**PARLIAMENT OF VICTORIA**

# PARLIAMENTARY DEBATES (HANSARD)

## LEGISLATIVE COUNCIL

## FIFTY-FOURTH PARLIAMENT

## FIRST SESSION

## 16 October 2002

## (extract from Book 2)

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

**By authority of the Victorian Government Printer**

## The Governor

JOHN LANDY, AC, MBE

## The Lieutenant-Governor

Lady SOUTHEY, AM

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| Deputy Premier and Minister for Health | The Hon. J. W. Thwaites, MP |
| Minister for Education Services and Minister for Youth Affairs | The Hon. M. M. Gould, MLC |
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| Minister for Energy and Resources and Minister for Ports | The Hon. C. C. Broad, MLC |
| Minister for State and Regional Development, Treasurer and Minister for Innovation | The Hon. J. M. Brumby, MP |
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| Minister for Planning, Minister for the Arts and Minister for Women's Affairs | The Hon. M. E. Delahunty, MP |
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| Minister for Education and Training | The Hon. L. J. Kosky, MP |
| Minister for Finance and Minister for Industrial Relations | The Hon. J. J. J. Lenders, MP |
| Minister for Sport and Recreation and Minister for Commonwealth Games | The Hon. J. M. Madden, MLC |
| Minister for Gaming, Minister for Tourism, Minister for Employment and Minister assisting the Premier on Multicultural Affairs | The Hon. J. Pandazopoulos, MP |
| Minister for Housing, Minister for Community Services and Minister assisting the Premier on Community Building | The Hon. B. J. Pike, MP |
| Minister for Small Business and Minister for Information and Communication Technology | The Hon. M. R. Thomson, MLC |
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**Privileges Committee** — The Honourables W. R. Baxter, D. McL. Davis, C. A. Furletti, M. M. Gould and Gavin Jennings.

**Standing Orders Committee** — The Honourables the President, G. B. Ashman, B. W. Bishop, R. M. Hallam, Gavin Jennings, Jenny Mikakos, G. D. Romanes and K. M. Smith.

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**Environment and Natural Resources Committee** — (*Council*): The Honourables R. F. Smith and E. G. Stoney. (*Assembly*): Mr Delahunty, Ms Duncan, Mrs Fyffe, Ms Lindell and Mr Seitz.

**Family and Community Development Committee** — (*Council*): The Honourables B. N. Atkinson, E. J. Powell and G. D. Romanes. (*Assembly*): Mr Hardman, Mr Lim, Mr Nardella and Mrs Peulich.

**House Committee** — (*Council*): The Honourables the President (*ex officio*), G. B. Ashman, R. A. Best, J. M. McQuilten, Jenny Mikakos and R. F. Smith. (*Assembly*): Mr Speaker (*ex officio*), Ms Beattie, Mr Kilgour, Ms McCall, Mr Rowe, Mr Savage and Mr Stensholt.

**Law Reform Committee** — (*Council*): The Honourables R. H. Bowden, D. G. Hadden and P. A. Katsambanis. (*Assembly*): Mr Languiller, Ms McCall, Mr Stensholt and Mr Thompson.

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**Printing Committee** — (*Council*): The Honourables the President, Andrea Coote, Kaye Darveniza and E. J. Powell. (*Assembly*): Mr Speaker, Ms Gillett, Mr Nardella and Mr Richardson.

**Public Accounts and Estimates Committee** — (*Council*): The Honourables D. McL. Davis, R. M. Hallam, G. K. Rich-Phillips and T. C. Theophanous. (*Assembly*): Ms Barker, Mr Clark, Ms Davies, Mr Holding, Mr Loney and Mrs Maddigan.

**Road Safety Committee** — (*Council*): The Honourables Andrew Brideson and E. C. Carbines. (*Assembly*): Mr Kilgour, Mr Langdon, Mr Plowman, Mr Spry and Mr Trezise.

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## Heads of Parliamentary Departments

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

*Hansard* — Chief Reporter: Ms C. J. Williams

*Library* — Librarian: Mr B. J. Davidson

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Director, Infrastructure Services: Mr G. C. Spurr

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**FIFTY-FOURTH PARLIAMENT — FIRST SESSION**

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**Deputy President and Chairman of Committees:** The Hon. B. W. BISHOP

**Temporary Chairmen of Committees:** The Honourables G. B. Ashman, R. A. Best, R. H. Bowden, Kaye Darveniza, D. G. Hadden, Jenny Mikakos, R. F. Smith, E. G. Stoney and C. A. Strong

**Leader of the Government:**
The Hon. M. M. GOULD

**Deputy Leader of the Government:**
The Hon. GAVIN JENNINGS

**Leader of the Opposition:**
The Hon. BILL FORWOOD from 13 September 2001
The Hon. M. A. BIRRELL to 13 September 2001

**Deputy Leader of the Opposition:**
The Hon. C. A. FURLETTI from 13 September 2001
The Hon. BILL FORWOOD to 13 September 2001

**Leader of the National Party:**
The Hon. P. R. HALL from 20 March 2001
The Hon. R. M. HALLAM to 20 March 2001

**Deputy Leader of the National Party:**
The Hon. E. J. POWELL from 20 March 2001
The Hon. P. R. HALL to 20 March 2001

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| Atkinson, Hon. Bruce Norman | Koonung | LP | Hallam, Hon. Roger Murray | Western | NP |
| Baxter, Hon. William Robert | North Eastern | NP | Jennings, Hon. Gavin Wayne | Melbourne | ALP |
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| Furletti, Hon. Carlo Angelo | Templestowe | LP | Strong, Hon. Christopher Arthur | Higinbotham | LP |
| Gould, Hon. Monica Mary | Doutta Galla | ALP | Theophanous, Hon. Theo Charles | Jika Jika | ALP |
| Hadden, Hon. Dianne Gladys | Ballarat | ALP | Thomson, Hon. Marsha Rose | Melbourne North | ALP |

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## WEDNESDAY, 16 OCTOBER 2002

# Wednesday, 16 October 2002

**The PRESIDENT (Hon. B. A. Chamberlain) took the chair at 10.03 a.m. and read the prayer.**

## QUESTIONS WITHOUT NOTICE

### MCG: redevelopment

**Hon. I. J. COVER** (Geelong) — I refer the Minister for Sport and Recreation to the Melbourne Cricket Ground redevelopment where the Bracks government will spend $77 million of Victorian taxpayers' money to buy industrial peace, and I ask: has the site agreement for the MCG project been finalised?

**Hon. J. M. MADDEN** (Minister for Sport and Recreation) — I welcome the question because this government is very proud of its ability to bring together the Melbourne Cricket Ground redevelopment works and all those appropriate agreements that have been required to deliver that project. I understand that the memorandum of understanding with the relevant industrial groups is in the process of being signed off. I also understand that works are proceeding as required and that the site agreement between the contractor and the appropriate unions is being determined and will be determined in the very near future.

*Supplementary question*

**Hon. I. J. COVER** (Geelong) — In answering the supplementary question the minister might make it clear if he said it 'is' being or 'it has been' finalised.

**Hon. B. N. Atkinson** — He said 'being'.

**Hon. I. J. COVER** — I think the minister said 'being', which would indicate it is still a work in progress. If that is the term used by the minister in his answer — that the memorandum of understanding was in the process and that things are being finalised — I ask the minister by of way of supplementary question: if the negotiations are still continuing, can the minister guarantee that the delay will not expose the Victorian taxpayer to a cost blow-out?

**Hon. J. M. MADDEN** (Minister for Sport and Recreation) — Again I repeat that we have been able to deliver a project — —

*Honourable members interjecting.*

**The PRESIDENT** — Order! I ask both sides of the house to allow the minister to answer in a way that can be heard by the rest of the house.

**Hon. J. M. MADDEN** — We have been able to deliver a project that the opposition would not have been able to deliver. I reinforce that: the opposition would not have been able to deliver. The government is proud of the way it has been able to bring that together. I reinforce that there will be no problems with the delivery of that project because we have ensured, and will continue to ensure, that the project is delivered on time and on budget. As I have continued to repeat, the project will be delivered on time and on budget.

### Schools: computer access

**Hon. E. C. CARBINES** (Geelong) — Will the Minister for Education Services advise the house of the investment the Bracks government has made in information technology in Victorian schools and specifically outline what impact this has had on school communities?

**Hon. M. M. GOULD** (Minister for Education Services) — I thank the honourable member for her question; her ongoing commitment to education is well known. The Bracks government has invested heavily to ensure that our school communities have access to world-class information and technology. This is unlike what the previous government did. The previous government failed to genuinely invest in information technology and recognise the benefits that it provides to the entire school community.

I am delighted to inform the house of the fantastic outcome of the 2002 census of computers in our schools. This census shows that the average computer to student ratios have improved under this government. The ratio has gone down to one computer to 3.9 students — that is one computer to less than every 4 students — compared with last year when it was over 4.3. This is a phenomenal result and one that reflects the investment this government has made in education. Victoria now has the best student–computer ratio in the country. We are delivering a brighter future for all schools, not like the opposition.

This year the Bracks government has purchased over 22 000 computers.

**Hon. T. C. Theophanous** — How many?

**Hon. M. M. GOULD** — In this year alone, 22 000. That's a huge investment to ensure we have additional computers in our schools. This ensures that Victorian students are well placed to take full advantage of the growing opportunities in information technology. In addition to these extra computers the government has provided funding of $30 million for an IT support

program, along with IT grants of $7 million, which are provided into schools each year.

This investment is on top of the funding the Bracks government has provided through the access@schools program. This allows over 130 schools in remote and rural Victoria to make their Internet facilities available to the community. I know the National Party members in this place support such a program so their communities can get access to that asset, so bringing the community together.

The government is proud of delivering IT facilities to our schools to ensure that we have world-class environments and facilities. The government will continue to work to ensure that the entire school community benefits from our investment. The Bracks government is turning things around in this state. It is turning education around. We have listened to the communities and we have acted.

## Minister for Education Services: departmental memo

**Hon. BILL FORWOOD** (Templestowe) — Obviously the minister has turned around so many times she is going around in circles!

My question to the Minister for Education Services also deals with school computers. I was slightly amused at the minister's response to her dorothy dixer. I draw the minister's attention to an article in the *Herald Sun* of 1 August which pointed out that the government had decided to charge a fee of $130 to supply recycled computers in Victorian schools, which was later withdrawn when the minister said that the memo had gone out without her authorisation or knowledge. Could the minister please advise the house how come she could have a memo sent out charging schools $130 without her knowledge?

**Hon. M. M. GOULD** (Minister for Education Services) — Obviously, the Leader of the Opposition is dredging through what happened back in August. As I indicated at the time, a memo had been sent out to schools. I intervened in that matter and had that memo withdrawn. I had an apology from the department as to the sending of that memo, and that matter is completed.

*Supplementary question*

**Hon. BILL FORWOOD** (Templestowe) — I am delighted that the minister has now admitted that the memo went out from her department and it was then withdrawn.

**Hon. M. M. Gould** — Didn't you listen to the news? I said that.

**Hon. BILL FORWOOD** — Thank you for saying that. Will the minister outline the purpose of the original memo?

**Hon. M. M. GOULD** (Minister for Education Services) — As I have advised the house, that memo was withdrawn. I intervened in that matter. I indicated that that memo had been withdrawn and all schools had been advised to disregard it. I indicated to the media the next day that I had intervened in the matter, had the memo withdrawn and received an apology from the department.

## Cycling: track world championships

**Hon. T. C. THEOPHANOUS** (Jika Jika) — Will the Minister for Sport and Recreation advise the house as to what steps the Bracks government has taken to ensure that Victoria's record as the major events state is maintained?

**Hon. J. M. MADDEN** (Minister for Sport and Recreation) — Members of the chamber may not be aware, but I would like to inform them that the state recently hosted 200 overseas riders and officials at the 2002 international cycling union, known as UCI, track cycling junior world championships. This was a very significant event in terms of showcasing the new velodrome at the Vodafone Arena and giving the international cycling community — —

*Honourable members interjecting.*

**The PRESIDENT** — Order! I am interested in hearing the minister's answer. I am sure if Mr Smith stopped talking he would hear the answer, and if the people on my left stopped talking — —

**Hon. M. M. Gould** — And Mr Boardman. Name them too, if you are going to name our side!

**The PRESIDENT** — Order! I just heard a mass of noise, but I heard Mr Smith very clearly. I want to hear the minister. I do not want to hear anyone else.

**Hon. J. M. MADDEN** — I appreciate that the collective noun for a rabble is the Liberal Party!

This international event provided an opportunity to showcase the Vodafone Arena as an international cycling venue. It proved itself as a premier cycling venue with excellent amenities for both competitors and spectators. The funding for the event was provided through the major events funding, and event planning

support was provided by the Department of Tourism, Sport and the Commonwealth Games.

Twenty-five countries competed, with Germany providing the largest contingent of overseas competitors. Fortunately, the Australian team performed extremely well and was the top-placed nation. This very important event is also part of the major events strategy, and it reflects how major events contribute to grassroots sporting development. It was part of a strategy to showcase the cycling venue in the lead-up to the 2004 UCI track cycling world championships, which have recently been awarded to Melbourne. Having the junior titles here has allowed many of the volunteers who support these events to be upskilled to support the event in 2004.

That event in 2004 will be extremely exciting because it will be the last major international event in the lead-up to the cycling in the Olympics in Athens. We will have some of the best international riders here. We will have international worldwide coverage on television through which we will highlight Melbourne as the sports capital not only of Australia but potentially the world.

All this strategy, this upskilling and the bringing together of these cycling events in the Vodafone Arena will no doubt ensure that, come the Commonwealth Games in 2006, we will be confident in showcasing the sport and the state and ensuring that our volunteers are sufficiently skilled and confident to ensure the successful delivery of the games in 2006.

## MCG: redevelopment

**Hon. R. M. HALLAM** (Western) — I want to again raise the issue of the funding for the redevelopment of the Melbourne Cricket Ground (MCG), and in particular I refer the minister to his letter addressed to me, dated 4 September, which responds to an earlier inquiry.

**The PRESIDENT** — Order! This is addressed to the Minister for Sport and Recreation?

**Hon. R. M. HALLAM** — Yes. I thank the minister for the courtesy of his response, but I am disappointed that he expects me to be satisfied with mumbo jumbo. There are several points I would like to explore in his response, but I begin with the most obvious. Can the minister please explain to the house his assertion that the commonwealth's offer of $90 million has been withdrawn?

**Hon. J. M. MADDEN** (Minister for Sport and Recreation) — The honourable member will appreciate that the commonwealth made the offer some time ago. At the very last minute the federal government was potentially about to scuttle the project by going against its own guidelines and entering into the process after the tender had been released. That was contradicting its own guidelines on its industrial relations policies.

It was very obvious that, as I have mentioned on a number of occasions in this house, our old favourite, Tony Abbott — that zealot up in Canberra — was very pleased to use the Melbourne Cricket Ground as a political football. It definitely shows that Mr Abbott does not appreciate or understand the significance and symbolism of the MCG to the Victorian community. The Victorian community would not allow, and would not expect the Victorian government to allow, the federal government to try to scuttle or sabotage that project by introducing elements of its industrial relations policy that contradict even its own guidelines.

We would expect that the federal government would support the Commonwealth Games in conjunction with us, and I feel confident that it will. The Commonwealth Games will be fantastic not only for Victoria, showcasing Melbourne, and showcasing Victoria and elements of regional Victoria, but it will also showcase Australia to the world in the same way that Sydney showcased us to the world. We expect that the commonwealth will provide pro rata support, similar to its pro rata support for the Olympic Games.

We anticipate that in an atmosphere of goodwill, support for sport and a recognition of the contribution that sport makes to the greater and broader community, the Commonwealth Games will supplement other elements of the games with that money.

*Supplementary question*

**Hon. R. M. HALLAM** (Western) — I thank the minister for his response but point out to the chamber that it did not go anywhere near the question I posed.

I would like to go back to the central issue. I make the point that it took but one phone call from me to the Prime Minister's office to establish that the $90 million has not been withdrawn. I am told that the $90 million is available as of today. So my supplementary question to the minister responsible — and I use the word advisedly in respect of the Commonwealth Games — is: can the minister explain to Victorian taxpayers why he insists on looking a $90 million gift horse in the mouth?

**Hon. J. M. MADDEN** (Minister for Sport and Recreation) — I am happy to say that we will accept money given to us by the federal government on any occasion so long as that money does not potentially

scuttle or sabotage the games. It was obvious from the way strings were attached to that money committed by the federal government that it potentially was going to scuttle the MCG redevelopment.

The MCG redevelopment is a hallmark development. It shows what we can do as a state: how we can still continue to have events in the facility while the redevelopment takes place. It is a development we should be proud of, but unfortunately the federal government wanted to pursue its own political agenda by potentially scuttling the project.

## Fishing: Lake Hume and Lake Mulwala

**Hon. JENNY MIKAKOS** (Jika Jika) — I ask the Minister for Energy and Resources to inform the chamber of what recent action the Bracks government has taken in relation to the regulation of recreational fishing on Lake Hume and Lake Mulwala.

**Hon. C. C. BROAD** (Minister for Energy and Resources) — Lake Hume and Lake Mulwala are very important recreational fisheries, with Lake Mulwala being generally considered to be the premier Murray cod fishery in Australia.

I am happy to inform the chamber that recently I announced that the Victorian and New South Wales governments had agreed to end the long-running confusion over fishing regulations for the state border waters, following much work done and an in-principle agreement after the joint meetings of the cabinets of New South Wales and Victoria last year.

This demonstrates again what can be achieved when governments cooperate. This is not something that would have been achieved by the opposition parties. The Bracks government has listened to recreational anglers and acted to end this cross-border confusion for anglers who have been concerned — quite rightly — about the need to hold two fishing licences and comply with two different sets of laws.

This confusion is primarily caused by the invisible borderline which is submerged, of course, by the two lakes, and the difference in licensing systems which include different bag limits, size limits and gear restrictions in New South Wales and Victoria.

The government announced that an extensive public consultation process had been initiated jointly by the two governments to determine the level of community support for establishing new fisheries management arrangements for the two lakes. Under our proposal New South Wales will manage Lake Mulwala and Victoria will manage recreational fishing in Lake Hume. This means in practice that a New South Wales recreational fishing licence will be required for Lake Mulwala and a Victorian licence will be required for Lake Hume. It will also mean uniform seasonal closures and uniform bag limits and size limits to apply to each of the water bodies.

This government understands how important recreational fishing is to many Victorians, and it is delivering on projects which maximise the enjoyment of this great activity. We are delivering outcomes, such as the ending of this confusion, which will directly benefit New South Wales and Victorian anglers. I take this opportunity to invite all interested anglers to make public submissions up until 15 November on this issue. In addition I indicate that a community liaison group will be formed to monitor the implementation of this historic decision.

Certain members opposite have criticised these arrangements despite the fact that when in government they provided no solutions to this long-running problem. Once again they demonstrate that they stand for nothing, that they do not care and that all they can do is carp and criticise. In contrast, the Bracks government continues to deliver on initiatives to support recreational angling in Victoria.

## Marine parks: enforcement officers

**Hon. C. A. FURLETTI** (Templestowe) — I refer the Minister for Energy and Resources to the recent review and allocation of staff under the Victorian marine parks fisheries officer placements by the Department of Natural Resources and Environment, pursuant to which the Yarram office has received one extra enforcement officer. Can the minister assure all Victorians and the Corner Inlet community in particular that the three enforcement officers allocated are sufficient to police the fisheries and marine parks to a standard at least comparable to other DNRE offices?

**Hon. C. C. BROAD** (Minister for Energy and Resources) — Following the passage of legislation to create marine national parks in this state — an historic decision that has been enacted by the government — that decision was accompanied by an extensive package to ensure not only that the new marine national parks are properly managed but that we also have adequate enforcement to ensure compliance in the marine national park areas and right around the coast. This was a very important part of the package the government presented to the Parliament. As a result of that package being implemented following the passage of the legislation, notwithstanding the opposition from the National Party, this has resulted in a number of fisheries

officers being deployed around the state by the Department of Natural Resources and Environment.

I am aware that in the deployment of those resources there has been a good deal of discussion around the state as to what is the most desirable location from the point of view of local communities and the precise location of this large number of additional fisheries officers. I believe the Department of Natural Resources and Environment has come up with a very satisfactory arrangement in deploying these resources to offices right across the state and has ensured that, as a result of a high level of cooperation in the way these resources are deployed not only on day-to-day activities but also in taskforce enforcement operations, we will get an excellent result.

*Supplementary question*

**Hon. C. A. FURLETTI** (Templestowe) — I thank the minister for her answer, but the reason I asked the question was because there are obvious issues in Yarram. The issue at the Yarram office arises from the fact that the appointment of one extra officer still represents one less officer than before marine parks were proposed. In other words, there is one less officer than before. Who will police it and will the policing be adequate? Will the minister reassess the numbers that will look after the large marine park at Corner Inlet and Wilsons Promontory?

The point of the question is this: the minister has sought support from the Victorian community on the basis of stronger enforcement. The Department of Natural Resources and Environment has announced there will be one less enforcement officer than before the announcement of marine parks. Will the minister remedy this situation?

**Hon. C. C. BROAD** (Minister for Energy and Resources) — The simple answer for the benefit of the honourable member opposite is that as a result of this government's actions there is a huge boost to the resources available to ensure enforcement and compliance with the fisheries laws in this state. There are more fisheries officers than there have ever been before — more fisheries officers than were ever allocated by the previous Kennett Liberal government.

This government is proud of the actions it has taken to ensure better fisheries enforcement in the state. I am confident that as a result of the actions of this government and the Department of Natural Resources and Environment we will get a better result in terms of compliance with our fisheries laws and enforcement in the state.

## Connecting Victoria strategy

**Hon. D. G. HADDEN** (Ballarat) — I refer my question to the Minister for Information and Communication Technology. One of the first policies released by the Bracks government was Connecting Victoria. Will the minister inform the house what has been achieved under the Connecting Victoria policy?

**Hon. M. R. THOMSON** (Minister for Information and Communication Technology) — I thank the honourable member for her question. The past three years has been a significant period for Victoria's information and communications technology industry. It has seen the maturing of our industry, the mainstreaming of ICT and the laying of foundations to establish an ongoing, vibrant industry.

During this period the Bracks government has been listening to the sector. We have listened and developed an industry plan and acted on that plan. We have listened to the community and delivered a program to close the digital divide and have delivered a range of e-commerce programs to small business and to business generally.

Over the last three years the Bracks government has been delivering a broad range of ICT policies and programs. The opposition has not delivered one new policy initiative in this area — not one new policy.

**Hon. M. M. Gould** — An absolute black hole!

**Hon. M. R. THOMSON** — It is an absolute black hole! The achievements of the Bracks government under Connecting Victoria are extensive. To demonstrate how the government has helped more Victorians than ever before to benefit from new technologies we have produced *Connecting Victoria — A Progress Report 1999–2002*. This report illustrates what can be achieved from a forward-looking government working in partnership — which the opposition does not understand — with industry, education providers and the community.

