessions that take into account the requirements of providing housing services to customers of cultural and linguistically diverse communities. A training package has also been developed to address the needs of staff working with Interpreters. Courses in Cross Cultural training for Housing staff have also been available since 1995.

In an effort to promote fire safety among the public tenant community, the Office of Housing has developed and produced videos, information sheets, booklets and 'Fire Orders' in partnership with the Metropolitan Fire and Emergency Services Board, to promote fire awareness within tenant communities. The video is available in four community languages and incorporates fire related issues, which arise from specific ethnic and cultural preferences when cooking or heating their homes. Other fire awareness material is translated and printed in 16 community languages. This is provided at the commencement of tenancy to incoming tenants and actively promoted in housing offices.

The Office of Housing funds 13 Public Housing Advocacy Providers to provide tenancy advice and support to public housing tenants. These agencies are required to target their services to culturally and linguistically diverse customers and tenants, and ensure that communities facilities are used for the direct or substantial benefit of public tenants. Use of community facilities for the provision of language and education classes, festivals and cultural events, is strongly encouraged.

Since August 2001, The Public Housing Advocacy Program has been funding the Australian Vietnamese Women's Welfare Association to provide tenant advice, referral and support services to the Vietnamese community in the City of Yarra area. This pilot program will explore new ways of delivering independent tenancy services to this community.

The Government's focus on community renewal and provision of services on public housing estates has also provided opportunities for particular ethnic or cultural communities to participate in activities which promote their culture while celebrating their new lives in Australia. For example, many activities undertaken by tenant groups during Housing Week have an ethnic or cultural theme.

Other more 'mainstream' activities have also attracted participation by specific cultural groups. For example, community gardens on public housing estates have provided a great opportunity for tenants from other countries to grow plants and vegetables from their homeland, while making friendships and sharing knowledge with keen gardeners from diverse cultural backgrounds.

Housing: Ashburton public housing estate

2341. **THE HON. ANDREA COOTE** — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Housing): What is the current status of work in progress for the Ashburton public housing estate.

ANSWER:

Demolition works for the concrete walk-up flats at Victory Boulevard were completed in early October 2001.

The Office of Housing has developed a design for 37 older persons units at the site and it is anticipated that a town planning application will be lodged later this year.

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