The major achievements under Connecting Victoria include: facilitating ICT investments worth over $660 million which have secured more than 5000 jobs in Victoria; providing 135 traineeships in the ICT industry through the Go for IT program; establishing more than 10 000 public Internet access terminals, 79 per cent of which are in regional Victoria; providing Internet training and access to more than 82 000 Victorians through the Skillsnet program; establishing six community enterprise centres in western Victoria; training 50 e-commerce advocates to help and assist small business to use e-commerce to

their advantage; providing $1.7 million to 39 councils across Victoria for 26 e-commerce projects; and establishing the first master course in microelectronics under the Chipskills project.

As we already heard today from the Minister for Education Services, the Bracks government has lowered the student-to-computer ratio to 1 to 3.9, one of the best ratios in the world.

The Bracks government has delivered under Connecting Victoria. Victoria is now a leader in the development of ICT skills. Our industry is growing and maturing, and Victorian small and medium-sized companies have a greater awareness of e-commerce. But this is only a progress report. The Bracks government will continue to listen and work with the ICT industry to continue to deliver good policies to grow the Victorian ICT industry.

## Fishing: bay and inlet licences

**Hon. PHILIP DAVIS** (Gippsland) — I direct a question to the Minister for Energy and Resources. Last week, on 4 October, the government announced without consultation the unilateral closure of Lake Tyers and Mallacoota estuarine fisheries. Will the minister advise of further proposed bay and inlet fishery closures?

**Hon. C. C. BROAD** (Minister for Energy and Resources) — The position the government has set out in relation to that announcement — one which the government believes is very much in the interests of recreational fishers in this state and has been warmly welcomed by the peak body for recreational fishing, VRFish and by the Rex Hunt Future Fish Foundation — is one which we believe will also be very much in the interests of the Gippsland economy in terms of the contribution which tourism and recreational fishing makes to the Gippsland economy alone.

What I have indicated in relation to the process following that announcement is that the announcement is subject to consultation. However, based on the representations that have been made to the government leading up to the announcement, my expectation is that the consultation process will demonstrate overwhelming support for that decision by this government.

So I think it is important to be honest with the commercial fisheries licence-holders who are understandably disappointed at this decision by the government. I am required under the fisheries legislation to go through a consultation process, and that will be followed to the letter. Should, unexpectedly, the result of that consultation process demonstrate that there is not support for this announcement, and from the opposition benches there appears not to be, I will certainly respond to those submissions. However, that is not my expectation; that is not the government's expectation. My expectation is that this announcement will be very strongly supported by the community.

Following that consultation process the government will move as quickly as possible to negotiate fair compensation for the commercial licence-holders affected to ensure they receive the fair compensation they are entitled to.

*Supplementary question*

**Hon. PHILIP DAVIS** (Gippsland) — On the basis of the minister's response, will she now advise that she can rule out any further bay and inlet fishery closures?

**Hon. C. C. BROAD** (Minister for Energy and Resources) — The Fisheries Co-management Council, I am pleased to indicate to the house, has been working on a policy to form the framework for these very difficult resource allocation decisions that affect both commercial and recreational fishing. As we look to the future we can expect to see even greater pressures arising as a result of an increasing number of Victorians and tourists wishing to engage in this very enjoyable activity. My preference is that the policy framework the co-management council has worked on, which involves all of the stakeholders, should be developed and used into the future as the framework for making these resource allocation decisions.

## Sport and recreation: AAA program

**Hon. KAYE DARVENIZA** (Melbourne West) — Will the Minister for Sport and Recreation advise — —

**Hon. G. R. Craige** interjected.

**The PRESIDENT** — Order! Mr Craige! We have finished with that question and are getting on with the next one, and I want to hear the Honourable Kaye Darveniza. I ask her whether she would mind starting again.

**Hon. KAYE DARVENIZA** (Melbourne West) — Thank you, Mr President. Will the Minister for Sport and Recreation advise the house what steps the Bracks government has taken to demonstrate its commitment to promoting accessible and inclusive sport and recreation opportunities?

**Hon. J. M. MADDEN** (Minister for Sport and Recreation) — I thank the honourable member for her question. On many occasions I have spoken of the value to the broader community of sport and recreation and physical activity. That is why I recently announced grants totalling $247 448 to nine projects through the Access for All Abilities Initiative Fund, known also as AAA. These projects focus on developing innovative planning delivery and evaluation models that can be readily adapted at a local level by community organisations delivering Access or sport and recreation programs and opportunities.

I would like to highlight some examples of those programs. Canoeing for All Abilities, which is undertaken by Canoeing Victoria, will create opportunities for people with disabilities to participate in canoeing by linking AAA regional providers, Canoeing Victoria and its affiliated clubs and disability service providers. Another initiative is Moreland City Council's inclusive teenage holiday program. This project will enable the council to develop a service enhancement training and resource package that documents its inclusive teenage holiday program model. The intent is for those with similar programs to use the package to enhance their services so that they are more inclusive of people with disabilities.

The Indigo Shire Council's program Can You Hear Me, I Want to Swim will provide for deaf and hearing-impaired children who want to participate in swimming lessons. An interpretive video and manual will be developed to cover differing levels of swimming ability. The Victorian Soccer Federation has introduced the Pathways to the World Games program. Over two years the project will develop a planning model that promotes the way in which partnerships between the Victorian Soccer Federation, AAA providers, local government authorities and special schools and local clubs can increase participation for people with a disability. The training package developed will be transferable to other sports.

As the house can see, the Bracks government continues to promote opportunities for people with disabilities to take part in local activities and to build on the many achievements of the AAA program in communities across the states.

I want to reinforce the fact that these initiatives show that this is a government that acts; it is inclusive; it is growing the whole of the state. It also reinforces the way in which this government believes sport can assist in growing the talents of many communities and investing in those communities.

# MOTIONS TO TAKE NOTE OF ANSWERS

## MCG: redevelopment

**Hon. B. N. ATKINSON** (Koonung) — I move:

That the Council take note of the answers given by the Minister for Sport and Recreation to questions without notice asked by the Honourable I. J. Cover and the Honourable R. M. Hallam relating to the Melbourne Cricket Ground redevelopment project and funding for the project.

I found today's answers by the minister to be absolutely extraordinary. This minister is known for his filibustering. He is known for raving on about all sorts of issues and the credentials of the government in delivering projects and so forth. We heard him again today, yet we heard it in answer to questions that were quite specific, questions that actually sought information on site agreements and the minister's position on federal government funding. But again he refused to indicate to this house what the real position facing this government is in delivering the Melbourne Cricket Ground (MCG) project.

The fact is that this minister, while he claims that the government is delivering the project, is unable to even deliver a site agreement for it. This project is in strife and despite the fact that demolition has started, the project is without a site agreement between the union movement and the principal contractor for the development, Grocon Pty Ltd. They are at loggerheads over the conditions that will comprise that site agreement. Despite the minister telling us in the last sitting of the Parliament that a site agreement had been organised and that the government had arrived at a position that would enable it to confidently carry forward this project, the fact is that six months later a site agreement is still not in place for the Melbourne Cricket Ground development.

We are looking at a situation where the government turned down federal government funding of $90 million for the MCG project on the basis that it was not prepared to accept the law of the land, the industrial relations conditions that are set out in federal law to cover these projects. It is clear why we need those laws when you look at the results of the Cole Royal Commission into the Building and Construction Industry to this point. The union movement involved in this project under Martin Kingham, the state secretary of the Construction, Forestry, Mining and Energy Union, is a key player in terms of the events that are unfolding in that commission and the rorts in the building industry.

We need those national laws in place to make sure that this project is delivered for the people of Victoria and indeed also for the people of Australia and the commonwealth. The Commonwealth Games needs to go ahead without a hitch at this major, centrepiece venue. The minister has indicated that he recognises the importance of the MCG as a centrepiece venue for the Commonwealth Games and reckons that he will bring it in on time and on budget. And yet with those sorts of assertions to the house he has not even nailed down a site agreement. The minister claims that the federal government and the federal Minister for Employment and Workplace Relations have sabotaged the project. In fact he has indicated that the federal government has not continued to make available the $90 million to build the project.

Today the Honourable Roger Hallam brought to this house the revelation — which I might say is no revelation to the opposition, but is perhaps to the government and the minister — that the money is still available for the project. The state government has done the state no service. It has done the Commonwealth Games project no service. The people of Victoria have been let down by the government not being prepared to take up those federal funds. How many schools could we have built? How many improvements could have been made to hospitals? The government could have built the Eastern Freeway tunnel, which is in my patch, with the same $90 million which has now been wasted because it refused to follow the law of the land and abide by federal laws relating to site agreements and industrial relations. Those are proper laws: laws that ought to be in place in this state.

Certainly in terms of this project the state government is going it alone, taking its own action, refusing to follow those laws. It says, 'No, we can hammer out our own site agreement. We will be able to proceed with this project and bring it in on time and on budget'. There is certainly no evidence of that, particularly as Martin Kingham suggested in the *Herald Sun* and the *Age* of 2 October when this matter was last covered that we can look forward to further industrial relations action on this project because there is no site agreement in place and Grocon and the union are miles apart in terms of that agreement.

This minister ought to shape up and look at the federal money and bring the union to — —

**The ACTING PRESIDENT (Hon. G. B. Ashman)** — Order! The honourable member's time has expired.

**Hon. R. M. HALLAM** (Western) — The minister's responses to the questions relating to the funding for the Melbourne Cricket Ground (MCG) have simply thickened the plot and there are several issues that I would like to canvass.

The first is the actual magic of the figures themselves. Honourable members have been told that the federal government offered $90 million for the project and it is now understood that that offer has been knocked back. But — and here is the magic — this minister, the financial guru at the table, is now telling us that that $90 million can be replaced by $77 million. This comes from a government that craves financial responsibility and yet again resorts to hocus-pocus. We are back to the bad old days of the Cain and Kirner governments which simply made it up as they went along.

I put it to the government that on the standard of the financial wizardry demonstrated here today, if it is worried about the difference between $77 million and $90 million, why does it not apply for the $90 million and slip the $13 million into the kitty? It could actually get a bonus in the process, but it has knocked the money back.

Then there are other circumstances surrounding the announcement which are also a bit of wizardry: they were pulled out of the hat. The house had not even debated the current budget when the government announced that a further $77 million found from somewhere could go to this project. The minister allegedly responsible for the project could not even tell us in which year the $77 million was to be found from the public purse. Now we are told that half of it is going to come from the next financial year and half from the year following that. But my point is that the announcement came after the $77 million was announced. I think the government simply made that up as well.

Then we go to the stupidity of the announcement itself: the knock-back of the $90 million. I am pleased to have on the record today the minister's confirmation that the knock-back relates to the conditions which we are told attach to the $90 million. I want to refer to a letter addressed by the Prime Minister to the Premier where the condition which is causing so much heartburn is spelt out. Apparently this is what is causing all the kerfuffle. His letter states:

> The commonwealth considers that the Office of the Employment Advocate should have access to the project sites to monitor compliance with and investigate any suspected breaches of the Workplace Relations Act, the national code of practice for the construction industry and associated industry guidelines.

I am told that those conditions are absolutely stock standard and that in fact they already apply to a number of projects across Australia. They have been specifically applied to the project to see the rail network extended from Alice Springs to Darwin.

My report is that that project is roaring ahead, which in my view makes an absolute mockery of the minister's assertion to the house that the $90 million on the table, on offer to the Victorian government, would somehow scuttle the MCG project. The minister has not addressed the real remaining question of why the $90 million has been knocked back. We are at least entitled to ask that.

We can conclude that here is another direct cost of the Bracks government's subservience to the union movement. I think that is a fair assumption, and I would like to have someone from the government ranks say that that is not the case and explain why the conditions attached to the $90 million are such an embarrassment. I invite government members to have a go. I would love to hear their response.

**An honourable member** interjected.

**Hon. R. M. HALLAM** — That is bad enough, but I reckon the circumstance has been compounded by the minister's untruthfulness in saying that the offer was somehow withdrawn. In his letter to me he said that the offer had been withdrawn, and he knew that was not the case. I am not surprised that he is embarrassed by the circumstance — he should be — but for him to say that the offer was withdrawn is beneath his dignity. I expected him to have some integrity and to advise the house that the $90 million had been knocked back rather than withdrawn.

I know that it is too much to expect that he should pick up the $90 million, but I ask him on behalf of the Victorian taxpayers to at least give us the truth of the circumstances.

**Hon. D. G. HADDEN** (Ballarat) — This government is committed to the redevelopment of the Melbourne Cricket Ground (MCG) and having it built within budget and on time for the Commonwealth Games in 2006.

The important facts are that the federal government committed $90 million towards the project. The public tender went out, and five months down the track the federal government changed the guidelines and the conditions. It wanted extra conditions put on its commitment of $90 million. Five months down the track and into the contract period the federal government imposed new industrial relations conditions that were not part of the tender documents. That is the embarrassment, and that is why this government is committed to proceeding with the MCG redevelopment and is committing funds towards it.

Had we succumbed to the federal government's change of conditions attaching to its initial commitment, the MCG would not have been redeveloped and certainly not in time for the Commonwealth Games in 2006, and that would have been an embarrassment to this state.

The former federal minister for sport, Jackie Kelly, indicated that the federal government had committed $90 million to the MCG northern stand redevelopment. The federal government changed its mind and added fresh and unusual conditions to its $90 million commitment, which severely embarrassed this state. It has no excuse for doing such a thing.

The tender for the MCG project was issued on 19 October 2001, almost five months prior to the federal government advising that it required the implementation guidelines to be incorporated into the project delivery. Tenders closed on 19 December 2001, with two tenderers being advised on 20 January this year that they had been short-listed for the project. The tender document issued, therefore, contained the standard industry requirement that the tenderers confirm their adoption of the Victorian building and construction industry code of conduct. There are no surprises or hidden agendas here. We are accountable, transparent and open.

Without the $90 million promised by the Howard federal government the Melbourne Cricket Club would have been forced to sell naming rights, reduce public seating or drop its plans to rebuild the Ponsford Stand to fund this very important redevelopment for the Commonwealth Games.

The federal minister, Mr Tony Abbott — who tried to sabotage this project that is critical for all Victorians and for the very important Commonwealth Games in 2006 with last-minute funding conditions and strings attached to the carrot — would have turned the people's ground, the MCG, into an industrial relations battleground. That is the truth of the matter, which the opposition in this chamber does not want to face and accept.

I congratulate the minister and this government on its commitment to ensuring that the MCG is redeveloped in line with our government policy and commitment to the people of Victoria and that it is completed for the 2006 Commonwealth Games, on time and on budget.

**Hon. P. A. KATSAMBANIS** (Monash) — I join this motion to take note of the extraordinary answers this morning of the Minister for Sport and Recreation. The minister engaged in verbal gymnastics and in more of his filibustering in an attempt to hide the absolutely obvious fact that this government and this minister are totally beholden to the trade union movement and the asphyxiating hold it has over Victorian building sites. That asphyxiating hold enables unions to perpetuate a series of illegal actions. Today we have seen one more attempt by this minister and this government to rewrite history and to give the public of Victoria the government spin rather than the facts.

The facts are that the commonwealth government gave $90 million to the redevelopment of the Melbourne Cricket Ground (MCG) — $90 million given with the simple condition that the laws of our land would apply to that project. I repeat, the laws of our land. I get here today and hear comments from the minister and from Ms Hadden suggesting that somehow tender documentation could overcome the operation of the laws of the land.

Unfortunately they do not. Our laws should apply equally across Australia. It is even more verbal gymnastics when the government tries to suggest that the industrial relations laws of our land should not apply to the MCG project, yet at the very same time it has a bill before the house — the Federal Awards (Uniform System) Bill — that purports to hand further powers over to the commonwealth government in relation to industrial relations. This government is engaging in spin again —

**Hon. R. M. Hallam** — Sophistry.

**Hon. P. A. KATSAMBANIS** — Mr Hallam says 'sophistry' — to protect its mates in the trade union movement. The government gave away $90 million of federal money because it was not prepared to sit back and see its mates in the trade union movement — in the Construction, Forestry, Mining and Energy Union (CFMEU), the Amalgamated Metal Workers Union, and the Electrical Trades Union subject to the law of the land.

It did not want to see the Office of the Employment Advocate, the independent umpire of industrial relations in this nation, be the supervisory body over work conducted at the MCG. This government has slugged the Victorian taxpayer $77 million that could rightly, as other honourable members have pointed out, have been applied to other important projects — to the building of roads, to the solving of the health crisis in our hospitals, to the solving of the maintenance crisis in our schools. Instead, it has had to commit this money in some veiled attempt to buy industrial peace.

That is what it has attempted to do with this money, and it has also slugged members of the Melbourne Cricket Club an additional $17 million. Mr Hallam earlier said the maths does not add up: that $90 million does not go into $77 million. In fact the $90 million has really become $94 million — that is, $77 million from the Victorian taxpayers and $17 million additional slug on members of the MCC. We could leave that debate to another day.

The issue is clear. The government sought to buy industrial peace. Did it buy it? No! The project commenced without a site agreement. We had the spectre of Martin Kingham, secretary of the CFMEU quoted in the *Age* of 1 October as having said:

> Time is on our side. The beauty about this project is the pressure is on them, not us.

The pressure is on the builder to complete the project on time.

On 26 June the Premier announced that Grocon was the redeveloper and announced there was a memorandum of understanding between unions, the builder and the government. I would have thought that memorandum of understanding placed pressure on all parties including the trade union movement but the trade union movement in this state, with the protection of its mates in the government, believes it is above the law. Forget Mr Bracks's memorandum of understanding that he trumpeted on 26 June!

Martin Kingham does not care. He does not believe the memorandum of understanding places any pressure on him — it places all the pressure on the builder. It is easy for the government in 2002 to get up in this place and say the project will be completed on time and on budget; that is all care and no responsibility. The fact is it has ceded control of the project to the trade union movement. It is going to be led by the nose and the people of Victoria will be those who suffer.

**Motion agreed to.**

## Marine parks: enforcement officers

**Hon. C. A. FURLETTI** (Templestowe) — I move:

> That the Council take note of the answer given by the Minister for Energy and Resources to a question without notice asked by the Honourable C. A. Furletti relating to fisheries enforcement officers in marine national parks.

I refer to the answers given by the minister — or perhaps I should say the failure of the minister to

answer the questions — and in particular to her failure and almost her refusal to commit to honour promises that were made by the government as part of its introduction of the marine parks regime. From the tenor of the minister's answers, Victorians can safely assume that they have been let down by this government in terms of the government's very clear and unequivocal commitment at the time of debate on the marine parks legislation to increase and enhance enforcement of fisheries and marine parks.

I was seeking to elicit from the minister answers with respect to the allocation of new enforcement officers, in particular at the Yarram office because it is that office that appears to me to be quite deprived in terms of the new Victorian marine parks fisheries officer placements. I put the questions specifically to the minister on the basis that the table that I have seen indicates that Yarram office is deprived of staff and that it will find it very difficult to operate. There is no logic to the allocation of new enforcement officers throughout the Department of Natural Resources and Environment and in looking at the allocation across the dozen or so offices, it is hard to believe that particularly the enforcement staff at the Yarram office can do their job adequately and fully because of their understaffed position.

The position simply is that there were originally four staff at Yarram. For various reasons the number was reduced to two and now we have the allocation of one extra staff, making a total of three officers, which is still below what would normally be deemed to be required management for the fishery before marine parks were introduced and before the imposition of the additional responsibility of policing and patrolling the marine parks.

I am told on good authority that at least two officers, and preferably three officers, are required to man each patrol boat. If you have an office with three officers, you can assume that one is either at court, on leave or on holidays or whatever and the likelihood is that there will be no patrols. Indeed, my advice is that the fishermen at Corner Inlet have not seen an enforcement officer ever. The reason for that is that while we have, for example, Warrnambool which is receiving two additional officers and an investigator, resulting in each officer having responsibility for 4 hectares, in Yarram each of the three marine park fisheries officers will have responsibility for 6616 hectares — the difference between 4 and 6616 makes quite clear the task that the officers at Yarram will have to fulfil. It will be a task, as I indicated, which will be difficult for them. We need to feel sympathy for them.

There are three new marine parks being declared in the Corner Inlet area. Of course we have the marine park within Corner Inlet — and I again congratulate the commercial fishers at Corner Inlet for the way in which they were able to compromise and reach an agreement with the government for a successful win–win outcome in that area. In that area is also the Wilsons Promontory Marine Park and the marine park at Seaspray. They are three very large areas that will require considerable patrolling. It is also historically known as one of the largest abalone poaching areas in Victoria, which of itself requires far greater and more intense policing.

The government cannot afford to let down so blatantly those Victorians who supported its initiative and accepted its word about enforcement through its reduction of resources and, in particular, in those areas where it received considerable support and compromise to achieve its commitment. Enforcement was the major part of its policy and it needs to be implemented.

**Hon. G. D. ROMANES** (Melbourne) — I assure honourable members that the Bracks Labor government and the Minister for Energy and Resources are meeting the commitment of the government to provide effective and extensive fisheries enforcement in the state. The government is committed to that because the Victorian commercial fisheries are an important part of the economy of this state and worth approximately $80 million to $100 million in landed value to commercial harvesters.

The Bracks government is committed to ensuring that our marine resources are protected from illegal exploitation through putting in place effective compliance and enforcement arrangements. I assure the house that the government is honouring the promises it has made that were part of the marine national parks package.

That commitment was to further build and strengthen enforcement in this state through an additional package of $14.3 million over four years and $3.4 million each year after that. This is a huge boost to the resources for enforcement in this state. In fact these extra funds and this boost in resources will deliver 21 new regional field-based fisheries officers, the appointment of three strategically located regional investigation offices to plan coordinated, major intelligence-based enforcement operations and the expansion of the special investigations group to include four additional intelligence analysis investigators to concentrate on illegal abalone activities.

**Hon. G. R. Craige** interjected.

**Hon. G. D. ROMANES** — These 28 additional officers, who will be engaged in enforcement compliance activities, will provide added value to the resourcing already in that area and, as we know, the deployment of these 28 extra staff by the Department of Natural Resources and Environment will be made according to their assessment and judgment regarding the maximum effectiveness in achieving the enforcement strategy of the government. The desired locations for achieving that will be the result of decisions made and priorities set by DNRE.

The Bracks Labor government is committed to delivering on increased enforcement to protect our fisheries, with our allocations of resource staff to make sure it happens and to maximise the potential. We are also facing decisions about the resource allocations relating to fish stocks themselves. The minister has recently announced the beginning of a consultation process on the creation of fisheries reserves at Lake Tyers, Mallacoota Inlet and Andersons Inlet. The government has announced its intention to consult widely with the community on this proposal and to make sure that if the community shows support for the government's intention, as the minister has indicated, fair compensation will be offered to affected commercial licence-holders.

The intention behind this proposal is to secure opportunities for recreational anglers and to make sure that those difficult issues of resource allocation are tackled, in particular in Gippsland. The Bracks government recognises that recreational fishing is not only a great activity enjoyed by many Victorians, but also plays a substantial role in the economic life of our state. For instance, it is estimated that in Gippsland alone about 50 000 people are regular recreational anglers, and the industry is worth $150 million to the local economy in Gippsland alone.

**The PRESIDENT** — Time!

**Motion agreed to.**

## QUESTIONS ON NOTICE

### Answers

**Hon. M. M. GOULD** (Minister for Education Services) — I have answers to the following questions on notice: 2873, 2875, 2876.

**Hon. N. B. LUCAS** (Eumemmerring) — I wish to raise with the minister four questions I submitted some time ago, back in June — 3103, 3105, 3113 and 3125. I wrote to the responsible minister yesterday — the Minister for Sport and Recreation — who indicated he would see what he could do to have the matters answered today. I have had no answers.

**Hon. M. M. Gould** — I was able to follow up some of them, but I am not sure which minister those are for. Are they for him personally or for referral?

**Hon. N. B. LUCAS** — The Minister for Local Government has 3101 and 3105, and 3113 and 3125 are for the Minister for Planning.

**Hon. M. M. GOULD** (Minister for Education Services) — I will speak to the responsible ministers and raise the fact that these questions are outstanding. I will have them presented to the house as soon as possible.

**Hon. P. A. KATSAMBANIS** (Monash) — I have written to the Leader of the Government in relation to a whole series of questions which I have on notice. The time has expired. Some of them are to her in her personal capacity and some are to her in her capacity as representing ministers in the other place. But the question also relates to all the other ministers in this house and those questions have remained unanswered for quite a considerable period of time. I was wondering whether the minister could indicate when the answers would be provided.

**The PRESIDENT** — Order! It would help if you could be specific at least with some of the numbers. Do you have a copy of the letter you wrote to the minister?

**Hon. P. A. KATSAMBANIS** — I do not have a copy with me but I have a copy electronically. I could send it to the minister.

**The PRESIDENT** — If the honourable member could provide that to the minister later today, she has made the point that she will respond.

**Hon. M. M. GOULD** (Minister for Education Services) — I would appreciate that from the honourable member. I will chase those up with the respective ministers. There is one specifically to me, but to my recollection I have done all mine, so I will just double-check that for him and let him know.

**Hon. E. G. STONEY** (Central Highlands) — I have been waiting for news on three questions on notice from April last sitting which is certainly not good enough. They are 2867, 2874 and 2879.

**The PRESIDENT** — Order! Could I just confirm the date; was it April this year?

**Hon. E. G. STONEY** — April this year. It was during the last sitting.

**Hon. M. M. GOULD** (Minister for Education Services) — I think these are the answers to questions that the honourable member raised yesterday. I have endeavoured to get three of them. I understand a couple more missed the time line required for processing today. There should be a couple of those answers tomorrow.

**Hon. E. G. STONEY** (Central Highlands) — It is just not good enough. I have raised it three times during this sitting and probably five or six times in the autumn sittings. It is a flagrant breach of parliamentary rules.

**The PRESIDENT** — Order! There are opportunities available to the honourable member through the procedures of the house. We cannot really take it further at this stage.

The Honourable Graeme Stoney has written to me seeking my ruling in relation to a number of answers to questions on notice relating to Shannon's Way Pty Ltd. In my opinion part (iii) of the following questions have not been answered in relation to the period between October 1999 and June 2001: questions nos 2844, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2855, 2856, 2858, 2859, 2860, 2861, 2862, 2865, 2866, 2869, 2870, 2871, 2872, 2877, 2878 and 2880. I direct that that part of those questions be reinstated on the notice paper.

## BUSINESS OF THE HOUSE

### Sessional orders

**Hon. M. M. GOULD** (Minister for Education Services) — By leave, I move:

> That so much of the sessional orders be suspended as would prevent new business being taken after 9.00 p.m. during the sitting of the Council this day.

**Motion agreed to.**

## PAPERS

**Laid on table by Clerk:**

> Statutory Rule under the Fair Trading Act 1999 — No. 95.
>
> Subordinate Legislation Act 1994 — Minister's exemption certificate under section 9(6) in respect of Statutory Rule No. 95.

## MINISTER FOR EDUCATION SERVICES and MINISTER FOR HOUSING: CONDUCT

**Hon. BILL FORWOOD** (Templestowe) — I move:

> That this house:
>
> (a) censures the Honourable M. M. Gould, Minister for Education Services, and the Honourable B. J. Pike, Minister for Housing, for acting improperly in that they were knowingly involved in the fabrication of a priority housing application on behalf of a family who did not meet Department of Human Services eligibility criteria and acted in concert with others to cover up their improper conduct; and
>
> (b) instructs the Department of Human Services to lodge all documents, correspondence, file notes, emails and records relating to priority application no. 350921, and all documents, correspondence, file notes, emails and records relating to other dealings this family has had with Human Services on housing issues since 1998, with the President by 4.00 p.m. on Thursday, 17 October 2002, for inspection by the Leader of the Government or her nominee, the Leader of the Opposition and the Leader of the National Party or his nominee.

There is no more serious allegation that can be brought to this place than that ministers have abused their parliamentary duties. There is no more serious allegation that can be made that they made — —

**Hon. M. M. Gould** interjected.

**Hon. BILL FORWOOD** — Thank you; the minister will get her opportunity.

There can be no more serious allegation than that they conspired with others to cover up inappropriate behaviour; and there can be no more serious allegation that as part of that cover-up documents have been destroyed. I put at the outset that this is a story — —

*Honourable members interjecting.*

**Hon. BILL FORWOOD** — I am being invited to provide evidence. Let me say at the outset in relation to this matter that I have before me 11 documents from the Department of Human Services and I will deal with them one by one and in detail. I need to say at the outset that I do not know the reason that this took place. I have no intention today of dragging the family in question through the mire, and I intend the whole way through this contribution to refer to them as the client. As I will be reading many documents I ask Hansard that if I do mention the name, just to use the word 'the client'. I do not wish this family to be put in any more difficult a position than they have been by the actions of the ministers and various public servants. The accusation, of course, is one of improper behaviour by fabrication

and cover-up. Let me give a brief summary of the events that have occurred.

The documents that I will go through will reveal that the Minister for Housing had intimate knowledge of this activity and actively participated in and directed others to falsify the client family's application during December 1999 and January 2000. The documents will also reveal the activities of the current Minister for Education Services and her staff in applying undue pressure on Office of Housing workers and the housing minister's office to find public housing for the client family because the Honourable Monica Gould had promised the family public housing despite their ineligibility. Let me make the point that the Honourable Monica Gould was the shadow Minister for Housing from February to October 1999, and these events took place in December 1999, January, February and March 2000.

The documents will demonstrate that following a directive from the Minister for Housing that this family be interviewed, the department found them ineligible for public housing for four reasons: they were already living in secure private rental accommodation not served with an eviction notice; the combined income of the family exceeded the income limit for priority housing status; the family owed outstanding rent, bond and maintenance debts of over $4000; and the family did not supply adequate financial and medical documentation to back up its application.

The documents will also demonstrate that the family were housed on 29 December 1999, even though they had not properly completed applications, nor provided adequate documentation to the Office of Housing. The documents will also show that with the knowledge and direction of both the Minister for Housing and the Minister for Education Services, Office of Housing staff detailed a process of normalising — in other words, falsifying — the application by ignoring the eldest son's salary, thereby lowering the family's combined income and making them fall within the limits for public housing.

The falsification went to the extent that as it was intended that the eldest son of the family would reside with them, a scheme was concocted to classify the client as a carer for her husband, which would entitle the family to a larger home capable of accommodating the ineligible elder son, and we know he lived in the house. File notes and emails which I have from Office of Housing employees reveal this fraud and show both ministers and their officers were aware of it. I also have, as I will demonstrate, a memo between Office of Housing staff identifying incriminating documents in the file and recommending that documents be removed from the file.

Finally, I have documents that will demonstrate by letter dated 3 March 2000 from Metrowest Housing Services that approval was sought to backdate the client family's application to 29 December, before the family's application was submitted or approved — so we have a case of backdating as well.

Let me go through the Shakespearean cast involved in this issue. We have two ministers: the Minister for Housing and the former Minister for Industrial Relations, now the Minister for Education Services. We have documents — correspondence and file notes — that detail the role played by Catherine Dundon, then and currently, I understand, an electorate officer for the Minister for Education Services. We have Marisa Koufos, a staffer — an adviser to the Minister for Housing. Then we have senior bureaucrats in the Office of Housing, including Carmel Collins, who was the assistant director at the time. I have here a copy of page 171 of the government directory for 2000–01. It shows that the director of the Office of Housing was Howard Ronaldson and then under that it has 'Public Housing (including Asset Management and Planning)' and 'Assistant Director: Ms Carmel Collins (Acting)'.

This scandal starts with the ministers and then it goes to the most senior bureaucrat in the Office of Housing dealing with public housing. Not only does it include Carmel Collins but it then goes further down the line. It includes Brenda Boland, who was the direct care manager of the Department of Human Services Western Metropolitan Region. It includes Paul Acreman, who was the housing services manager at the Footscray regional office. So we have headquarters, then we have the regional office and then we have the Sunshine office. In the Sunshine office was Lyn Linton, the acting housing services manager, and Steve Raschilla, who was the team leader there. This is the cast that primarily makes up this saga.

Let me turn to the first document. I point out that these documents have obviously been photocopied — you can tell by the black mark across the left-hand edge that they have folded over and photocopied. The first is a document dated 1 December 1999 from Steve Raschilla, who as I mentioned was a team leader in the Office of Housing in Sunshine, written to his superior, Lynette Linton. It refers to the client family and their number and says:

> As arranged [the client] attended office today with Cathy Dundon [Minister Gould's staffer] … as advocate.

'As arranged' — one speculates who arranged it and under what instruction. The second paragraph reads:

> Both [the client] and Cathy Dundon believed that [the client] should have been housed by now as [the client] had been on the waiting list since 1992. Cathy requested that special consideration should be given to [the client]'s situation, and housing offered as soon as possible.

The memo goes on:

> I explained the department's policy — —

And this policy is well known to honourable members. It is detailed in chapter and verse in the document I have here. The memo states:

> I explained the department's policy and procedures on early allocation and advised them to lodge a priority allocation if they felt that [the client] met the criteria. I further explained the rent market test criteria and policy regarding repayment of outstanding arrears and bonds.
>
> [The client] had a priority application with her with some medical letters, but the rent market test section had not been completed nor the entire household included. I advised that if she wished to proceed with priority application then all sections need to be completed with all the relevant information and also worked out the maximum rent payable section.

It does not say 'Dundon' but that is who it was:

> Cathy [Dundon] advised that she would assist the family to apply for five private properties and return priority application with supporting documents after requirement for the rent market test was completed. (i.e. Must apply for at least five properties with three different agents over a minimum of 14 days.)
>
> [The client] stated that [her] current accommodation is not suitable as landlord will not carry out repairs and [the client] is afraid to push the issue as she fears being evicted. Apparently this occurred in a previous tenancy hence her reluctance to approach the landlord for repairs.

The point about this is that as of 1 December this family was housed in private housing accommodation. He goes on in his memo:

> I advised her of her rights under VCAT but she was still reluctant to follow this course of action.
>
> I advised that after the application was lodged it would be assessed [by a housing services officer] and then the panel if applicable and outcome would be sent by letter.
>
> Also advised of rights of appeal if priority is unsuccessful.

So on 1 December an interview took place with the client family and the minister's electorate officer — we do not know on whose instruction. What we do know is that it is very rare in the housing department for interviews of this nature to take place. Applications are lodged with housing services officers, they are assessed by housing services officers and subsequently may go to team leaders. They do not start with team leaders.

The second document I refer to is a file note written by Paul Acreman, who, as I pointed out, is the housing services manager at the Footscray regional office. The file note covers the dates 21, 22 and 23 December 1999. The document starts:

> I received a telephone call from Marisa Koufos (Minister Pike's ministerial office) at 5.30 p.m. in relation to [the client]'s application for housing. Marisa [Minister Pike's adviser] advised that Monica Gould, MLC, had 'promised' priority house to [the client] and had rung Minister Pike to advise her of this situation. Marisa also advised that Minister Pike had agreed to follow through with Ms Gould's promise to [the client] and issued a directive that [the client] be housed tomorrow (23/12). Marisa also advised that the allocation was subject to [the client] agreeing to pay her rent via direct debit and to recommence repaying her outstanding debt …

It then goes on:

> We discussed the concerns about this process and the possible potential fallout relating to this directive.

As appears in yesterday's *Daily Hansard* the shadow Minister for Housing asked a question of the Minister for Housing. In her response which appears in yesterday's *Daily Hansard* the minister said:

> Lots of people from both sides in the house make such requests of me. The process is always the same: I listen to the request, I forward the request to the Office of Housing, the particular constituent is invited to lodge an application, the matter is assessed, and then the department determines whether the person is eligible or not and the matter proceeds from there.

She finishes her response to the shadow minister saying:

> This is the exact process we went through with the particular request from the minister's office that the member refers to.

I invite honourable members throughout my contribution today to contrast the answer given in the Assembly yesterday with the facts from the Office of Housing documents I have. In particular, I ask honourable members to consider whether it is usual process for a ministerial adviser to ring a regional housing services manager to issue directives from the minister.

I make the comment at this stage that this memo in its first paragraph notes that the bureaucrat in question was concerned about the process and concerned about the potential fallout. That, of course, leads to a sequence of events of fabrication, falsifying the application and, later, of cover-up. What Mr Acreman said in the memo is:

> I advised Marisa I would call into the Sunshine office in the morning and make the necessary arrangements. Marisa —

that is the housing minister's officer —

> asked if she could be advised of the outcome of these arrangements and for Ms Catherine Dundon (Monica Gould's electorate officer) to also be advised.

This public servant was so concerned about the directive he had received from the minister's adviser that he finishes this file note by saying:

> I rang Brenda Boland, direct care manager, Western Metropolitan Region, and advised her of the directive I had received.

So now we have a directive received from the minister via her ministerial officer going to the housing services manager in Footscray region and him advising his superior, the direct care manager. We also know that the team leader had previously, on 1 December, been approached by the minister's electorate officer to meet with this particular family.

Mr Acreman continues in his file note of the next day, 22 December 1999, to say:

> I called into the Sunshine housing office at 8.30 a.m. and arranged for [the client] to be offered a new four-bedroom property at … St Albans as, according to application, this was in an area of her choice and met the requirements of the number and age of proposed residents.

He goes on to say:

> Steve Raschilla, team leader, would contact Ms Dundon —

the Honourable Monica Gould's officer —

> to make the offer and the necessary arrangements to sign up.

So the directive was being followed through immediately. The file note then says:

> Steve rang me at 10.30 a.m. to advise that [the client], through Ms Dundon, had advised that they were not eligible for four-bedroom accommodation because —

a daughter —

> would not be living with the family and —

a son —

> would probably not be living with them at all.

It goes on:

> Steve also advised that [the client] wanted to remain in the Sunshine area —

for family reasons —

> Steve advised that he would pass the message on to me and provided advice that he could not tell then when a suitable property would become available in the Sunshine area. Ms Dundon advised Steve that that would be okay as they still had a bit of time left as [the client] had not received any advice they were to be evicted from the current address although they believed that would happen …

I make the point again that to be eligible in this sort of way these people should not have been living in housing that was obviously private housing, and Ms Dundon at that time acknowledged this point. Mr Acreman then says in the memo:

> I spoke to Carmel Collins —

I have just pointed out to the chamber that Carmel Collins was, of course, the second most senior officer in the whole department —

> acting assistant director, housing, about the matter and we discussed the potential difficulties surrounding an allocation of a property without the appropriate application and documentation.

So now we have another public servant concerned about this issue. It goes on:

> We both felt it necessary to try to get the process as normalised as possible —

so they set out on a process to normalise — fabricate, cover up — this application, to hide what is happening —

> and discussed the potential involvement of the Tenants Union of Victoria (TUV) to assist in filling in the priority housing application form and undertaking the private rent market test.

The memo goes on:

> I agreed to contact the TUV to see if they were able to assist. I also agreed to ring Catherine Dundon — —

**Hon. T. C. Theophanous** — On a point of order, Mr President, as you say, I was not in the house when the honourable member indicated — —

**Hon. R. M. Hallam** — Were you under a rock?

**Hon. T. C. Theophanous** — Are you going to listen or are you going to be your normal rude self?

I was not in the chamber when the honourable member identified the document that he is reading from. I understand it is a memo that has come into his possession, a departmental memo of some sort. Because he is not just making a quote from the memo but reading extensively from it I ask whether he should table the document or make it available to other honourable members so that we can check the accuracy

of his quotations and his interpretations — which he has frequently made — of what is in that memo.

We are in the disadvantaged position of not having access to that memo. I ask that you ask him to make it available forthwith to members of the chamber so that they can check the veracity of the claims made by the honourable member.

**The PRESIDENT** — Order! The honourable member is in the process of making his speech and it is reasonable that at the end of his dissertation the documentation be made available to the other side if he is quoting public documents. However — —

**Hon. T. C. Theophanous** — Is he going to do it or not?

**The PRESIDENT** — Hang on! That is the way the house normally operates.

**Hon. T. C. Theophanous** — Is he going to do it or not?

**Hon. BILL FORWOOD** — I am not going to do that.

**The PRESIDENT** — Pardon? You are not going to do that?

**Hon. BILL FORWOOD** — On the point of order, Mr President, part (b) of the motion instructs the Department of Human Services to lodge all these documents with the President.

**Hon. T. C. Theophanous** — You have already got them.

**Hon. BILL FORWOOD** — So what!

*Honourable members interjecting*.

**The PRESIDENT** — Order! The first point I make is that there has never been a requirement in the house that an honourable member table documents to which he refers. There have been varying practices as to whether the honourable member concerned makes available to the house documents they are relying on.

The general practice of the house is that if an honourable member identifies the document and quotes directly from it that is one thing; however, if the honourable member is interpolating — in other words, splitting up the reading part and then giving an interpretation and then going back to the document — it then makes it hard for members of the house to follow what is going on.

As I understand it, the structure of the motion, by making the documents available through the President, is designed to protect the privacy of the family concerned, and that is why a very controlled — —

**Hon. T. C. Theophanous** interjected.

**The PRESIDENT** — Order! I am trying to work through the issues for the house. The structure of this motion is different from the usual sort of motion we have because the second part is designed to protect the privacy, if you like, of the family concerned. The honourable member has been very careful to refer to 'the client'.

In the book of rules — the chamber guide — which has been in operation for a long period, the section regarding quotations and the reading of speeches states:

> Limited quotations are permitted to support a point, but they must be authoritative and the authority and reference must be given.

I say to the honourable member that if he quotes from a document from now on I ask him to clearly identify it, and he has been doing that, and to give us so much of the document as he intends to rely on — in other words, not to go halfway through it and then give his own interpretation. Generally within those parameters it has been left to the individual member as to what they make available to others.

If the motion is carried, then the full documentation would be available by means of the second part of the motion, which is an instruction to the department to produce the files.

**Hon. BILL FORWOOD** — I should like to make two comments in relation to this. When I first drafted this motion I was going to move a motion that required these documents to be tabled in the Parliament, but what I did not want to do was to make the private files of a client available to the world at large, so I arrived at a system whereby the documents would be made available through this mechanism.

I stand by that decision. So far as I am concerned this motion is about the inappropriate behaviour of two ministers and various public servants acting under their direction who fabricated, falsified and covered up. This is not about the family itself. I will continue to quote the documents. Mr President, following on your instruction — —

**Hon. T. C. Theophanous** — On a point of order, Mr President, I am becoming very concerned at the process that is being adopted, and I ask you, Mr President, to consider the issues very carefully. I am

getting increasingly nervous and concerned for the following reasons — —

**Hon. G. R. Craige** interjected.

**Hon. T. C. Theophanous** — You might want to treat it as a joke, but this motion calls for an unprecedented step to be taken by this house. In my recollection this house has never called for documents directly other than by going through freedom of information requests. The reason we have FOI requests is precisely to protect these sorts of individuals. That is what they are there for. The FOI legislation — —

**Hon. BILL FORWOOD** — You're just trying to protect crook behaviour.

**Hon. T. C. Theophanous** — No, I am not trying to protect the public from your outrageous behaviour today. I make the following points. Firstly, we have a motion which has this unprecedented step of calling for documents that would normally go through an FOI process, with all of the considered checks and balances in the FOI legislation which this house has considered and passed in the past. This is circumventing all of that.

The second thing is that the Leader of the Opposition has indicated several times now that the documents he is quoting from are the very same documents he seeks to have the house get from the department in order to make them available to you, Mr President. That is what the honourable member said before. If the documents are being requested by the Leader of the Opposition simply to justify his reading out sections of them in this house, the whole process is a complete sham. Not only is he using the house, Mr President, he is using your good name as well in relation to that. I believe the documents he is quoting from are the very same documents, and I want an assurance that they are not.

**The PRESIDENT** — Order! I thank the honourable member for his observations. It is not an unusual thing for a house of Parliament in Australia to require production of documents. This house did it in relation to requiring the government to produce answers to questions on notice which had not be answered. It was an order of this house to produce documents.

**Hon. T. C. Theophanous** interjected.

**The PRESIDENT** — Order! Hang on. Let's go a bit further. The Senate makes orders for the production of documents on a regular basis. The New South Wales upper house does so. I have previously mentioned the Egan case, Mr Egan being the government leader in the upper house in New South Wales and being the Treasurer. He has been required on a number of occasions to produce documents by order of the Legislative Council of New South Wales. That power was tested all the way to the High Court, and the ability of the Council to make such an order and have it enforced was backed up by the High Court of Australia and by other courts on the way.

Although it is not a usual practice in this house — I certainly cannot recall it other than in the case of questions — certainly in the Australian jurisdiction it is quite common. I do not uphold the point of order.

**Hon. BILL FORWOOD** — Thank you, Mr President. Let me just make some other points before I go on with the sequence. I have in my hand an action memo with the logo of the Department of Human Services in the corner. It is a memo dated 19 January 2000 to Carmel Collins, the assistant director, from Paul Acreman. It reads:

> Carmel,
>
> Please find attached the copy of [the client]'s file as discussed with some yellow 'stickies' where I believe some things/pages may have to be removed.
>
> For your consideration.

There is a signature on the bottom.

*Honourable members interjecting.*

**Hon. BILL FORWOOD** — I will tell you why I want the documents. I want to see what documents you destroyed. Right? That is what the document says.

*Honourable members interjecting.*

**The PRESIDENT** — Order! The house will get a lot further in this debate if the honourable member is able to be heard and we then listen to the response from the minister and others in a way that the house can hear.

**Hon. BILL FORWOOD** — Thank you, Mr President. Following your instruction, I now propose to read in its entirety the remaining part of Mr Acreman's memo. It says — —

**The PRESIDENT** — Order! Can you give us the date again?

**Hon. BILL FORWOOD** — It is dated 22 December 1999. It is a file note!

> I spoke to Carmel Collins, A/Assistant Director, Housing about the matter. We discussed the potential difficulties surrounding an allocation of a property without the appropriate application and documentation. We both felt it necessary to try to get the process as normalised as possible and discussed the potential involvement of the Tenants Union of Victoria (TUV) to assist in filling in the priority housing

application form and undertaking the private rent market test. I agreed to contact the TUV to see if they were able to assist. I also agreed to ring Catherine Dundon to advise her of the position and the requirement to normalise the process.

I rang Kala Smith at the TUV and she agreed to have the client ring — —

**Hon. T. C. Theophanous** — On a point of order, Mr President, the honourable member has indicated that the document he is reading from is a file note — they were his words. I draw your attention to the fact that part (b) of the motion before the house seeks these 'documents, including correspondence, file notes, emails'. I believe this is one of the file notes that would be made available under this motion to you — —

**An Honourable Member** — It would have to have been destroyed!

**Hon. T. C. Theophanous** — You have gone completely insane. You have lost it!

**The PRESIDENT** — Order! I want to hear this point of order from the honourable member so let us get straight to the point.

**Hon. T. C. Theophanous** — It was the former government that destroyed documents; not this government.

**The PRESIDENT** — Order! That is not a point of order. Get on to it.

**Hon. T. C. Theophanous** — I believe this file note is one of a number that are being requested as a result of the motion in the house. I want to know how, Mr President, you can reconcile the house asking for documents which the honourable member is already quoting from and is refusing to make available to the house. I think the issues that are raised by this are a question of propriety — —

**The PRESIDENT** — Order! I understand the point you are making and the honourable member did make it before. Part (b) of the motion calls for production of all documents, correspondence, file notes, emails and records. It is clear just from the size of the file of the Leader of the Opposition that he has not got the full files; he has some parts of the files. I see no inconsistency at all between the use by the honourable member of some of the file notes and the motion before the house.

**Hon. BILL FORWOOD** — Thank you, Mr President. The file notes continues:

I rang Kala Smith at the TUV and she agreed to have the client ring her to receive advice and assistance.

I rang Ms Dundon and left a message for her to ring me — Ms Dundon rang back (she was on a mobile phone in a car and appeared to be talking also to someone else in the car whilst talking to me) and I attempted to discuss the issues surrounding the [client's] application which included submitting a priority housing application and the possible assistance of the TUV in this process. Ms Dundon did not appear to understand or comprehend what I was saying and eventually the mobile network call was disconnected. I tried to ring Ms Dundon back and left a message on her answering service at Monica Gould's electorate office.

Steve Raschilla rang me at about 1.00 p.m. and advised he had received a telephone call from Ms Dundon in which she stated she had received a call from me and she wasn't happy as we were trying to renege on the deal/direction made by the minister. I told Steve about my conversation with Ms Dundon and that I was awaiting a return call from her.

I rang Carmel Collins — —

**Hon. T. C. Theophanous** interjected.

**The PRESIDENT** — Order! I ask the honourable member to desist. If he has a point of order I will hear it. I have heard three I think so far. But in relation to this matter we do not allow haranguing of a speaker in this house to stop them from speaking.

**Hon. BILL FORWOOD** — It continues:

and advised her of the current situation. Carmel was going into minister Pike's office to bring them up to date with what was happening.

23 December 1999

I received a call from Carmel Collins advising that Ms Dundon had sent through a fax, regarding her discussion with me yesterday, to the minister's office and that Ms Dundon had actually had a telephone discussion with Minister Pike this morning. Carmel sent a copy of the fax to me and we discussed the need for us to meet with Ms Dundon. I agreed to ring Ms Dundon and arrange a suitable time for this afternoon (4.00 p.m).

I rang Ms Dundon and discussed the matter briefly and requested that Carmel and I meet with her at 4.00 p.m. to discuss the matter further. Ms Dundon wanted to know why as she believed that [the client] was going to take the property at [address] St Albans, as offered by Minister Pike this morning. I advised Ms Dundon that I wasn't aware of this offer and would check to see if the property was still available and get back to her.

I rang and arranged for the Sunshine office to hold any new offers on [address] St Albans and rang Carmel back with the details of my discussion with Ms Dundon. Carmel said she would speak with the minister and get back to me.

Carmel rang back and said that Minister Pike had just spoken to Ms Dundon on the telephone and had 'set her straight' about the matter.

Carmel also advised that she had made an appointment for us to see Ms Dundon at the electorate office at 3.00 p.m. this afternoon.

> Carmel had also arranged, via Tony Newman, manager, community housing, for a three-bedroom THM property to be made available … (through Metrowest).
>
> I arranged to meet with Brenda Boland at 1.00 p.m. and brought her up to date with everything that had occurred.
>
> Carmel and I met with Ms Dundon at 3.00 p.m. in Monica Gould's electorate office in Keilor (see meeting notes 23 December 1999).

I do not have the meeting notes for that meeting. Let me make a few comments, now that I have finished reading the document, about what I have just read into *Hansard*. We have the most senior officer in charge of public housing, Carmel Collins, picking up the housing services manager from the Footscray regional office and visiting Monica Gould's office. We have the minister on the phone to Monica Gould's staff setting her straight about the matter.

**The PRESIDENT** — Order! That minister on the phone being?

**Hon. BILL FORWOOD** — Minister Pike on the phone — it is what the memo says, Mr President. We also have a new step, because no longer is priority housing the issue, the issue is now switched to misuse of Metrowest Housing Services, the transitional and crisis housing service, to house a family that already was living in rental accommodation.

This page also referred to a fax that Ms Dundon had sent through. I have that fax. It is on the letterhead of the minister, 'Member of the Legislative Council, Member for Doutta Galla', addressed to Paul Acreman, dated 23 December 1999:

> re: Offer to [the client] of immediate accommodation withdrawn

Again, following your instruction, Mr President, I will read the facts:

> Dear Sir,
>
> I write in relation to your verbal advice of yesterday afternoon when you informed me that the offer that was made to [the client] for immediate accommodation is withdrawn.
>
> An offer of a four-bedroom house in St Albans was made yesterday morning with immediate occupancy available.

It should never have been made available, but it was. The memo goes on:

> However, [the client] could not move into the house as she is not eligible for four-bedroom accommodation, rather the family is restricted to a three-bedroom house.
>
> I would appreciate your faxing this office before Christmas Eve with the reasons for the withdrawal, as I will need to explain to [the client] why the offer has been rescinded.
>
> Yours faithfully,
>
> Catherine Dundon
> Electorate Officer
>
> cc Minister Pike

The minister well in the loop!

**An honourable member** interjected.

**Hon. BILL FORWOOD** — Absolutely! The department, the housing minister's office and the office of the Minister for Education Services then set out to fabricate this situation, and I have here further memos which detail the extent to which this fabrication took place.

The next document, addressed to Carmel Collins, department of housing, also comes from Cathy Dundon:

> Carmel, this is just a note in case you are unable to return my call today. I have spoken with [the client] and told her the situation you mentioned at our meeting. That St Albans four-bedroom house is still available and also a three-bedroom THM house in Sunshine is also immediately available.
>
> [The client] has indicated that she will take the St Albans four-bedroom house because of the permanency of housing rather than Sunshine (although more convenient) which does not afford her the stability of long-term housing as it is only a lease for three months, and no commitment by the department is available for the long term.

There is other information on this document which I do not propose to read at the moment. A note from Carmel Collins appears at the bottom of the page:

> I rang Cathy Dundon at 4.50 p.m. (before I saw this fax). She told me the outcome in para two. My response was that the situation I had explained at our meeting was that the four-bedroom property was still available as a three-month THM arrangement or a three-bedroom property was available in Sunshine, also on a three-month THM arrangement. In other words, there is no offer of a long-term tenancy at either property.

The next document is a letter dated 23 December 1999 from Carmel Collins, acting assistant director, housing services, to Catherine Dundon:

> Dear Ms Dundon,
>
> re: [The client] and family
>
> Thank you for your fax in which you advised that [the client] and family will accept the department's offer to be immediately housed on a three-month lease in a THM property in … Sunshine.

It goes on with the details of where that house is and continues:

> I confirm that sign-up for the property is scheduled, as we discussed in our phone conversation, for Wednesday, 29 December. I will advise you tomorrow of the time and place for sign-up.
>
> I would also like to confirm that I received from you this afternoon an application from [the client] for early allocation to public housing through the special needs segment. The application does not at this stage include documentation in relation to testing the private rental market. When the documentation is received the department will be able to make a formal assessment of the application. In the meantime we will examine material provided today and advise if anything further is required in addition to the private market test documentation.
>
> Please call me if you have any questions …
>
> Carmel Collins

The process that took place was that once they realised that they had difficulty in normalising — or fabricating — the process to get priority housing, they switched to a separate tack. That tack was to use Metrowest, emergency housing accommodation, transitional housing accommodation or short-term housing accommodation, to house the family until priority housing became available. People can wait any length of time for priority housing according to their category from a week to six months. If a family is currently residing in a house it is not going to go straight to the top of the list. These people were living in a house at the time.

Arrangements were made on the instruction of the department to Metro West. I am informed that there is no capacity for the minister or anyone else to instruct Metro West who it should or should not take, and I am certainly sure that nobody should be put into transitional or crisis housing like that without their going through an application process, the same as everybody else does. The documents demonstrate that that has not happened.

What then happened is that on 24 December there was significant concern still in the department about this, so the team leader who was involved in this, Steve Raschilla, wrote a memo to Lynette Linton and detailed all the reasons why this family was not eligible for housing. The memorandum was dated 24 December 1999.

**Hon. M. M. Gould** — Christmas Eve.

**Hon. BILL FORWOOD** — It was Christmas Eve. I will not read the whole document, just some of it. The document talks about various sections of the housing guidelines and it describes the family and the family income and other assets. Then I will read this sentence — —

**Hon. Kaye Darveniza** — Don't leave out the important bits, will you?

**The PRESIDENT** — Order! Ms Darveniza should hear what he has to say first.

**Hon. BILL FORWOOD** — Under 'current household income' this document lists the client and the amount of pension she is believed to be in receipt of; then the husband and the amount of pension he is in receipt of; then it lists the eldest son and his income statement is provided in gross weekly income; then it lists the next son and says:

> Not known as current income statement not provided …

The documentation was not there. It says:

> Total household income is estimated at …

Then it says:

> Household not eligible for priority housing as their combined income is over the current income limit.

Then it has a note:

> As per current allocation policy section 2.1.7 the —

the third person I mentioned, the eldest son —

> is not eligible to be included on this application as his income exceeds the current limit of $286 per week gross.

It then goes on and details other reasons, including 'asset limits' and it says at the bottom of that:

> From the available information it would not appear that any household member requires full or major modifications, therefore would not be exempt from this criteria.

It then talks about other criteria. It details again the fact that, despite the fact they were told on 1 December they needed to do it, the rent market test had still not been done. It goes into the outstanding charges section and, from what I understand of the process, if you have an outstanding debt with the department of housing before you can move into a house again the first thing you need to do is pay $200 and for three months pay a minimum of $10 a fortnight to demonstrate that you are prepared to work down your amount.

This document was written to demonstrate that the family was not eligible for priority housing; nor had this family been assessed for transitional housing. They were shoe horned into it on the instructions of the minister.

I will now read a memorandum dated 7 February 2000. It is an email, and I will read the whole page.

**An honourable member** interjected.

**Hon. BILL FORWOOD** — I do not know because I do not have the source of the earlier bit, but it is an email. It is signed by Carmel Collins. The first part says:

> We need to get a letter to her asap, and someone from Sunshine should ring her today or tomorrow morning at the latest.
>
> I took the opportunity this morning to also tell her that the household would be accommodated through the THM —

the transitional housing manager —

> until a public housing property is allocated.

And it goes on.

The complete email is from Carmel Collins at 18:50, and is dated 7 February 2000. It is addressed to Paul Acreman at Western DHS with a copy to Marisa Koufos at the office of the Minister for Housing. Its subject is the '[client family] application under segment 3'. It says:

> Paul
>
> This is to confirm my advice to you earlier today. This application should be assessed on the basis of the household comprising [the client and husband] and their younger son. In particular, income eligibility should be assessed on the income received by these three family members, and the income of the older son should be disregarded. Further, the family should be eligible for a three-bedroom property on the basis that [the client] is the carer for [her husband]. A letter should be sent to [the client] advising that her application has been so assessed.
>
> Following our discussions along the above lines I rang [the client] at 4.50 p.m. to advise her that her application had been approved and would be placed on the three-bedroom waiting list, Sunshine broadband. I also advise her that she would be contacted by Sunshine housing office later this week to ensure that a repayment agreement was in place for the family's OOH debt.
>
> I didn't go into detail about the three-month repayment period or lump sum payment, so Sunshine office will need to address this and also advise [the client] that the family will be accommodated through the THM until they are allocated a public housing property.
>
> Thanks
>
> Carmel Collins

This document demonstrates that an instruction from the second-most senior person in the department of housing went to Paul Acreman at western DHS office deliberately excluding one member of the family from the income calculation so that the family would fall below the income level. That is a fabrication, on instruction, by the second-most senior person in the department, but because that happened the family was no longer eligible for a three-bedroom house.

So, another concoction comes into it. The person whose income has been disregarded is going to live in this house. Where will we put him? We need then to find a way to get an extra bedroom. How do we do that? We issue a further instruction:

> … the family should be eligible for a three-bedroom property on the basis that [the client] is the carer for [her husband].

There is no evidence at all, and there is substantial evidence to the contrary — that this was not a ridgy-didge deal and that there was no need for this at all. The information that has come to me is that these two things are part of the fabrication and the justification. The first is that the son, whose income was too high, was disregarded on instruction from the second-most senior officer.

I repeat what it says:

> This application should be assessed on the basis of the household comprising [the client and husband] and their younger son. In particular, income eligibility should be assessed on the income received by these three family members, and the income of the older son should be disregarded.

That has come from the second-most senior officer; even Mr Theophanous could understand that. I make another point. I am talking about the second-most senior officer, this is not an officer who allocates housing; this is the second-most senior officer in the department of housing and she was ringing the client.

**Hon. T. C. Theophanous** — Was the eldest going to live with them? Do you know that?

**Hon. BILL FORWOOD** — Yes, I know that. Not only that, I know he was living there in June this year with the family.

I have one last document that I wish to refer to in relation to this sorry saga. It is dated 3 March and addressed 'To whom it may concern'.

**The PRESIDENT** — Order! Which year?

**Hon. BILL FORWOOD** — It is 3 March 2000. It is from Metrowest Housing Services Pty Ltd, tenancy administration. I remind the house that because of the process needed to go through to normalise or fabricate the application process, the decision was made to house these people through emergency housing — the THM process. This is the house they received on 29 December in Sunshine and where they stayed until

they moved into permanent accommodation under the priority housing system later in the year.

So this was an instruction totally out of the ordinary. This memo is from Kathy Lang, the tenancy team leader at Metrowest Housing Services. It was addressed to whom it may concern and was received by the Department of Planning and Development on 15 March at its Sunshine area office:

> This is to confirm that [the client] has been a tenant of Metrowest Housing Services Ltd — a transitional housing service. [the client] signed her lease with Metrowest on 29 December 1999. Could you please backdate her application to this date? The application number for [the client] is … If there are any queries do not hesitate to call me …

We now have a process. I read the other document into *Hansard* earlier. This is the action memo which I read previously, from Paul Acreman to Carmel Collins, and which, as I mentioned, is dated 19 January and shows which bits of the file may have to be removed for her consideration. At least Acreman was bright enough not to take them out himself; he sent them to his superior officer.

I have no criticism of a family that wishes to find themselves housing. There are over 43 000 Victorians waiting for public housing through this process in Victoria. They go through a process that is outlined in detail here and it has strict guidelines.

**Hon. T. C. Theophanous** interjected.

**Hon. BILL FORWOOD** — I remind honourable members of the answer from the Minister for Housing yesterday in another place:

> This is the exact process we went through with the particular request from the minister's office that the member refers to.

That was her quote yesterday, and I put it to the house that nothing could be further from the truth. This has been a story of not only concoction but of fabrication and then destruction of documents. Let me summarise: I have established that there was a directive from the office of the Minister for Housing on the request of the Honourable Monica Gould for this family to be housed. I have demonstrated that the Department of Human Services determined that the client family was not a priority case. It did not provide certificate documentation to meet the criteria. That was in the memo of 1 December. I have demonstrated that the family was not facing immediate eviction from current accommodation — and that was from the document of 1 December and also from the document of 22 December. I have demonstrated that the Minister for Housing issued a directive that the family — —

**Hon. M. R. Thomson** — On a point of order, Mr President, I wish to go back to your ruling about documents and the tabling thereof and refer to the second part of the motion before us. I have had a look at the *Senate Standing Orders* of February 2002 and it contains a standing order in reference to calling for the tabling of documents. Standing order 164 refers to 'Order for the production of documents'. There are two parts to it:

> (1) Documents may be ordered to be laid on the table, and the Clerk shall communicate to the Leader of the Government in the Senate all orders for documents made by the Senate.
>
> (2) When returned the documents shall be laid on the table by the Clerk.

Mr President, I actually rang to find out and clarify whether or not the precedent was to ever have the President receive the documents, and it is not the practice. The papers have to be tabled in the Senate and I point out that we do not in this house have a standing order or a practice of tabling documents with the President. I therefore suggest it is inappropriate for us to allow for such a provision when we do not have a standing order to cover it.

*Honourable members interjecting.*

**Hon. Kaye Darveniza** — What are you trying to cover up?

**Hon. BILL FORWOOD** — Mr President, on the point of order, it is entirely incumbent on this house to seek to have documents brought before it. As I pointed out previously, I could have sought to have the documents tabled. What I did to protect the private affairs of the family involved was seek to have them put in a place where they are safe with you, but only a limited number of people, the Leader of the Government and her nominees and the Leader of the National Party and his nominee or myself had access to them. It is entirely incumbent upon this house to pass a motion that enables it to receive documents in any form it so wishes.

**Hon. T. C. Theophanous** — On a point of order, Mr President, my colleague has raised the issue of whether this house should use — if it were to give itself the power to call for documents in this way — the appropriate process of establishing a standing order of the sort that might exist in the Senate. No such standing order that would provide that kind of power has been established, so the house is being asked to disregard the fact that there is no such standing order to allow for the tabling of documents.

Mr President, in relation to this matter I draw your attention to another factor on which you have made a number of rulings yourself — that is, when in this house documents from which an honourable member was reading have been requested to be tabled, your response to that in the past has been that you cannot force that to occur because it is not part of the standing orders. In some other houses of Parliament it is in fact part of the standing orders and, indeed, you would be aware that if an honourable member rises and starts to quote from a document there is a specific standing order about that which says that the document must be tabled.

What is therefore protecting the honourable member from not tabling the documents he currently has with him is the fact that there is no standing order of that sort. The same logic applies to the motion before the house. Mr President, since there is no standing order, the same kinds of rules need to apply to the lodging of documents with you as you would apply, and as you have just applied, to the request that Mr Forwood table documents to the house. It is about the fact that no such standing order exists. The reason it occurs in the Senate, and Mr Hallam would understand process; I know he is big on process — —

**Hon. R. M. Hallam** — You are talking to a point of order.

**Hon. T. C. Theophanous** — The reason it occurs in the Senate is that there is a standing order that allows it to occur. Mr President, I ask you to therefore consider ruling out part (b) of the motion before the house.

**Hon. P. R. Hall** — On the point of order, Mr President, if it were a genuine concern of the government that part (b) of this motion is out of order it would have raised it yesterday when the motion was put before the house, or at least at the commencement of this debate today. It is a churlish point of order being put by the government. It is a desperate attempt to cover up, and I would suggest it is digging a deeper hole for itself. It is perfectly in order for this house to control its own actions. The fact that it has called for papers to be presented in a fashion that protects the privacy of individuals is appropriate. This is nothing more than a defence which the government would more appropriately put in its response to the debate. It is certainly not a point of order.

**Hon. M. R. Thomson** — Further on the point of order, Mr President, in fact the government was always concerned about the second part of the resolution and standing orders, because it is a question of the privacy of the individuals who are the constituents in this case and the precedent it sets for others. The reason it was not raised at the beginning of the debate was that I was awaiting confirmation of the practice in the Senate, as well as the standing order and, in relation to your rulings, how we deal with these issues.

The reason it would not be reported to the President is that someone's privacy is put in jeopardy if it is then leaked. The reason it is tabled is that it allows for the proper procedures to be followed, so that where there are issues of privacy people will go through the appropriate channels and those processes will protect the individuals. But there is no process for this. There is no process of the Senate like this. What is allowed in the Senate is the tabling of documents, and it is presumed that documents are not tabled unless the privacy issues have been dealt with.

I do not believe we have the power in this place when we do not have a standing order that calls for the tabling of documents.

**The PRESIDENT** — Order! I will take up the last point first. The impact of what the minister has just suggested — that is, documents are tabled in the house, they become public documents, therefore there is no privacy for the individual — —

**Hon. M. R. Thomson** — Correct.

**The PRESIDENT** — No, the minister cannot have understood that or she would not have been suggesting that the documents be tabled.

**Hon. M. R. Thomson** — No, I am suggesting they cannot be tabled either way.

**The PRESIDENT** — Let's deal with that issue. Firstly, back on 20 November 1992 I made a ruling — I think I must have been in the Chair one month — adopting the longstanding practice we have observed today. I refer to the President's chamber guide and to the ruling made on that day:

> If a document is being quoted, members are entitled to know whether it is being quoted selectively, what the document is and by whom it has been prepared. One cannot quote a document in support of a case and then refuse to identify the document.

That is clearly the way we have operated during the course of this debate, and that is longstanding practice. I agree with honourable members in that I would have thought if someone were going to object to the terms of the motion that that would have been done when notice was given yesterday, or at the very least at the start of the proceedings today. Given it is being raised now, I will look at it.

The minister, in her discussion with the Senate, would have been advised that if you use the procedures used by the Senate there are two issues: one is whether they have the right to have the documents, and clearly they have that right; the second issue is whether it is appropriate. The motion before the house is designed to provide a controlled release — in other words, a release to the President and the party leaders — so as to preserve the confidentiality of the individuals. I had no part to play in the drafting of the motion; that was done between the professional officers of the house and the opposition.

On the question of the role of the standing orders — and it is important to understand this — the standing orders regulate the way in which the house operates its proceedings. In some cases they act as a limitation, but basically the house looks to the provisions of the Constitution Act or The Constitution Act Amendment Act to see what powers it has. I mentioned Egan's case in New South Wales. That is relevant because it examined in great detail — and it went up to the High Court, where there was a four-to-one decision in favour of the Legislative Council in New South Wales — the powers of upper houses in Australia to require the production of documents. This case involved an order to Minister Egan to produce certain documents. He declined to do so because they were cabinet documents, so there was this great analysis.

The court came to the conclusion that the house was quite entitled to call for the production of those documents and that it used the power given to it by what is called the Bill of Rights of 1689, which sets out the power to call for persons, papers and things, whether it is through the committees of the house or the house itself. I am fairly sure I still have the Egan decision in my office if honourable members have three days to read it, which reinforces that.

This power was in fact debated in this Parliament just last weekend at the Australasian Study of Parliament Group meeting. The power to do what this house is seeking to do — —

**Hon. T. C. Theophanous** — Does New South Wales have a standing order to do it?

**The PRESIDENT** — No, it does not require a standing order. Again, if you read the decision you see there is this longstanding power based on the provisions in the English legislation of 1689. This is a serious matter and I am taking it seriously. I am trying to present the issue as I see it.

The conclusion I come to is that the house clearly has this power. You do not provide a power like this through the standing orders. They exist to regulate your proceedings once you use your particular power. The power of upper houses is unfettered in this regard. This motion has obviously been constructed to preserve the confidentiality of the family. Therefore I rule that the motion is in order. What the house does with it is a matter for the house.

**Hon. T. C. Theophanous** — On a further point of order, Mr President, you indicated in your ruling, and I think the words you used were. 'You do not provide a power like this' — that is, the tabling of documents or the provision of documents — 'through the standing orders' but rather it is a general power available.

**The PRESIDENT** — May or may not; you can do either.

**Hon. T. C. Theophanous** — I want to point out that in fact in the Senate the tabling of documents is through a standing order, which is — —

**Hon. K. M. Smith** — We have heard all this.

**Hon. T. C. Theophanous** — No, this is a separate standing order. It refers to documents being quoted in debate while a member is speaking. Standing order 168(2) makes the following point:

> A document quoted by a senator not a minister may be ordered to be laid on the table.

**Hon. R. M. Hallam** — By whom?

**Hon. T. C. Theophanous** — By the President. I therefore — —

**Hon. R. M. Hallam** — Does it say by the President?

**Hon. T. C. Theophanous** — Just wait.

**Hon. BILL FORWOOD** — Does it say by the President?

**Hon. T. C. Theophanous** — Who else would order it?

**Hon. R. F. Smith** — Think of that!

**Hon. BILL FORWOOD** — The house itself.

**Hon. T. C. Theophanous** — It's the President who upholds the standing order, you fool!

Mr President, the point of order I have is that if it is the case, as it is in the Senate, that a document quoted by a senator not a minister may be ordered to be laid on the

table, the Senate has provided itself with this power under a standing order, based on your words before — which were that you do not provide such a power through a standing order but that there is a general power which is available, presumably, to both yourself and to the house — I call on you to ask the honourable member to table the documents from which he is quoting.

**The PRESIDENT** — Order! I find the point the honourable member is taking extraordinarily difficult to understand. I told Mr Theophanous earlier where the power of the house to order the production of documents comes from. I referred to the specific provision in section 19(1) of the Constitution Act, which says:

> The Council and the Assembly respectively and the committees and members thereof respectively shall hold enjoy and exercise such and the like privileges immunities and powers as at the 21st day of July, 1855 —

which is the date of our legislation —

> were held enjoyed and exercised by the House of Commons of Great Britain and Ireland and by the committees and members thereof …

As I said, there has now been very strong legislative backup from the High Court of Australia saying what that means. As I said also, if you want the judgment, the Parliamentary Library has been asked to provide it.

We do not require a standing order to give us that power. The power comes, if you like, from higher up — in this case the Constitution Act of the state of Victoria. I do not uphold the point of order.

**Hon. BILL FORWOOD** — I wish to make three points about paragraph (b) of this motion before I return to my summing up of this issue. The first is that we have done it this way to protect the client family.

The second point I wish to make is that these documents will be available firstly for the purpose of discovering whether or not Mr Acreman's memo to Carmel Collins that indicated that there were some pages — —

**Hon. N. B. Lucas** — Yellow stickies.

**Hon. BILL FORWOOD** — Yes, whether the indication that there were yellow stickies where pages may have to be removed has been followed or not. It will be interesting to see whether the documents I have in my possession are still in the file or whether they have been destroyed.

The third reason the documents should be tabled tomorrow is to see if we can discover from other information that did not come my way what else happened in this very sordid case.

Let me finish with my summary. We have established that the Minister for Housing issued a directive that the client family was to be housed by 23 December because of a promise made by the now Minister for Education Services. We have demonstrated that the client family had an outstanding debt. We have demonstrated that the housing services manager of the Footscray regional office, Paul Acreman, expressed his concern directly to the office of the Minister for Housing regarding this process and the potential fallout. We have established that he then called his supervisor. We have established that he turned up next day and arranged for a property to be offered.

We have established that Steve Raschilla called him and notified him that the family was not eligible for priority housing, but that it still went ahead. We have established that there was argy-bargy about whether a house or which house should be made available. In the course of that we have established that the minister spoke to the electorate officer of the present Minister for Education Services.

**Hon. M. M. Gould** interjected.

**Hon. BILL FORWOOD** — We have established that the second most senior person in the Office of Housing visited your office in relation to this.

*Honourable members interjecting*.

**Hon. BILL FORWOOD** — We have established that Paul Acreman and Carmel Collins decided to normalise the process to get over the problems associated with the client's application.

**Hon. T. C. Theophanous** — So they wanted a normal process? That's a big crime. That's a real hanging offence, wanting a normal process.

**Hon. BILL FORWOOD** — Let me pick up Mr Theophanous's interjection that they wanted a normal process.

**Hon. R. M. Hallam** — Afterwards.

**Hon. BILL FORWOOD** — As Mr Hallam said, they wanted a normal process afterwards. They wanted a doctored process to hide the fact that there was no eligibility and that the case had been absolutely fabricated.

We have certainly established that a memo exists from Carmel Collins which arranges for the application to be reassessed, using fabricated information that all parties knew to be false or incorrect. We have established that that very same memo was emailed to the office of the Minister for Housing.

Finally, we have established two things: that the transitional housing management application was backdated and that a memo suggesting that pages should be removed from the file was also sent.

I believe I have absolutely demonstrated that these two ministers have acted improperly in that they were knowingly involved in the fabrication of a priority housing application for a family who did not meet the criteria and that they then acted in concert with others to cover up this improper conduct.

**Hon. M. M. GOULD** (Minister for Education Services) — I rise to strongly oppose the motion before the house. The opposition today has broken a number of procedures and conventions that have been observed in this house for some time. Some of those conventions and procedures resulted from rulings and suggestions made by you, Mr President. With respect to documentation, in the past if the question of a person's name arose, that information was made available to the other side, to the appropriate minister. The opposition has ignored those conventions in this little exercise it has undertaken today.

I have been a member of this house since 1993. I have had my electorate office in Keilor since 1993. My electorate officer who started working for me back then continues to work with me today. On my behalf she looks after a number of tasks that all members of Parliament should do — that is, raise concerns and issues on behalf of and act as advocates for constituents.

With respect to this matter about my constituent — Mr Forwood used the title 'the client' — she got in touch with my office because she and her family were in crisis and had a number of difficulties, one of which was the concern that her family required and needed appropriate housing.

Just prior to Christmas 1999 my electorate officer contacted the office of the Minister for Housing, just as I know a number of honourable members on that side of the house have got in contact with the Minister for Housing, including writing letters on behalf of their constituents. In the adjournment debate last night an honourable member on the other side of the house raised for the Minister for Housing a matter involving one of his constituents. My electorate officer did get in touch with the minister's office on behalf of my constituent. She was doing her job in assisting me in doing my job in representing my constituents.

I do not know about those people on that side of the chamber, but I have a lot of constituents whose daily lives are in crisis. A lot of families in my electorate are in crisis and a lot live in public housing. A lot also require the assistance of their local member of Parliament. They come into my office to seek that assistance. The chief role of my electorate officer is to make representations to government on behalf of my constituents if I am not able to do it. I am sure that if other honourable members have as good electorate officers as I have they do exactly the same thing.

It is the role of the ministers for housing to refer representations they receive on behalf of other members of Parliament or their electorate officers. Just last week we heard that one of my colleagues in the other place related a story about the previous housing minister during a condolence motion. The honourable member had in her office one of her constituents who was in crisis, similar to my constituents. She picked up the phone and rang the minister's office. The minister spoke to them and said, 'Leave it with me'.

**Hon. K. M. Smith** interjected.

**Hon. M. M. GOULD** — You do not know that.

*Honourable members interjecting*.

**The PRESIDENT** — Order! Serious allegations are being made here. The minister is entitled to be heard in silence. I know there was a lot of interruption of the Leader of the Opposition, but I think the minister should be allowed to develop her argument without assistance.

**Hon. M. M. GOULD** — In the relaying of that condolence motion the honourable member for Werribee related a story of when she had constituents in her office, rang the former minister and the minister spoke to the people who were her constituents. They passed the phone back and the minister said, 'Give me a couple of hours and I will get back to you'. So you are talking about a couple of hours there.

I am talking about constituents of mine who were in crisis. They came to my electorate office and spoke to me and my electorate officer. My electorate officer got in touch with the minister and raised the concerns of that family in my electorate. I make no apologies for representing my constituents or for getting in touch with ministers with respect to my constituents. I

continue to do it today. I did it then, I have done it since 1993 and I will do it again tomorrow if I have a constituent who comes to me and says that they need assistance.

This scurrilous allegation by the opposition is not substantiated by any facts at all, Mr President. I was doing my job, my electorate officer was doing her job and the minister in another place, the Minister for Housing, was doing her job in referring that matter on to the department. We are talking about a family in crisis that required the assistance and help of their local member of Parliament. I took that case up on their behalf.

The Leader of the Opposition referred to a four-month period and mentioned specifically my electorate officer's work on that case around Christmas time. She was working on the day before New Year's Eve because she cared about those constituents and I cared about them. I will continue to care about my constituents, and if a constituent walks into my office with an issue I will raise it with the responsible minister. I make no apology for representing my constituents who are raising their concerns and I will raise them with the appropriate minister and the minister dealing with the matter in the appropriate form.

**Hon. P. R. HALL** (Gippsland) — I am stunned at the defence. As you said yourself, Mr President, this is a serious accusation against the minister. We have had a 9-minute defence from the minister, who refuses to address the many serious issues that have been raised in the contribution of the Honourable Bill Forwood today. I am absolutely staggered to have the opportunity to speak so early in the debate. I fully expected the minister to give a full account of her involvement and a rebuttal of the accusations made of interference by her electorate office in respect of these particular issues.

Anyway, notwithstanding my utter surprise, let me begin by making some general comments about public housing because it is an important and very emotive issue. I do not think I would be any different to any other honourable member in this place in saying that not a week goes by without at least one constituent coming into my office seeking some assistance on a public housing matter. More often, they are almost on a daily basis. And yes, I am entirely in agreement with the Leader of the Government when she says it is our duty to try to assist those people. Absolutely, 100 per cent! I am also proud of my electorate officer who also goes into bat for constituents when they have a public housing matter they want some assistance with.

**Hon. M. M. Gould** interjected.

**Hon. P. R. HALL** — Let me go on. The issues they raise with me vary in degree. Some are simple issues: it might be a maintenance issue on their Office of Housing home; an issue of a waiting list; a transfer being sought; even a need for some priority housing. All of those I have no hesitation as a local member in taking up or delegating that authority to my electorate officer to make representations on their behalf.

The issue we are dealing with today is whether proper process has been followed. I can honestly say that I have never myself tried to jump people up the queue or instructed my electorate officer to do it. That is what it is all about. I know there is a lengthy wait for priority housing and a lengthy wait for general housing. Government members know that themselves. Things have to be done on the basis of merit.

People need to be assessed through an appropriate process. As the Leader of the Opposition pointed out, a very lengthy document sets out the process by which applications for public housing are made. The issue today is whether that appropriate process has been followed, and if not why it has not been followed. The Leader of the Opposition established a significant case to the effect that the process has not been appropriately followed.

I shall make a general comment on public housing before I go to the issues we have heard about today. I shall look at the issue of waiting lists for public housing. I refer the government to its own press release of Monday, 7 October, where it made great play that the number of people on public housing waiting lists had dropped since June this year. I will not dispute those figures because I do not have the resources to verify or check them. It claimed that the number on waiting lists in September 2002 was 37 400, and that had dropped from June 2002 when the figure was 40 396. The government uses those figures to claim it has done a good job in reducing waiting lists.

If, however, you look at early or priority housing waiting lists, you find the number of people waiting increased between June and September of this year from 4681 to 5147. The position for people waiting for priority housing is not so bright or rosy; therefore there is a need to be stricter in the process of the allocation of priority housing on a totally merit-based system where the most deserving are given priority and housed. What we have presented today is powerful evidence to suggest that proper process and merit have not been followed in this particular case. Like members of the government — —

**Hon. T. C. Theophanous** interjected.

**Hon. P. R. HALL** — No, I have not; I am just about to make that point. I have had no access to any documentation but I have sat here for the last 1½ hours and listened very intently to the arguments put forward, and I listened to the defence of the Leader of the Government as well. I have to make a judgment in this debate about what I have heard from both sides. I have heard 1½ hours of documentation and solid evidence put before us, but I heard an almost flippant 9-minute response from the Leader of the Government.

**Hon. M. M. Gould** — It wasn't flippant.

**Hon. P. R. HALL** — I think it was flippant because it failed to address some of the serious accusations that have been made in this particular debate. I can only conclude there is a very powerful argument. We have some prima facie evidence to suggest that we need to look into this further.

**Hon. T. C. Theophanous** — You lack independence.

**Hon. P. R. HALL** — Mr Theophanous says we lack independence. That is absolute rubbish! There was no collusion on this particular debate and there is no collusion on the motion put before the house. I was not even offered a look at the documents, nor did I want one. I want to judge the merits of the arguments that have been put forward by both the opposition and the government. That is where the National Party stands. We are prepared to consider the merits of arguments put before the house.

**Hon. T. C. Theophanous** interjected.

**Hon. P. R. HALL** — I would have thought that the government's lead speaker would have put more than 9 minutes of defence to the serious accusation against her. We are prepared to listen to the merits, and will make up our minds on how to judge them. If Mr Theophanous is asking me to judge now, I have no choice but to totally support the motion, because there has not been any element or any ounce of a decent defence put forward at this time.

**Sitting suspended 1.00 p.m. until 2 06 p.m.**

**Hon. P. R. HALL** — Before the luncheon break I was commenting about the role of electorate officers in assisting constituents to obtain public housing places, and I said that I thought it was a perfectly appropriate function for members and elected officers to do so.

In saying that, I mention the excellent cooperation I receive from officers within the Office of Housing in the Gippsland region, and I am sure honourable members of this place would acknowledge that generally speaking we get good service from all officers within the Office of Housing. I believe those people to be fair. They certainly respond to inquiries that we direct their way and they treat constituents with the appropriate respect and formality that is required of their position.

I am not aware of one individual case of the many that I have referred to the Office of Housing where a proper and fair assessment of the particular merits of the case have not been considered. Nor, as I said before the luncheon break, have I ever suggested that any of the people who I have referred to the Office of Housing should be jumped up the queue. That is the important part of where we are at today.

The Leader of the Opposition outlined very substantial evidence to suggest that in this case the Office of Housing had been given a directive from the minister's adviser to find a house for people. That is totally inappropriate, despite the circumstances that the clients were in. We could all outline extreme hardship cases of people deserving of public housing, but we can only ask that they be assessed fairly. Where a minister goes to the length of actually directing that a particular client should be jumped up the waiting list is totally inappropriate, and for that alone the ministers mentioned in the motion deserve to be censured.

The evidence presented by the Leader of the Opposition was compelling. It began with a memo of 1 December 1999 where a meeting took place at the Sunshine office of the Office of Housing between officers of the Office of Housing and a client in the company of the electorate officer of the Minister for Education Services. That may be unusual but I do not think it is inappropriate. Never has my electorate officer or I sat down with clients and been interviewed by officers of the Office of Housing. But, to her credit, if the electorate officer has time to accompany constituents to an interview with the Office of Housing then that is fine and above board.

The memo read to the Council this morning about that particular meeting described the process of how a priority application was to be submitted, what the eligibility criteria were, and that the rights of appeal were explained to those clients. That is an appropriate step to be taken.

However, the most damning evidence was the next piece of evidence presented by the Leader of the Opposition this morning when he quoted from a file

note dated 21, 22 and 23 December 1999. We saw in that file note that that was when the word 'direction' came into play — that is, 'Despite the merits of this case, forget about the eligibility criteria; you must find these people a house immediately'. That is queue jumping; that is abusing the processes; and that is why, as I said, this is the most damning evidence presented to this house today.

While I do not want to go through and give a critique of all the documentation that was presented today, one theme came through overwhelmingly to me in listening to that evidence, and that was the uncomfortable position the public servants in the Office of Housing felt themselves to be in. They were really uncomfortable about the directions given to them from on high — from the electorate officers and from the ministerial officers of the Minister for Housing and the electorate office of the then Minister for Industrial Relations — to fabricate the application for these people to ensure that they got priority housing. I really felt sorry for those public servants. I would say they were good public servants who were certainly doing their job. They had explained the process, and yet they were directed to break the rules by the offices of the ministers, and that is simply not good enough.

The evidence we heard here today clearly showed that the client in question did not meet the eligibility criteria for priority housing. As was said in the evidence presented to the house, firstly, the members of the family were already living in secure private rental accommodation, they had not been served with an eviction notice and they still had a roof over their heads; secondly, the combined income of the family members exceeded the income limit for priority housing status; and thirdly, the family had an outstanding debt to the Office of Housing in the order of $4000. All honourable members would know that once a family accumulates a debt with the Office of Housing steps must be taken to eliminate that debt before an offer for further public housing can be given to the members of that family. They must undertake a repayment scheme.

So there were a number of eligibility criteria that this client simply did not meet. But despite all that, we heard in the evidence this morning that members of this government went to great lengths to abuse that process, to find a way around it and to direct public servants to break the rules. That is simply not good enough.

The government then had an opportunity to provide a defence to rebut the allegations made by the Leader of the Opposition. What did we see in defence of those accusations? We saw, first of all, repeated points of order being raised by the government. For what reason? Honourable members have to think about why the government would continually raise spurious points of order. To my mind it was purely because it had something to cover up. It just wanted to thwart the process of this Parliament by raising those spurious points of order. As I said in debate on one of the points of order, if the government were serious about this motion and believed it was an improper motion to be considered by the house and was unconstitutional, it should have raised that matter when notice of the motion was given in this house yesterday, or at the very least it should have raised it at the start of the debate today and sought to have the motion ruled out of order.

Mr President, I believe you were quite right in ruling on these points of order that this motion is an entirely appropriate motion for the house to consider, and I believe the government's defence of bringing up points of order was purely a last desperate attempt to cover up on this issue.

Then we waited with some expectation to hear what the former Minister for Industrial Relations would say in defence of the accusations made against her. As I said before lunch, I was staggered that the minister refused to make any comment on the substantial allegations made against her and her staff and against staff in the office of the Minister for Housing. Not one comment did she make about any of the commentary provided by the Leader of the Opposition on the inappropriate dealings that members of her staff or her electorate office had with the Office of Housing. All we heard was a bland commentary saying, 'Yes, it is perfectly in order for members to take up matters on behalf of their constituents'.

As I said when I started my contribution to this debate, I agree entirely that it is absolutely appropriate for members of Parliament to take up matters on behalf of their constituents. I have no problem whatsoever with that. If that extends to a member sending an electorate officer around to accompany a constituent to an interview, so be it. That is perfectly legitimate too. But what is not legitimate is to instruct public servants to break the rules. I am convinced by the evidence we have heard today and by the lack of any substantial defence — or any defence at all — from the government that the government stands guilty on this count.

As I said, the National Party approached this debate with an open mind. To this day National Party members have not seen any of the documentation cited in the debate this morning. We intended to come here today to listen to what the opposition said, to listen to

the defence of the government and to judge this issue on the merits of the case.

Well, the merits of the case are clearly one sided at this point of time, and National Party members, as we have said, believe, based on the evidence put to the house so far, that a powerful case has been built on prima facie evidence that this was an improper action on the part of two ministers of the Crown. Therefore, unless somebody from the government benches pulls out a miracle and convinces us otherwise, National Party members believe justice needs to be done and this matter needs to be investigated further. We believe it is appropriate to require the tabling of papers so that the air can be cleared on this issue. As I said, given the evidence before us today, the National Party will have to support the motion before the chamber.

**Hon. GAVIN JENNINGS** (Melbourne) — The motion before the house has two elements to it. The first element is to censure two ministers of the government, one in this chamber and one in the other chamber, and the second element is to call on private information about the private clients of the housing division of the Department of Human Services to ascertain the veracity of the allegations that are the subject of the censure.

In terms of the logic and the evidence that will be relied upon to ascertain whether a censure is appropriate, the motion itself acknowledges that the house's examination of the evidence is deficient because the evidence has not been made available to the house at this point in time. In fact the Leader of the Opposition, who moved the motion, had the opportunity to share with the chamber the information he has relied upon to mount his case to say that the two ministers should be censured, and he chose not to.

During the course of the contribution to the debate of the Leader of the Opposition any number of points of order were taken which led to a ruling from the Chair to defend the right of the Leader of the Opposition to use material in a selective fashion and to paint a version of the story that in his view supports the censure motion. In fact the Leader of the Opposition steadfastly refused to provide that information to the chamber. The Chair felt unable to demand the tabling or the sharing of that information by the Leader of the Opposition because there is no capacity in the standing orders of this place to provide for the Chair to demand that such pieces of information be shared with the chamber prior to the house considering the motion to censure two ministers. The Leader of the Opposition has himself denied the house the opportunity to have a look at that information.

**Hon. Bill Forwood** interjected.

**Hon. GAVIN JENNINGS** — The Chair has said it is not within the capacity of the Chair to determine this outcome.

**Hon. Bill Forwood** — Did you talk to the people who are up to their eyebrows in this scandal?

**Hon. GAVIN JENNINGS** — I was very mindful when Mr Forwood was telling his story today that I could be eternally grateful that I was not a child of his to whom he was telling a bedtime story, because he would have turned *Goldilocks and the Three Bears* into the most horrendous, mischievous and bedevilling story of all time in the same fashion that he constructed his story today. In fact the whole nature of his contribution today was spin and intrigue that was not matched by substance.

I challenge the Leader of the Opposition to indicate the specific actions of the Minister for Housing and the former Minister for Industrial Relations at the time. What were the specific instances of their intervention in this exercise which warranted their censure? Anybody who listened or reads the *Hansard* extract of the contribution of the Leader of the Opposition will find that the evidence is not there of the active involvement of either of the two ministers who are the subject of this censure motion.

Ministerial responsibility incorporates responsibility for the actions of those who work with a minister's office and administration. Ministerial responsibility amounts to taking responsibility for those who work for you. The Leader of the Government in this place said that she assumed responsibility for the actions of her electorate officer who was acting on behalf of the interests of a constituent that were outlined to the house. She advocated and facilitated the application before the Department of Human Services.

The critical issue is that the Leader of the House has denied the house information relating to this application, pivotal information that supports the family being given access to transitional housing. If honourable members listen to the 90-minute contribution of the Leader of the Opposition, they will find a glaring hole in the evidence he provided. That lies at the heart of the trap the Leader of the Opposition has tried to create, not for the ministers but for the Parliament itself. That is the nature of the trap.

The nature of the information that the Leader of the Opposition has not seen and which is pivotal in providing this family with access to transitional housing, the Leader of the Government described as crisis circumstances and the deeply personal circumstance of the family. On the basis of appropriate confidentiality that information would be kept from the scrutiny of freedom of information considerations or the scrutiny of the house. That goes to the heart of the government's concerns. The most deeply personal, critical elements of the file that warrant this family being given access to transitional housing are the very items that the Leader of the Opposition does not have. That is the issue that goes to the heart of the intervention of the government this morning to protect the privacy of this family.

Hence the conundrum that confronts us. The only way in which the government can satisfy the opposition, to demonstrate that the ministers do not warrant censure, is to provide the information that is most near and dear to the family concerned, which must be protected at every turn to ensure its privacy. That is the nub of the problem the government is confronted with today. The actions of this motion and the way it is constructed to censure ministers on the basis of information that the opposition does not have, to say that it demands the information that the minister and her department will rely upon to justify the allocation of housing to this family, is the very information that the government is concerned to protect in the interests of the family.

It creates a conundrum for the government and a monumental problem for the Parliament. As I speak some government members are attempting to ascertain the legal standing of the right of this Parliament to delve into personal matters.

**Hon. Bill Forwood** — Do you want Egan?

**Hon. GAVIN JENNINGS** — The Leader of the Opposition is relying on a decision in the High Court that relates to actions stemming from the considerations of the upper house in New South Wales. That has been subject to a previous ruling by the Chair in this debate. The government would attest that it is a concern that our standing orders are deficient in a way that the standing orders of the Australian Senate and the NSW Parliament are explicit; that our standing orders are silent. In particular the application of these issues in the Senate and in the NSW upper house are subject to public documents and public information — not private information. We are dealing with extremely private and personal information in this case.

**Hon. N. B. Lucas** — You are trying to cover up!

**Hon. GAVIN JENNINGS** — Mr Lucas and I worked on a select committee of this Parliament for the best part of a year exploring at every turn the rigour of an allegation that was made within this chamber. In my view at the end of that 10-month exercise, lengthy consideration and extensive documentation, not a silver bullet warranted conclusions any different from those issues that were in the public domain before the inquiry started.

**Hon. N. B. Lucas** — You are trying to change the subject now.

**Hon. GAVIN JENNINGS** — I am saying to the house that it should be particularly mindful of the processes we use, how we obtain information and how we use it. As a government member at this time I do not have a high degree of confidence about the way in which the house is going about its business. In seeking information through this motion today, it is pushing the envelope in a way that has never been applied before in this house, at a time when I have serious reservations about the mischievous and partisan way in which the forms of the house are being used to pursue particular political interests. It is incumbent upon all of us to take a breath and have a look at the nature of the motion before us. We are censuring ministers on the basis of the interventions of their staff; the Minister for Education Services for being an advocate on behalf of a constituent and the Minister for Housing for making sure that the process is appropriately gone through. The number of times that the Leader of the Opposition used the phrase 'normalised the process' was — —

**Hon. C. A. Furletti** interjected.

**Hon. GAVIN JENNINGS** — It was not his word. He used the word in parenthesis — that is, 'normalised'. In a sense, he was putting a mischievous construction on the expression that was put on the file. I suggest to the Parliament that the word 'normalised' would mean to go through the normal process, to make sure that the i's are dotted and the t's are crossed. That is my understanding of what 'normalised' means and that is what I believe was the undertaking by the officers of the Minister for Housing's office, the department liaison officer and any person within the Department of Human Services who dealt with this application.

As the minister has indicated in her contribution to the debate earlier today, the pivotal decision to provide transitional housing to this family, which was the route by which the family gained access to public housing through a description of their individual personal circumstances, is the critical information that applies a

different test to that applied to priority housing. All the references to income tests, outstanding debts, eligibility and assets do not apply in circumstances of transitional housing.

Transitional housing is temporary and provides for accommodation under acute and crisis situations. I have been advised that this is the very nature of the evidence that has been withheld from the file that has been obtained by the Leader of the Opposition in somewhat dubious circumstances. It has not been subject to any freedom of information request, nor to any release of documentation through the whistleblower's legislation — two avenues by which the statutes of the Victorian Parliament allow for the release of documents. Clearly, the Leader of the Opposition did not obtain his documentation through those routes. We have no option other than to believe they had been misappropriated in some shape or form, which is totally consistent with his refusal to share the information with us.

It is quite a mischievous construction and it belittles the standing of the Leader of the Opposition. Last week, on a personal matter, he was quite gracious to me in dealing with a motion before the house to suit a personal circumstance that I had in terms of my availability to attend a hearing of the select committee at a certain hour of the day. On the basis of my personal explanation to him about my difficulty he accommodated me. I thought that was a very decent act.

As the Leader of the Government has already indicated, the decency of the previous Minister for Housing, Ann Henderson, was featured prominently in the condolence motions that appeared before both the Legislative Assembly and this chamber within the past few weeks. Any number of examples of her graciousness and consideration of constituents was acknowledged in terms of trying to accommodate the urgent concerns of constituents and applicants to receive housing under her control. That level of decency and regard for Victorian citizens and their quality of life, standing as individuals and respect for their privacy, is not evident in the motion before the chamber today.

It is unfortunate that the construction that has been placed on these events in this case are malevolent. The construction placed on the evidence referred to by the Leader of the Opposition does not reflect well on what otherwise would be decent values that he demonstrated in his consideration of my circumstances last week.

I call on honourable members to think seriously about passing a motion that censures ministers not on the basis of their personal action but on the action of their staff. The motion is deficient in terms of the evidence that is before us and fundamentally deficient in the evidence as to what criteria were used to provide this family with transitional housing. Once the family obtained transitional housing the allegations in terms of backdating this application just fall outside the very guidelines that operate within the Department of Human Services because the application for permanent housing, according to the guidelines at paragraph 7.1.16, say that the application will be treated as occurring from the date of the access to transitional housing. In terms of normalising the process, the backdating allegation does not take flight because the date applies from the date of access to transitional housing, which is totally consistent with the guidelines.

In terms of the specific allegation of censuring the Minister for Education Services, there is just no evidence before us. In terms of censuring the Minister for Housing, I suggest that any construction of the arguments proposed by the Leader of the Opposition indicates that the minister's officers and staff ensured that due process was followed.

Perhaps honourable members would expect that I, as a member of the government, as a matter of course would not support a motion censuring two of my ministerial colleagues. Beyond that I take my responsibility to the Parliament seriously, in that if I were convinced I would be open to consider whether that action was warranted.

The Minister for Housing has made a significant contribution towards redressing a number of problems that bedevilled the housing sector upon our government coming to office, and she has been a leading advocate of the housing sector. She has played a significant role in reducing waiting lists and dealing on a statewide basis with trying to improve the lot of Victorians who seek access to public housing.

In fact over the period since 1999 there has been a 9 per cent reduction in the waiting lists for public housing in Victoria. There has been a 7 per cent reduction in the last year, which demonstrates that the combined policies on investment and asset management of the government have had a profound effect in moving people into housing. We have seen the waiting lists drop to 37 400 in September this year down from 40 396 in June. We have seen a 7 per cent drop in the last quarter, which is a significant result.

The last quarterly figures show that in country Victoria there has been a significant reduction, in the order of 20 per cent, from 7080 to 5661, and under this minister

we are creating a better housing system. We are helping people in the greatest need to get access to housing at rates far greater than had been the case in the system we inherited. We have a policy that has been progressively introduced by the minister to ensure that by now 66 per cent of all new allocations are going to the most urgent categories.

Rather than censuring the minister, there are many reasons why we should applaud the minister.

**Hon. R. M. Hallam** — They are your rules — that we should congratulate the minister for breaking the rules?

**Hon. GAVIN JENNINGS** — No. I am yet to be convinced by Mr Hallam, Mr Forwood or anybody in the chamber that the minister broke any rules.

**Hon. R. M. Hallam** — Were you listening?

**Hon. GAVIN JENNINGS** — Yes, I was absolutely listening. In fact, I believe that on the construction the Leader of the Opposition put the case was not proved, if his interpretation was correct, let alone being deficient of the most critical piece of information — the one that actually provided access to transitional housing. He does not even know what the circumstances are.

**Hon. Bill Forwood** — Yes I do.

**Hon. GAVIN JENNINGS** — If he does know, he is indecent; and if he does not know, that is the pivotal piece of information that he is deficient on. Those personal circumstances are the critical bit.

This minister is the minister who reinvested, upon coming to government, for the first time state money beyond the commonwealth–state housing agreement in a way that had not been evident during the life of the Kennett government. We introduced $94 million to be invested back into the sector. We have ensured that of that money over the life of the government $170 million has been spent in this budget to upgrade and redevelop existing stock, including $28 million that has been specifically spent on ageing housing estates.

I, as a member for Melbourne Province, am eternally grateful that there is some reinvestment in those communities which I represent, in stark contrast to what seemed to be the intent of the previous administration, which was to explore the potential to sell off those housing estates to the private sector. We are reinvesting and defending both those estates and those communities.

This minister has made great efforts towards expanding the supply of quality, affordable housing to low-income families in Victoria and progressively has made changes to the way in which the guidelines and rules have actually applied over the life of this government, to try to provide greater access for the working poor and people who have an insecure access to housing. That is perhaps at the heart of why there are some concerns that may underpin some discontent with the minister, because she is pushing the boundaries in dealing with what are the appropriate policy considerations and policy settings for action on public housing in Victoria. Maybe she is being assaulted on the basis of trying in public policy terms to open up access to public housing and to defend the rights of public tenants across the state.

I have no reason because of the argument put by the Leader of the Opposition to censure either minister. I have no confidence in this chamber continuing to push the envelope in exercising its powers in a way they have never been exercised before. The house has never used the mechanism that is currently envisaged in this motion.

When I started my contribution to this debate I indicated to the house that I thought it was nonsensical for us to censure ministers on the basis of information we do not have. The second part of the motion says, 'Give it to us tomorrow, after we have censured you'. That is nonsensical. The Leader of the Opposition, who moved the motion, is the one who has more access to information than any of the rest of us in the chamber at the moment, but he refused to share it with us.

If on no other basis I would expect members who operate on the basis of logic and reason to reject the motion. However, I do not have a great degree of confidence, because I do not believe members of this chamber are sitting in judgment on the basis of the evidence before them. I think they will vote along the lines of predetermined positions they adopted before they came in here for particularly mischievous political motives rather than being in accord with the evidence or the standing of the ministers involved.

I sat next to the Leader of the Government during the course of this debate, and I shared her sense of anger and frustration about the pivotal piece of evidence that may provide her safety net and her comfort in this regard being a matter that is totally inappropriate to air in the chamber and totally inappropriate to be used for political mischief and the political benefit of one side of the chamber. I have it on good faith that that evidence does exist, but that is why there is a degree of difficulty for the minister I sit next to in this chamber. I share her

concern about the mischief that may be created by the passage of this motion.

In terms of the mechanisms that are available to the people of Victoria, let alone Parliament, I reiterate that from where I sit the information could or should be obtained through legal sources, with those legal sources applying under statute, including freedom of information.

**Hon. R. M. Hallam** interjected.

**Hon. GAVIN JENNINGS** — There has been no level of confidence about the way in which the Leader of the Opposition obtained this information.

**Hon. R. M. Hallam** interjected.

**Hon. GAVIN JENNINGS** — I am saying that the Leader of the Opposition was not able to give us any confidence about the way the information came to him.

**Hon. R. M. Hallam** interjected.

**Hon. GAVIN JENNINGS** — I believe it is incumbent upon those people who bring documents to us to actually — —

**Hon. R. M. Hallam** — You only needed 24 hours notice. You already had it on file. You could have gone up and got the information. That's what you're implying — —

**Hon. GAVIN JENNINGS** — Mr Hallam is calling upon me to reflect upon my comments about illegality. Let me do so. Let me reflect on it and suggest that regardless of whether I am making any inappropriate allegations about anybody — which I am not intending to do — what I am actually saying to the house is that the Leader of the Opposition did not provide us with any degree of confidence about the way in which he obtained the documents and has subsequently used them. Let me leave it at that.

**Hon. R. M. Hallam** — That's better. You're referring to conduct unbecoming.

**Hon. GAVIN JENNINGS** — If in fact I erred on that side, let me be straightened in regard to that issue. However, let me say what my substantive point was: that there are legal forms that can be used to obtain documentation — freedom of information and whistleblowers legislation. They are the available avenues and from where I sit as part of the government I would be happy to play an active role in ensuring that material was released in an expeditious fashion. That is an offer I make to the house and is something I am prepared to do: to try to facilitate access to this information.

However, in terms of the motion before the house today, I reiterate that I will not support it. I reiterate concerns of a number of government members about the appropriateness of the use of the powers of this house to try to obtain documentation in this way and their serious concerns about the selective use of material. I remind honourable members that at the end of the day, whatever material we are likely to obtain, we may never be privy to the critical issue of how this family obtained housing, because in fact they are deeply personal matters that go to the nature of why the family was warranted to receive transitional housing in the first place. Whatever mechanisms. legal or otherwise, we use to obtain the information, we may never obtain it. For the sum of those reasons, I will sincerely oppose the motion and express my support for the two ministers concerned.

**Hon. C. A. FURLETTI** (Templestowe) — I am pleased to rise to support the motion before the house, which, among other things, requires the government to produce the files relating to the matter that has been raised by the Leader of the Opposition in this place and which is the subject of the motion.

I start by referring to the last comments of the Deputy Leader of the Government in this place, in which he said that the main purpose for the family being given priority, which is now acknowledged by the government, was that there existed a critical issue relating to their eligibility for transitional housing in the first place. I put on record that in the other place at question time today, probably less than half an hour ago, a question was put to the Minister for Housing relating to the motion now before the house, as to whether the Office of Housing staff engaged in falsifying or 'normalising' priority housing applications for those clients.

It strikes me as absolutely amazing that the Minister for Housing in the other place, who is now so well acquainted with this whole issue, did not raise the matter of any special crisis or critical issue and did not in her answer seek to draw out the matters that have been raised by the Deputy Leader of the Government in this place. I hope sincerely, Mr President, Mr Jennings has based his comments on certain circumstances. Without the government's refusal to produce the file and the need, possibly, for this to be debated, the whole issue could have been defused very quickly with the government coming clean and saying, 'Here's the file. What do you want to see?'. Let me be specific.

**Hon. R. M. Hallam** — They haven't even put in a request.

**Hon. C. A. FURLETTI** — Let us be specific. This is not a matter of investigating and going on a witch-hunt for an individual client who received a house. This is about pursuing some element of impropriety and of working in concert, from the highest echelons in the Department of Human Services down to the electorate officers. It is about backdating documents. One of the first things I learnt when I was in practice, Mr President, is, as you would be well aware, that one thing you do not do is backdate documents for any reason. Now there is evidence of backdating of documents by the department, and finally there is the file note that was referred to by the Leader of the Opposition in this place, where certain documents and papers had been identified by yellow stickers for possible removal from the file. If that is not a trail leading to a good reason for getting to the bottom of conduct unbecoming by two ministers of the Crown, I do not know what is.

If there is a reasonable explanation it is for the government to prove it. The government was given that opportunity today. The minister, the leader in this house, had her opportunity and she rose and made a statement that I think none of us would disagree with. It is clearly the obligation of every member of this house to move heaven and earth for their constituents, to do whatever they can for them and to do the maximum to achieve an outcome for them. But underlying all of that is the word 'legitimately'. In this case we have the Leader of the Government in this place, who starts out promising to assist a constituent — and I make no difference between the leader in this house and her electorate officer, Catherine Dundon, because after all the buck stops there and the minister is responsible for the conduct of her electorate officer.

Therefore the minister says to a constituent, 'I will get you into a house before 23 December', and the ball starts rolling. Like other honourable members in this place I have had the experience of trying to find accommodation for needy people. My office is in the middle of a process as I speak, and I know how difficult it is. However, on 1 December there is a file note — —

**Hon. T. C. Theophanous** — On a point of order, Mr President, I want to raise what I consider to be a fairly serious point of order. The reason it has taken some time for me to come to the house is that I have had to research a number of documents that I would like you to take into consideration.

**The PRESIDENT** — Order! Is it a point of order in relation to something that has been said by the Honourable Carlo Furletti?

**Hon. T. C. Theophanous** — This is in reference to the provision of documents in the motion.

**The PRESIDENT** — Order! We have had a couple of arguments on that issue. I am not querying the honourable member's right to raise it, but whether it is the appropriate time to raise it, or whether we should wait until the honourable member finishes his dissertation.

**Hon. T. C. Theophanous** — I do not think it matters. It is up to you, Mr President.

**The PRESIDENT** — Order! I am happy to hear you now.

**Hon. T. C. Theophanous** — Thank you, Mr President. The reason I wish to raise this point of order is because the Chair, in its earlier rulings to the house, made reference to the case of *Egan v. Willis* and used that as a precedent or justification for the ruling made earlier. I have had an opportunity to have a look at the High Court decision in *Egan v. Willis* in relation to the Chair's ruling and also what is before the house at the moment. I want to make a couple of points. The High Court is reported as saying:

> In the Court of Appeal, the Chief Justice described the circumstances of the dispute giving rise to the present litigation. His Honour said:
>
> > During 1995, in respect of a number of politically controversial government proposals, the Legislative Council, under standing order 18, resolved that there be tabled in [that] house, documents relating to various activities of 'the government'.

His Honour was referring to the fact that the Council in New South Wales had specifically asked for documents under a standing order of the house, that standing order being standing order 18. This house has an equivalent standing order. It is standing order 306, which states:

> Accounts and papers which are required to be laid before the Council by any act of Parliament, or by any order of the Council, may be deposited with the Clerk, and the same shall be laid on the table, and a list of such accounts and papers read by the Clerk.

That standing order seems to make it clear that if any papers are called for by this house they have to be deposited with the Clerk.

**Hon. R. M. Hallam** — 'May be'; you read it out.

**Hon. T. C. Theophanous** — Mr Hallam can have his go when I am finished. I am sure he will have plenty to say on the point of order.

The documents under this standing order would, in the normal course of events, be deposited with the Clerk and may be laid on the table, and a list of such accounts and papers read by the Clerk. There are two points I wish to make about this. The first is that the motion before the house, which has been moved by the Honourable Bill Forwood, does not refer to this standing order. It is not requesting documents under this standing order, as I believe it should given that such a standing order exists in the house, and then it would have the same status as the request for documents under the standing order in relation to the Egan case cited by you, Mr President.

However, given that that has not occurred, but even if it were to occur, my view is that such documentation would then need to be made available to the Clerk, at the very minimum, given standing order 306.

I further draw attention to page 388 of *May's Parliamentary Practice* where it says — and this goes to the nature of the documentation that is being requested by this motion, which I believe is very specific to a particular individual:

> On 20 June 1974, the deputy speaker ruled that a letter from a department to a private individual did not come within the category of having to be laid. However, in exceptional circumstances and because they had become matters of acute political controversy, the Secretary of State for Defence on 18 February 1985 laid on the table documents on the advice given to ministers by an individual civil servant. As the house deals only with public documents in its proceedings —

and I stress this —

> it could not incidentally require the production of papers which, if moved for separately, would be refused as beyond its jurisdiction.

*May* is quite clear about this issue. It cites the case of the deputy speaker ruling that a letter from a private individual did not come within the category of documents that could be laid, and therefore that the house did not have power to call for those documents. It secondly says that public documents are the only sorts of documents that in effect can be called for by the house and not simply any document.

Taking that aspect which I have just read out of *May* and adding to it the fact that the motion before the house does not make reference to the power under our standing order 306, and also adding that in the case of *Egan v. Willis* — and the Chair cited the High Court judgment — the High Court only ruled on the basis that there was a standing order which was being implemented, Mr President, I urge you to reconsider whether to allow this to continue.

I conclude by making one final point from *Egan v. Willis*, and that is the point which appears towards the end. The High Court states:

> The only question which has to be answered in this case is therefore, whether what was done by the house was reasonably necessary for its functions.

It goes on to say:

> … it would be extraordinary if, having a matter before it for consideration, it could not do what was necessary to inform itself about it.

I want to explain what this means to the house. What the house was therefore referring to was its capacity to call for documents in order for the house to consider those documents so that it could make a decision. The difference here is that the house is calling for documents, but not in order to inform members in this place so that they can be informed in order to make a judgment and therefore make a decision in voting on this issue. The motion calls for documents which would be made available only to you, Mr President, and to the leaders of the parties to be looked at. Therefore it in no way falls within the category of an action by the house in order to inform itself for the purposes of debate and for the purposes of decision in this house.

I therefore urge you, Mr President, to reconsider on all the grounds I have just laid before you this extraordinary and unprecedented action to ask for information about a private individual. In doing so I might also say that the government has already indicated to the Leader of the Opposition its preparedness to expedite a proper freedom of information application for information in relation to this case where the interests and the rights of that individual would be preserved.

**Hon. Bill Forwood** — Mr President, I have a number of comments to make in response to the point of order raised by Mr Theophanous. The first is that I wonder why the government is so scared of this. I wonder why the government is going to such lengths over such a long time with points of order to try to prevent the documents becoming available. I think the only answer to that is that the allegation that is being made here today, that documents have been destroyed on the government's own evidence — —

*Honourable members interjecting*.

**Hon. Bill Forwood** — And you are trying to cover it up.

Mr Theophanous was relying on the reference in *May* in relation to a letter from a private individual. What we are talking about is a government file. This is not a letter from a private individual, this is a government file held by the department of housing that relates to an application. As I demonstrated in my contribution this morning, there is evidence in that file that documents have been removed or destroyed. In those circumstances we have gone absolutely out of our way — —

**Hon. T. C. Theophanous** — It is not a letter from a private individual; it is a letter from a department to a private individual.

**Hon. K. M. Smith** — You didn't say that.

**Hon. T. C. Theophanous** — I read out the quote.

**Hon. Bill Forwood** — On the point of order, Mr President, I have gone out of my way to ensure that the documents were not tabled in this house but were provided in a way that ensures the personal affairs of this family could remain protected while we get to the bottom of the mess caused by the behaviour of these two ministers. I want to say categorically that the capacity of this house to send for documents and files is not in question. There is absolutely no doubt that by resolution of this house it has the capacity to send for documents. I look forward to the government making them available once this motion is passed.

**The PRESIDENT** — Order! In relation to Mr Theophanous's point of order, I thank him for his very considered advancement of the arguments. In some ways I will be referring to some of the issues I referred to earlier.

One point to make first of all is that documents held by the Department of Human Services are public documents for all purposes. Some of those documents contain information that is private to a particular family or applicant, but in fact they are public documents.

**Hon. M. M. Gould** interjected.

**The PRESIDENT** — Order! The minister can further respond if she wants to. I am asked for a ruling. Mr Theophanous put a lot of work into arriving at the proposition he put to the house.

**Hon. T. C. Theophanous** — It does say 'a letter from the department to a private individual'.

**The PRESIDENT** — The honourable member is relying on a decision of a Deputy Speaker of the House of Commons.

**Hon. T. C. Theophanous** — Which is in *May*.

**The PRESIDENT** — I refer him to other matters in *May*. I refer him to returns to order, pages 224 and 225. I refer him also to page 64 of *May*, where it says:

> Either house may summon witnesses to appear before it and answer questions. It is on this power that the power to summon persons papers and records, frequently given to select committees in both houses, is founded.

**Hon. T. C. Theophanous** — That is to select committees.

**The PRESIDENT** — Again it is a point worth addressing, and I was going to address it. The fact is this house has the power to give to a select committee of the house the power to call for persons, papers and records. If we did not have that power ourselves we could not give it to one of our committees.

Again I remind honourable members to look at the source of the power: section 19(1) of the Constitution Act 1975 of the state of Victoria, as amended. I will not read it again, but basically what it says is that we hold and enjoy the privileges, immunities and powers that as at 21 July 1855 were enjoyed by members of the House of Commons of Great Britain.

I have referred honourable members to *May*, page 64, and also to the issue of returns to order, which is where the house orders documents, which is to be found on pages 224 and 225.

The *Egan v. Willis* case dealt with two things: first of all, whether the house had the power to call for papers from its members — in that case it was the Treasurer of New South Wales; secondly, how that power was exercised and whether it was exercised properly. In that case the house has a standing order, so it has the power. It was examined by the Court of Appeal in New South Wales, subsequently confirmed — these proceedings went on for a long time — in the High Court of Australia, I think on a four-to-one decision.

The issue when it was taken to the High Court was regarded so seriously that all the states — other than New South Wales, which was already in the case — sought to intervene because they were concerned about what sort of decision the High Court might make and that it might constrain the powers of the legislatures of Australia. That is why they all took an active role. Most of those arguments were not based on the question of a particular standing order — although in that case the

High Court found that to actually toss Mr Egan onto the street rather than just take him out of the chamber was really beyond the provisions of the standing order referred to.

The Court of Appeal examined the power that we have all derived from the British Parliament to actually regulate our proceedings and to call for persons, papers and records. The High Court upheld the power of each of the legislatures of Australia.

**Hon. T. C. Theophanous** — Under the standing order.

**The PRESIDENT** — The standing order is relevant to whether the power is exercised in a particular way, so Mr Theophanous is quite right in bringing that up. The Court of Appeal said that they have the power and were entitled to have the documents, but they were not entitled to toss Mr Egan out into Pitt Street. They should have just ignored him.

I am quite comfortable with the ruling I gave earlier. I thank Mr Theophanous for the work he put into the issue.

**Hon. T. C. Theophanous** — What about our argument that they should be made available to the Clerk?

**The PRESIDENT** — In relation to the suggestion that the documents be made available to the Clerk and then be tabled, that then gets to the situation where the documents are public documents. No-one wants that because of the private information that is contained in them. I think earlier Mr Theophanous was calling for the Leader of the Opposition to table the document. That would have gone exactly the opposite way, the way members of the house on both sides agree should not happen. That is my ruling.

**Hon. T. C. Theophanous** — Mr President, further on your ruling, I do not agree with your ruling.

**An Honourable Member** — You don't have to.

**Hon. T. C. Theophanous** — I know that. I will be considering moving a dissent from that ruling, because I think it is against — —

**The PRESIDENT** — There will be an appropriate time to do that.

**Hon. C. A. FURLETTI** — I was at the point of indicating that the raising of the crisis in this family by Mr Jennings was the first anyone had heard of it, whether within the documentation, which had all been prepared and constructed at the time of the events, or elsewhere. So I sincerely hope there is a genuine history to that and, of course, the production of the file as requested should verify Mr Jennings's assertions.

One of the other issues that are significant here is that on those files there are extremely detailed file notes. I know that most honourable members here might make file notes and might actually go away and pin them onto a file or keep them together in their own fashion; but what we have here is a series of very detailed file notes — and I will refer to one in particular — that indicate that there was a very careful and conscious decision by public servants to keep very accurate records. One knows that for one to go to extraordinary lengths at the time of the events occurring one is seeking to ensure that they would not be the scapegoats of this ministerial intervention and what appears to be a degree of ministerial impropriety.

The question of the normalisation — the normalising — of the process was raised by both the Honourable Theo Theophanous and the Honourable Gavin Jennings. I have a view of 'normal', and to normalise to my mind means that you make something that is abnormal or not normal look like or have the appearance of being normal. Mr Jennings has sought to make very light of the fact that the word 'normalise' means just that; and that may be right, depending on the context upon which the word is used. So, for the purposes of putting on record the context, I will quote from the file notes of Paul Acreman, which read as follows:

> I spoke to Carmel Collins —

and he even puts her position title, acting assistant director, housing, in his file notes —

> about the matter —

which is the subject of this motion. This is significant, and I quote:

> and we discussed the potential difficulties surrounding an allocation of a property without the appropriate application and documentation.

Very strong words for a public servant to put into a file note and certainly, to my mind, grounds for this motion being put before the chamber and, indeed, being passed by this chamber so that we can get to the bottom of it. He goes on to say:

> We both felt it necessary to try to get the process as normalised as possible …

That to me is not bringing it back to normal; it is to correct the difficulties surrounding the allocation of the

property without the appropriate application and documentation. So, to do that, for some reason they go and get the involvement of the Tenants Union of Victoria to assist in filling out the priority housing application form. He goes on to say that he went on to contact the TUV and agreed to ring Ms Gould's office to advise her of the position and the requirement to normalise the process.

So throughout the whole spectrum of the Office of Housing, the housing minister's office and the now education services minister's office, they were in concert, perhaps conspiring to normalise the process — that is, not returning something to normal but fabricating to give it the appearance of normality.

The same file notes also show a very active period, almost a frenzied period, between 21 December and 24 December, the period within which all of this happened. There are three or four letters, two or three emails and a number of telephone conversations within the period in which the clients are offered not one but two houses. They are discovered to not be eligible for one and things are rearranged in such a way for them to be eligible for another. At the end of the day there is sufficient material before the chamber to show that two ministers of the Crown conspired very closely over a short period of time to assist constituents of the Minister for Education Services to acquire a house notwithstanding that the constituents were neither eligible nor had completed the appropriate documentation.

On the question of eligibility there is also another substratum of areas in which those constituents were not eligible. One of the grounds was that they owed money for a previous tenancy with the department and there are certain guidelines and rules that need to be observed. One of those is that an arrangement be made for the repayment of the debt. In these circumstances, almost with the stroke of a pen, it was found that these particular constituents could be exempted from that requirement so they qualified for the allocation of the property provided to them. When all the evidence mounts up one finds that things are very, very extraordinary.

Some of the public servants involved in the scam say openly that all members of Parliament seek to contact the minister for special treatment and to assist their constituents. All of us do. As was pointed out, to consider in this particular case that the Minister for Housing would give a directive that certain things had to occur by a certain time, that a minister should pick up the phone and call public servants to ensure that things were happening, for a minister to take directly telephone calls from an electorate officer of another member state directly — —

**Hon. M. M. Gould** — I take phone calls all the time.

**Hon. C. A. FURLETTI** — They are here, on the form, directly. Then, of course, to have the outcome of not one house but two houses to be offered within the space of two days. The minister protesteth too much with that interjection!

The issue then becomes clearly one of questioning. The issue of backdating the application has a number of implications, not the least of which, given that there is a huge waiting list for public housing probably second only to hospitals, is the impact on positioning. I refer to the figures mentioned by the Honourable Gavin Jennings with respect to the latest trends in public housing. He suggested there was a drop of 7 per cent or so over the last quarter. The reason for the fall is that the government has conveniently ignored applications within the system by excluding over 6000 families whose names are on the waiting list.

The reality is that the waiting list across the state has actually grown by 6 per cent, not fallen by 7 per cent, because of this doctoring of the figures. This is symptomatic of the government; it changes the figures to suit itself. I put on record that country waiting lists for public housing have jumped a massive 28 per cent under this government. It is not accurate to say waiting lists have fallen under this government. In this case the backdating allowed this particular family to leapfrog over a whole heap of other people who had been on the waiting list at the same time and therefore gave friends and mates of the Labor Party an advantage they did not deserve.

What should also be put on the record is the significant action of Paul Acreman. In his action memo to Carmel Collins, the assistant director, he says:

> Please find attached thee copy of … file …
>
> … I believe some things/pages may have to be removed.

This is the action of a public servant in the Office of Housing making clear that something needs to be dealt with. He makes it clear that to effect a cover-up sensitive pages need to be removed. Equally significant is that a junior officer is drawing to the attention of a superior officer that the file contains documents which he had identified as sensitive and incriminating of the government.

The public servants themselves, as indicated by the Leader of the National Party, smelt a rat. They were

aware of the sham. They were the people who were involved intimately with this whole process and they were not comfortable with what had been going on. The government says we are critical and heartless. But the public servants were aware of the number of people who were on the waiting lists who they had to put off on a daily basis because of lack of facilities and all of a sudden because there is a telephone call from a minister things are changed and they are put into awkward and difficult positions of having to determine that very difficult question of who should get what priority.

I must correct the statement made by the Honourable Gavin Jennings relating to the construction of additional public housing. In 1998–99 under a Liberal government there were some 1115 new public sector houses; in 1999–2000 there were 901; and in 2000–01 under Labor the figure had dropped to 540. That obviously explains why there is such an incredible increase of 6 per cent in demand in the last quarter compared with 1996 and 2000 when there was a drop in house waiting lists under a Liberal government of over 25 per cent.

The spin that the Honourable Gavin Jennings would seek to put on the issue does not jell. This motion is about one thing and one thing only — there is a smoking gun, as the expression goes. The government has been given the opportunity to produce a file. If a file had been offered last night I doubt that we would today be debating this motion. The tenor of the motion is not that the file be made public but that it be handed to you, Mr President, and that the leaders have the opportunity to examine the file to identify the documents which have been removed and to identify the role of the various participants in this somewhat sorry saga.

The whole affair has embroiled the Minister for Education Services, and has embroiled, fortunately or unfortunately, the Minister for Housing. It has taken its toll on a number of public servants who were involved and obliged to do the bidding of the ministers and their senior officers. It would appear from the documents that I have seen that Carmel Collins, the assistant director, played a major role. It appears that Brenda Boland, the direct care manager of the Department of Human Services in the western metropolitan region, was contacted, had been advised of a matter, was fully au fait with the goings-on and that at every step the issue was relayed not only to the senior bureaucrats but to the officers of the Minister for Housing and to the officers of the Minister for Education Services.

There is no doubt that the evidence that has been presented to the house requires that the motion be supported so that the roles played by the ministers in this whole affair can be identified. We can clear or censure the ministers more appropriately at a later date. This motion is about censuring the ministers for their part in the fabrication and the cover-up and for the impropriety of the whole affair. I urge all honourable members of this house on this occasion that it is appropriate that they support the motion and bring to task the ministers for whatever role they played. It is appropriate that the file be presented to the leaders of the parties in this place so the whole tawdry affair can be fully examined and the matter laid to rest. I urge honourable members to support the motion.

**Business interrupted pursuant to sessional orders.**

## MEMBERS STATEMENTS

### Bali: terrorist attack

**Hon. G. B. ASHMAN** (Koonung) — The member statement I wish to make today is one that I would prefer not to be making, but I take this opportunity to express my sincere sympathy to the families and people involved in the disaster that occurred in Bali at the weekend.

On Sunday I received two phone calls from families who live in Koonung Province who were chasing the whereabouts of loved ones in Bali. In one case the family has had the good news that their daughter is returning home; in the other case the family has no news at this stage.

This event has struck home to all of us. It is the first time that Australians have been a target in this way. The magnitude of the attack is something we are all still trying to come to grips with, but sadly the reality is that not only are the two families I have had contact with in Koonung touched by this, but also many hundreds of other families across Australia will be feeling the same pain.

I compliment the service personnel who went over to Bali so promptly and so quickly and who made such a significant contribution. In these circumstances they deserve our congratulations and most sincere thanks.

### Jessica Leach

**Hon. B. W. BISHOP** (North Western) — It is with pride that I rise to congratulate a real star among our rural students, who are already recognised for academic excellence. The student is Miss Jessica Leach, who has been offered a full paying scholarship to Bond University in Queensland. Jessica's high academic

records, community involvement and personal achievements have contributed to her receiving this offer. In addition to her many successes, Jessica has been named 2002 Australian winner of the Lions Youth of the Year quest.

Jessica can share her outstanding success with other students in rural centres as an example of what can be achieved. Jessica is a resident of the small farming community of Walpeup in the heart of North Western Province, and her family has been very supportive of all her endeavours, as has the community, and this support has undoubtedly held her in good stead. Stories of academic success coming from small rural towns are no longer scarce, and our rural youth are proving more and more often that they are more than a match for their city cousins.

I understand Jessica plans to study international relations and communications, and I have every faith that she will continue her high personal standards throughout the continuation of her education and her career. I wish her well and every success for the future.

## Ballarat: investment

**Hon. D. G. HADDEN** (Ballarat) — Over the past couple of weeks Ballarat and district have witnessed some great achievements and announcements which collectively make the provincial region of Ballarat a great place in which to live, work and invest.

There was the official opening and blessing of the Ballarat and Austin Radiation Oncology Centre at the St John of God Hospital campus, which was the culmination of 13 years of community action and a partnership between the public and private Ballarat health services and the Austin hospital.

Information technology leader IBM Global Services Australia confirmed that it will locate its regional software solutions centre at the University of Ballarat at Mount Helen. This will see the creation of some 300 jobs over the next five years, and it is expected to generate some $84 million each year for the Victorian economy.

Then the University of Ballarat's Camp Street campus was officially opened by the Premier. This now completes a $30 million arts academy precinct and confirms Ballarat clearly as the education and learning city. Then Tattersalls announced its $1.1 million contribution towards the Former Prisoners of War Memorial Appeal, which will see the commencement of this important project at the Ballarat Botanic Gardens. Finally, there was the official launch of the Community Jobs program for unemployed people to complete an industry-based landscaping project at the Creswick School of Forestry.

## Natural Resources and Environment: reorganisation

**Hon. D. McL. DAVIS** (East Yarra) — My member statement today relates to the bureaucracy and disorganisation at the Department of Natural Resources and Environment and to a recent advertisement in the *Age* for an executive director, parks flora and fauna, which is the position that was held by Michonne van Rees.

**Hon. G. R. Craige** interjected.

**Hon. D. McL. DAVIS** — The position had a remuneration of somewhere up to $200 000, Mr Craige. This is the position that had a key role in managing the Seal Rocks debacle.

The department has been reorganised to place above the parks flora and fauna division a deputy secretary's position, also remunerated at up to $200 000. That deputy secretary's position in public land, heritage and biodiversity will be filled by Kevin Love, who has been moved across from the Premier's office. I understand this is part of a wider reorganisation that has seen a number of deputy secretary positions created. I am also informed that Peter Sutherland has been made a deputy secretary and that he will have responsibility for catchments, communities and water. These deputy secretaries will each cost Victorian taxpayers up to $200 000 each year.

I understand Land Victoria will be overseen by a deputy secretary as well, rather than reporting directly to the secretary, Chloe Munro. This is a sign of disorganisation. The failure at Seal Rocks and the failure at Land Victoria have been reflected in this reorganisation.

## Immigration Museum: tribute garden

**Hon. E. C. CARBINES** (Geelong) — I acknowledge the enormous contribution migrants have made over many generations to the economic prosperity and cultural life of Victoria. Having migrated to Australia in 1968 with my parents and brother, I was proud to attend with my family on Sunday the official launch of the fourth stage of the tribute garden at the Immigration Museum. The tribute garden contains the names of some 4000 Victorian migrants who originated from 90 different countries, and it therefore represents wonderfully the rich multicultural diversity of our state.

My family joined hundreds of other migrants and their families who had chosen to have their names inscribed on the walls of the tribute garden as a lasting memorial to their personal cultural heritage and contribution as migrants to Victoria.

It was a proud and emotional ceremony for everyone present, and I commend the Immigration Museum for its meaningful initiative on behalf of the people of Victoria.

## Citizens Electoral Council: statements

**Hon. P. A. KATSAMBANIS** (Monash) — Yesterday I received an email that many other members of Parliament would have received announcing the Citizens Electoral Council candidates for the forthcoming state election. It is an opportune time to mention to the house that the CEC is an insidious, pseudopolitical organisation that attracts tiny amounts of the vote but still raises over $1 million each year.

The claims it makes include the following: Israel was responsible for the 11 September attacks and it will carry out further terrorist attacks on the United States of America; the Queen and Prince Phillip head a so-called financial oligarchy that rules the world and controls most of the world's drug trafficking, with supposed Zionist bankers being a part of this conspiracy. This financial oligarchy is pushing for a war on Iraq as part of a clash of civilisations it needs to handle a global financial crisis. It also claims that Ariel Sharon is blackmailing the United States of America into attacking Iraq by threatening a nuclear attack on Iraq if it does not. It claims that the Port Arthur massacre was a British plot and that our Racial and Religious Tolerance Act is a plot by the Queen to prevent dissent against Aboriginal land rights, which it claims the Queen devised herself to break up the Australian nation state and steal our raw materials.

Despite the ludicrous assertions of the Citizens Electoral Council, current and former politicians, councillors and unionists, religious and Aboriginal leaders sign CEC petitions such as the recent full-page advertisement in the *Australian* calling for a national bank. They should know better, and the public of Australia should watch out for this insidious organisation.

## Bendigo: legal aid

**Hon. R. A. BEST** (North Western) — The issue I raise today relates to the lack of legal aid funding in the Bendigo region. It was with great concern that I learnt yesterday that the most vulnerable in our community are being denied access to our court system. Yesterday Bendigo lawyers took the unprecedented action of stopping work. This action effectively closed down the Bendigo court system. The president of the Bendigo Law Association, Mr Leach, is quoted as saying:

> It's time for the state government to stop buck passing and sit up and take notice …

He continued:

> The appalling state of affairs means children are being denied proper justice.

He went on to say:

> Fees paid to private practitioners under the legal aid system have not increased since 1992, leaving those who continued to work with the financially disadvantaged out of pocket.

It is of great concern that the most vulnerable in our community are being denied an entitlement to have their day in court and to be legally represented. I thank and congratulate those lawyers on the work they do, particularly those who are still providing a service to the most needy in our community. However, it is time for the minister and this government to address this problem, and I urge them to remedy the funding shortfall.

## United Wood Cooperative

**Hon. G. D. ROMANES** (Melbourne) — I wish to draw the attention of the house to an innovative project which combines English language training with job creation. It was initiated in 2001 by Adult Multicultural Education Services (AMES) and is known as the United Wood Cooperative. Previously it has been referred to as the Toolshed.

The United Wood Cooperative is one of AMES's community projects. It focuses on improving the economic wellbeing of disadvantaged refugee-background people, primarily from Eastern Africa. It was recognised that people in this latest wave of refugees into Australia found rebuilding their lives in their new country particularly difficult due to lack of employment opportunities.

Expressions of interest to be part of a carpentry workshop were sought from older men with a refugee background from various East African countries living in the high-rise flats in the North Melbourne and Flemington areas. A project coordinator was employed to teach the men carpentry skills and how to build and restore furniture. AMES community staff assisted the men to gain carpentry contracts, including one with St Vincent de Paul selling beds to be given to new refugees arriving in Australia.

Last Sunday a gathering was held in North Melbourne to celebrate the achievements of the United Wood Cooperative and to acknowledge the important financial support of the Bracks government, Vichealth and the City of Moonee Valley for this groundbreaking AMES project.

## Silvan Foundation

**Hon. W. I. SMITH** (Silvan) — I wish to acknowledge and thank 12 businesses that have funded 93 Silvan Foundation scholarships worth $400 each. They are given to students at Bayswater Secondary College, Boronia Heights College, Croydon Secondary College, Heathmont College, Maroondah Secondary College, Ringwood Secondary College and Upwey High School. These students are in financial difficulties and the $400 plus a leadership program is given to them to fund their books and school uniforms.

The 12 businesses who have funded a total of 223 Silvan Foundation Positive Futures scholarships in the last three years are ANZ State Trustees, ARB Corporation Ltd, Australian Automotive Air Pty Ltd, Aussoft Solutions, the Bayswater hotel, Cadbury Schweppes, the Felton Bequest, Fleming's Nurseries Pty Ltd, Keypass Pty Ltd, the Kilsyth Club, Patterson Cheney Holden and Siemens Ltd.

This is the first time such a project has been initiated in this manner. Businesses and schools in the region are working together to help students stay at school. A total of 223 scholarships have been given, and in the past every student who has received the scholarship has remained at school. All the students use the money, monitored by the principal, to pay for their school uniforms and books. Without that aid they would not stay at school; they would leave.

I thank these businesses for supporting these kids. It is wonderful that they do so without looking for any publicity. Without their sponsorship the Silvan Foundation would not exist.

## Bali: terrorist attack

**Hon. S. M. NGUYEN** (Melbourne West) — The Australian national anthem has a line in it that says 'With courage let us all combine'. This is what all Australians must do in this time of great loss and suffering. We must combine as one with courage against this vicious attack; an attack which was not on our shores but which was an attack on our souls.

This attack in Bali that has killed many Australians and maimed and wounded many more is an act of murder. There is no reason, no cause or no great martyrdom that justifies this barbarism. The world has changed greatly over recent times. This great country of ours is not immune to acts of evil that cause great sorrow.

As Australians of many colours, creeds and races, we must unite against those who attack us. We need to be able to offer a shoulder of support for those who need it and be vigilant against those who would look to harm us, but most of all we must combine and be courageous.

Our thoughts are with those who have lost loved ones in the tragic events in Bali at the weekend.

## UTILITY METERS (METROLOGICAL CONTROLS) BILL

*Second reading*

**Debate resumed from 10 October; motion of Hon. M. R. THOMSON (Minister for Small Business).**

**Hon. W. I. SMITH** (Silvan) — The Liberal Party does not oppose the Utility Meters (Metrological Controls) Bill, but it does have some concerns with it, and I will raise those later in debate.

The bill extends the operation of the current trade measurements to utility meters, which are used to measure quantities of reticulated electricity, gas and water. The bill will ensure that utility meters will be subject to the same regulatory framework and scrutiny which currently apply to other measuring instruments under Victorian trade measurement legislation. The bill also gives administrative responsibility to Trade Measurement Victoria.

This bill has come into place because there have been changes in electricity, gas and water from public to private ownership. The commonwealth regulates the design of utility meters under the National Measurement Amendment (Utility Meters) Act 1999. However, the responsibility for ensuring ongoing accuracy once the meters have been installed rests with the states.

In 1990 all states and territories except Western Australia agreed to the adoption of uniform trade measurement legislation to ensure accuracy and consistency in measurement across Australia. In 1995 the Victorian government adopted uniform trade measurement legislation and exempted publicly owned utility meters such as gas, electricity and water. Privatisation and corporatisation of utilities in Victoria has occurred since then and that has meant that direct government control no longer applies. This bill has come about to ensure that all privatised and

corporatised utility meters will be subject to the same regulatory framework and scrutiny that currently apply to other measuring instruments under Victorian trade measurement legislation for meter accuracy.

No regulations have been written yet to accompany this legislation. There has been some consultation on the legislation, but no consultation at this point at all on regulations.

I have spoken with all utility companies and would like to put on the record my thanks to them for their assistance. These include: the chairman of the Essential Services Commission; Australian Retailers Association; AGL; United Energy; Citipower; Origin Energy; Powercor; TXU; Gas Technology; Barwon Water; Lower Murray Water; Central Highlands; Coliban Water; East Gippsland Water; Gippsland Water; Glenelg Water; Goulburn Murray Water; Goulburn Valley Water; Grampians Water; North East Region Water; Portland Coast Water; Southern Rural Water; South West Water; Sunraysia Rural Water; South Gippsland Water; Western Water; Westernport Water; Wimmera Mallee Water; and Yarra Valley Water.

I found in the process, as I had been alerted, that consultation on this bill had been pretty limited. There had been quite extensive consultation with the larger utilities in the city but many of the country utilities, including water, gas and electricity, had had very little consultation. I sent each of them a copy of the bill and I thank them for giving me correspondence back raising some of the issues with this legislation.

We are not opposing this bill because all the utilities say that while there are concerns with anomalies and lack of definition with some things, which I will raise later in the debate, basically the issues are not with the legislation, but with the regulations. There is deep concern in the industry among utility companies that the devil will be in the detail — that is, with the regulations. Utility companies are concerned about another level of bureaucracy and about regulations they have not seen as well as overregulation. They are extremely concerned about compliance costs being passed on. It is obviously important that before the government starts to write regulations it consults extensively with all these companies. They have asked me to put to the Minister for Small Business that they all need a good consultation process.

The companies that have written to me have asked that they remain anonymous, and I will honour that. However, I acknowledge that the particular concerns I bring up in the first letter is from a very large metropolitan electricity utility. It is very concerned about metering requirements, and I will go through those. I have already spoken with the minister and, instead of bringing the bill to committee, I have her agreement that she will look at these concerns from the utility companies and try to answer, if not now, later, the anomalies and the uncertainties in the bill.

The first concern is in regard to metering requirements. Clauses 10 to 12 of the bill establish a series of requirements for use of meters in trade. This is seen as unreasonable. For example, under clause 11(1) a person who uses for trade a utility meter that is incorrect is guilty of an offence. No formation of intent is required by that person. A further example is clause 11(2), which provides that a person who uses for trade a utility meter in a manner which is unjust is guilty of an offence. No guidance on what will be considered ‘unjust’ is provided. I ask for clarification on that when we get to regulations.

The impact of these clauses may depend on the attitude of the administering authority and how strictly that authority interprets the legislation. The utility says this is clearly undesirable and should be addressed by amending or clarifying the regulation in clause 11(1) so that it only operates where a person has formed the intent to use an incorrect meter.

In regard to penalties, breaches of clause 11(1) and clause 11(2) can result in fines of $20 000 for a natural person. Clause 64 provides that if a body corporate contravenes the act each person who is a director or is concerned in the management of the body corporate is deemed to have contravened the same provisions if the person knowingly authorised or permitted the contravention. By virtue of clause 61 this is increased fivefold for a company. This means a company can be fined $100 000 in relation to a meter that is incorrect to the extent of $1. The utility considers the maximum liability of a party under the bill should be directly linked to the additional amount charged to a customer through incorrect usage of the meter. I ask the minister to take that on.

Clause 64 extends liability to directors and managers who knowingly authorise or commit a contravention of the legislation. This is in contrast to the existing electricity customer metering code under which directors and managers are not personally liable. This is an anomaly, and I ask that it be looked at.

It is understood that the penalties prescribed are intended to be maximum penalties as they are in the Trade Measurement Act, on which the legislation is based. However, this provision is not made clear in the bill, which suggests that the penalties are absolute

rather than maximum. Again, I ask for clarity on this issue.

In regard to clause 18 — responsibilities of the administering authority concerning re-verification and certification — the legislation provides unfettered power for the administering authority concerned with the re-verification and re-certification of utility meters. This is potentially problematic for distributors if the metering standards are varied in a way not contemplated when the Essential Services Commission (ESC) considers the price regulations to apply to metering services. Prices and standards are axiomatic and a risk arises whenever they are regulated by different parties.

I would like to raise a concern of another major electricity utility that has raised a number of issues. It is seen by this particular company that the bill, as drafted, creates obligations on the industry participants that are burdensome, can have costly implications for the energy consumers, and are highly uncertain.

The main concerns are that a strict liability regime, while in the best interests of the administrating authority, is rarely in the best interests of the industry participants. In the context of the current framework of metering obligations the strict liability offences in the bill are of the greatest concern for the retailer who has no control over the accuracy of the meter and can only seek assurances from the meter owner/provider that the technical requirements will be complied with.

The passing of the bill may mean that all the current contracts between the industry participants affecting metering will need to be amended and/or renegotiated, which will be very difficult and costly to achieve. The retailer may also have trouble in forcing contractual rights in respect of meters that have been compliant to date and become non-compliant as a result of the introduction of this bill.

In regard to cost recovery and pass-through provisions — which I have to say is a matter that most utilities raised with me — it is likely that the cost of compliance for the regulatory framework envisaged by the bill will be relatively high. The renegotiation of contractual arrangements will be costly. Meters already in use may need to be re-verified and re-tagged. Metering providers who wish to carry out verification services under the bill will incur licensing fees. It is likely that these costs and any penalties incurred by the industry participants will eventually be reflected in rising energy prices for consumers. Contracts with parties whose meters do not comply become voidable. Clause 11(6) provides that where a party commits the offence of using a meter that is incorrect or using it in a manner that is unjust, any contracts which rely on that measurement are voidable by the other parties to the contract. In its simplest application this provision would allow consumers to void their energy supply contracts with retailers if the retailer is found to be guilty of an offence under the bill in respect of that consumer's meter. A wider implication is that the uniform regulatory service agreements between the retailers and distributors which rely on metering data to determine distribution charges may also be voidable. This result would cause chaos in the energy industry.

On the double-reporting and uncertainty provisions in the bill, it is unclear from the bill at this stage what regulations may be introduced to facilitate the implementation of the bill, how responsibility will be shared between the ESC and Trade Measurement Victoria, and what degree of industry consultation will be accepted. Many of the important terms such as 'incorrect' and 'unjust use of a meter ' have not been defined. This creates uncertainty for all parties concerned in business planning projections of cash flow.

In addition, we have no confirmation to date as to the compatibility of the state primary standards of measurement and accuracy margins with those currently in place in the energy industry. Any discrepancy will create an additional economic and implementation burden on the distributors and the metering providers.

The final issues I wish to raise have been raised by the gas utility businesses. They say the bill would appear to be modelled on previous weights and measures legislation where the measurement is straightforward and is under the control of the local business operator where the meter resides. This has caused two issues for that set of businesses.

A gas account describes three quantities that make up the account quantity: gas volume, gas heating, and the value and pressure factor. This bill covers only the nature of the determination of the gas volume. The gas heating value is a measured quantity and is not covered under this bill.

Clause 45 provides the power for the seizure of a meter. If the gas customer has tampered with the meter, this may be appropriate. However, if the gas vendor has installed a meter that does not comply, the seizure of the meter would disadvantage the gas customer without cause. The distinction of fault may need to be added to this provision.

Also, in relation to powers for utility meters under clause 45, if an inspector reasonably believes a utility meter is used for trade, the inspector may examine and test a utility meter, require a person in the building or place where the utility meter is found to answer questions or previous records under the person's control concerning the utility's meter or its use, and to make copies or take extracts from records so produced.

If the inspector reasonably believes an offence against the legislation or the regulations involving a utility meter has been committed, he may seize or make arrangements to seize and obtain instruments and any records so produced.

The industry believes that is a problem. A gas meter can include the actual meter to measure uncorrected volume, a gas regulator to control gas pressure at the specified value for metering, and a corrector to adjust the measured value to meet certain conditions.

Clause 10, headed 'Utility meters used for trade must be marked' states:

> The regulations may provide for the circumstances in which the use for trade of a utility meter that has been repaired or modified, or commissioned, is permitted even though it does not bear an inspector's mark or licensee's mark, pending its re-verification or certification.

The industry agrees that this is too weak, and there are no circumstances within the gas industry that would require this provision. If this must be included, the industry believes a time limit would appear necessary.

Clause 12, headed 'Supplying incorrect utility meter' states:

> (1) For the purposes of this section, a utility meter is unacceptable for trade use …

if the meter indicates in excess of the limits specified in clause 16(1)(a) or is not of an approved pattern. It goes on:

> (2) If a utility meter that is unacceptable for trade use is used for trade, a person who sold, leased, hired or lent it to the person who used it for trade is guilty of an offence.

The industry believes the use of the term 'incorrect' may lead to unresolved disputes. It believes all meters are incorrect within a specified limit. It says this provision needs much further clarification. Clause 45(2) also provides that:

> The inspector may record the details of any utility meter that is examined or tested under this section in the way the inspector considers appropriate, including by filming or photography.

The industry believes this provision appears to imply that the resident or business operator may have some influence over the original test of the meter. Although the resident or business operator may tamper with the meter, that was not explained.

Clause 45(1)(c) refers to the removal of the meter. The industry believes this must be conducted by a licensed plumber in a safe manner which is in accordance with the Gas Safety Act.

I raise these issues because I have asked the utilities to review the bill and refer issues to me. I raise those issues with the house because there are obvious anomalies and there are some areas which need better definitions than are in the bill. The bottom line in all this is obviously concern about overregulation and concern about a new bureaucracy and its powers and the fact that they believe new regulations and compliance costs will be passed on to business and then passed on to consumers.

I ask the minister to give assurances that, when regulations are being defined, all utilities have some ability to be involved in the consultation process and be able to make some comment on it. I do not oppose the bill.

**Hon. B. W. BISHOP** (North Western) — I rise on behalf of the National Party to speak on the Utility Meters (Metrological Controls) Bill 2002. The reason the bill is here today is to extend the operation of current trade measurement laws to utility meters that are used to measure quantities of reticulated electricity, gas and water — an everyday event in our lives in Victoria and Australia.

It is interesting to note that in 1990 all the states and territories except Western Australia agreed to the adoption of uniform trade measurement legislation. In fact this legislation was designed to ensure that any transactions involving quantifiable measures were conducted accurately and consistently across all states and territories. Most importantly, the incentive for this was to promote commercial certainty and to bring about a reduction in business costs and greater efficiency in the trade measurement industry, which is the large industry that services the marketplace, and so that the confidence of consumers in the market could be maintained through the provision of suitable protections in these bills.

We think this is an excellent idea, particularly for those of us in the National Party who represent areas along the border, say, along the Murray River. There is no doubt that this bill is designed to ensure that any

transaction involving a measurement was firstly and most importantly accurate and also consistent across all states and territories. Again, that is very important for those of us who live and work in those border areas.

The other issue, as we have said before, is to promote commercial certainty and to reduce the costs to flow from that practical application of measuring devices. It is most important, in fact a major consideration, that any of the legislation we put through this place in relation to measurements has the confidence of the consumers and, of course, the providers to the consumers as well. It is not only the consumers we would be looking to protect in this legislation. Quite obviously anyone who has been involved with measurements knows there are legal implications if inaccurate measuring devices are used in the conduct of business.

I know that in the grain industry it has always been a struggle to have close at hand an accurate weighbridge that is up to standard and passed by all the regulators to ensure that you can weigh your products accurately. It was essential to be able to check accurately if you had sent a load of grain to an end user through a board or an agent to ensure that the right quantity got there, and to check accurately if you were selling grain direct to an end user. It is interesting to note that in this side of the industry the confidence in the system is now much more mature than it was many years ago.

We know now, for example, that trucks can come to farms and load grain, weigh it and dump it off at the end user and there are very few disputes nowadays whereas years ago there were many. I raise this point to put very firmly on the record that it is absolutely essential that both the provider and the end user have confidence in the process of weighing out or measuring our products. That is not to say that there have been no problems in the past. I am sure there have been across all the measuring instruments we use as an everyday part of our lives.

The other interesting thing that has occurred in the grain industry particularly is that farmers have got to know the transport operators better. They get to know the drivers and where their product is going, and their confidence in this process keeps building. The same thing could happen with this legislation we are discussing today, with both the provider and the end user gaining confidence.

This bill is quite narrow in that it is about electricity, gas and water. We in the National Party are relaxed about electricity and gas, but we have some concern about the measurement of water — not about the meters that we have on our houses in country Victoria or on our stock and domestic areas as well, but about the measurement of irrigation water. In fact we use — and I am sure many honourable members have seen them — the Detheridge wheels that meter out the water as it goes into the irrigation areas. These wheels have been continually upgraded over many years and it is not really exact science even today. Whilst the technology is catching up and the wheels are now more efficient, there is certainly more to do in that area about their absolute accuracy.

I can think back to the old wheels that were not particularly efficient. There was a fair gap between the wheel and the trough underneath that was used in the measuring process as the wheel rotated. Stories are often told about spragging the wheel, which was the old term for when — always, of course, by accident — a piece of wood or a fish or something else would get caught in the wheel and obviously a fair amount of water would be able to slip through the trough. That was always done by accident — there was no other way it could have been done — but it was a practice that was quite a challenge across the irrigation industry. I hasten to say that the modern wheel has such minimal tolerance and clearance now between it and the trough that very little water could leak through nowadays anyway, even if by accident something came along to sprag the wheel.

We have been advised that the water industry has looked at this legislation and it has advised that the main area of concern in this legislation, at the front end anyway, is with gas and electricity, and then water. We are also advised that water would be managed in the following order: metro urbans, metro rurals, waterworks district, stock and domestic — with irrigation water certainly very well down the list.

I come back briefly now to the specific tasks that the bill has responsibilities for. I should say that this bill really just tidies up some exemptions from uniform trade measurement legislation as provided by section 6 of the Trade Measurement Act 1995. Among those items we are discussing today is reticulated electricity, gas and water. A number of those were exempted some time ago when the utilities were publicly owned but now with privatisation and corporatisation of some of those utilities it means direct government control over these particular issues no longer applies.

It is interesting to note that the commonwealth regulations stand in relation to the design of utility meters to ensure that initial accuracy and appropriateness is maintained. However, the states and

territories have the responsibility for the ongoing accuracy of those meters once they are installed.

I note the bill provides for trade measurement inspectors. I wondered at one stage whether they would be inspector specific in one particular area. However, it is the National Party's understanding that they will be multiskilled and be able to operate across all products, and in fact check the meters of any of those products, be it electricity, gas or water. Part 6 of the bill sets out the powers of the inspectors. They can inspect at any reasonable time but they must get consent from an occupier to enter a residential part of a property.

Yesterday honourable members were discussing an agricultural bill and talking about the powers of inspectors. The powers of inspectors are often very wide. We need to ensure that those powers are used correctly. Otherwise, of course, political pressure would see those powers removed over time, and that is not a good idea if we are going to get, in this case, accurate measurements of the products we use, such as electricity, gas and water.

As I said, the National Party has little concern with this bill apart from when the system gets into measuring irrigation water. We will certainly keep a close eye on that, but it is clear that gas and electricity are in the first part of the program with our irrigation water well down the list, even in relation to the water itself.

This bill will bring together a cooperative process of checking the accuracy of measuring instruments, which if done correctly will provide good confidence and certainty throughout the industry for providers and consumers, and it certainly should reduce costs overall. It should provide a practical way of managing and checking our measurement systems across the state.

**Hon. S. M. NGUYEN** (Melbourne West) — I am honoured to speak in support of the Utility Meters (Metrological Controls) Bill. I have listened to other honourable members speaking in support of the bill, and it is very straightforward. It is in the interests of Victorians and the industry.

I wish to go to the background of the bill. The current trade measurement legislation provides a framework whereby the owner of the measuring instrument is responsible for the accuracy of the instrument's operation. It is the responsibility of the owners and we know the business has to ensure accuracy and make sure the customer or the service provider knows exactly what is happening. The owner may use a repairer of choice provided the instrument is certified by a licensee before returning the instrument to service. We have to use people who are licensed and authorised to make sure everything is correct.

Any inspectors employed by Trade Measurement Victoria have the power to audit work carried out by the licensees, and the associated documentation. We also have inspectors to check licensees to make sure the person does a good job. Everything has to be right. All the documentation has to be in order. People can go past the system and pretend they are doing okay, but everything has to be correct. Also, the inspector has the power to check many things and the licensee has to show that to the inspectors.

In 1999 all the state and territories, except Western Australia, agreed to adopt the uniform trade measurement legislation (UTML). This was designed to ensure that transactions involving quantifiable measures apply across the states, except WA. This system is good because it is a national level of control and we have the same system. Also, the incentive for UTML was to promote commercial certainty, to bring down the cost of business and ensure efficiency so that the industry will get the best benefit, and make sure the customer is confident in the market and is not worried about the meter not being correct or about being ripped off by the industry. It is important that the customer feels confident in the industry so that the business will benefit everyone.

Also, effective trade measurement, as I mentioned before, provides a significant economic benefit. The benefits include a level playing field for commercial transactions, mutual recognition of measurement used in international trade, ensuring full national benefit is obtained for commodity exports, full collection of government tax and excise based on measurement, consumer protection, and control of fraud. This is one of the key reasons for this legislation — to show the clear benefit to customers and to make it clear that everything is under control. Consumer protection is very important, as is the control of fraud, and making sure there is no fraud.

We are also talking about the Victorian Trade Measurement Act 1995, along with the Trade Measurement (Administration) Act 1995 which form the basis of Victoria's UTML commitment. Some trade transactions have been exempted from the UTML through section 6 of the Trade Measurement Act. Among the exempt items are utility meters used to measure consumption of reticulated electricity, gas and water.

I refer to the media release of the Minister for Small Business issued on 20 May this year in which she

strongly outlines the government's commitment to the legislation to ensure the accuracy of gas, electricity and water meters.

This is the government's commitment to ensure that suppliers provide accuracy to their customers. The minister also highlighted in her media release that the bill will:

> … improve existing controls on the accuracy of utility meters by transferring administrative responsibility to Trade Measurement Victoria, a specialist body within the Department of Innovation, Industry and Regional Development.

This is a commitment of the government to businesses and consumers. The minister said also:

> Under the new arrangements, licensed technicians and inspectors will oversee utility meter accuracy ensuring that both businesses and consumers 'get what they pay for'…

People have to feel confident about what they pay for and that they will not be ripped off or misled by service providers. The government has to ensure that and tell the community that it is watching and controlling the meters. The minister went on to say:

> The legislation will make utility meters subject to the same legal controls that currently apply to other measuring instruments used for trade, resulting in a systematic and consistent approach designed to enhance business and consumer confidence.

This is pointing out the government's commitment to provide a better service for our community. As part of the role of the Essential Services Commission to oversee the gas, electricity and metropolitan water industries, it will control and coordinate gas, electricity and metropolitan water. People will have a licence and everything will be overseen by the department.

The bill is very clear. There are many things our community should know. The department of small business would like to make sure our small business users are confident in the industry. I support the bill.

**Hon. A. P. OLEXANDER** (Silvan) — I rise to speak on this bill, which has been introduced by the government for the purposes of bringing uniform trade measurement for electricity, gas and water meters under the umbrella of Trade Measurement Victoria (TMV). As already stated, the opposition does not oppose the bill. However, in my brief contribution to the debate I will make some supplementary points on the bill.

Firstly, I would like the indulgence of the chamber to reiterate some of the main objectives in introducing the bill. The bill will extend the operation of current trade measurements to utility meters that are used to measure quantities of reticulated electricity, gas and water. It will also ensure utility meters will be subject to the same regulatory framework and scrutiny which applies to other measuring instruments under Victorian trade measurement legislation. The bill will also bring electricity, gas and water meters under the regulatory umbrella of TMV. Measuring instruments will be scrutinised under the Victorian trade measurement legislation.

The implications of these intentions are that utility meters and companies responsible for meter accuracy with regard to electricity, gas and water will be subject to regulation and oversight by inspectors and licensees representing TMV. Another point taken into consideration when drafting this bill would have been the developments in the industry over the last decade and the need now to make concessions and amendments to practices and bills legislating for the industry.

One such development matter concerns section 6 of the current Trade Measurement Act, which presently excludes electricity, gas and water regulation. The reason is that at the time of drawing this act electricity, water and gas were under the direct control of the government. As honourable members would be well aware, corporatisation and privatisation of these utilities in Victoria means that direct government intervention and control no longer applies. This certainly does not negate the necessity, however, for an integrated comprehensive and equitable system for all utility consumers — businesses and vendors alike.

In 1990 the federal government adopted a uniform system of trade measurement legislation Australia wide, with the exception of Western Australia. The intent of that process was to ensure that there was a homogenous system of accuracy and consistency in measurement across the nation, a laudable objective. This ensures a fairer and more compatible system for consumers and traders alike, especially when considering commercial implications: industry, science, engineering, international trade, commonwealth–state relations and of course health and safety. The federal government's objective in the 1990 legislation was to ensure that verifiable instruments were conducted with accuracy and consistency on a national front.

Another primary concern federally was the promotion of commercial and market certainty and a more holistic approach to consumer protection. The states' obligations extend to the operation of the trade measurement authorities and also to the verifying authorities.

The main legislative reference for Victoria's uniform trade legislation commitments is, of course, the Trade Measurement Act 1995, in conjunction with the Trade Measurement (Administration) Act 1995. The bill before this house will provide for a regulatory framework of scrutiny to be applied to gas, water and electricity meters and other related instruments under the Victorian trade measurement legislation. This means that companies in Victoria that are responsible for meter accuracy will be subject to regulation and oversight by TMV.

As one of the primary purposes of this bill is to enhance both business and consumer confidence and certainty, this bill also provides for a systematic and separate commencement of enacting in each sector of gas, electricity and water to respect and allow for the various needs and demands of each of those separate areas. In doing so I suggest the government conduct an appropriate education campaign with those roll-outs so that consumers and businesses involved in those industry sectors are aware of the amendment and have ample time and opportunity to make adjustments to their individual circumstances if that becomes necessary.

As already explained by the shadow minister, a very extensive consultation process was undertaken by the Liberal Party. During this process some very valid concerns were raised with the opposition by members of the industry. These related to several aspects of the bill, and one of those is the qualifications of inspectors involved in the regulation of the industry. I wish to advise any consumers or businesses concerned with this facet of the bill that the department has already disclosed that all inspectors currently appointed under the Trade Measurement Act hold national accreditation as inspectors through the National Standards Commission.

Also, under the Utility Meters (Metrological Controls) Bill currently employed inspectors that were appointed under the Trade Measurement Act 1995 will be appointed as inspectors under the new legislation in recognition of their previous experience in the industry. Unfortunately, however, their previous experience in the industry does not guarantee their technical experience in regard to utility meters. But they will receive additional training to bring them up to date with current practices and will receive training on an ongoing basis in the operation of utility meters. That is welcome.

New inspectors that will be appointed will have specialist knowledge about a specific utility, whether it be water, electricity or gas. This may also be arranged in conjunction with a system of multiskilling, where inspectors may branch into other utilities in order to allow for staffing resources and staff leave arrangements.

I would also encourage the inclusion of additional areas covered in the training of inspectors, such as customer relations skills and perhaps an investigation into the merits of acquiring some more extensive negotiating skills. Speaking from my personal experience in some of the branches of customer relations, it would be most beneficial for both businesses and consumers if these points were taken on board.

Overall, the opposition is satisfied that the concerns mentioned already have been addressed.

I would like to draw to the attention of the chamber one specific concern. It relates to clause 72, which deals with other fees and charges that have been prescribed. Under this provision a regulatory impact statement is required, and further regulations should also be developed in conjunction with this process in order to provide a system that is practical and fair.

Additional concerns that were raised with the opposition include the possible cost of compliance in the process of the bill being enacted, and also the level of consultation that will be a part of this process. In representing these concerns the opposition would like an assurance from the government that it will conduct a campaign of extensive consultation on the process of developing those regulations and that when writing the regulations the government will consult all utilities and utility meter manufacturers on the regulations and the impact they might have on their businesses. A primary concern of businesses involved in the utility industry is that there will be mounting imposed business costs resulting from an increased cost of doing business as a result of increased government regulation.

In summation, I encourage the minister to provide assurances for the concerns expressed by those in the industry from both a business and a consumer perspective. In the interests of a more systematic and regulatory framework that secures the accuracy of utility meters used for trade, this bill is necessary; but also for the purposes of more consistent and up-to-date Victorian trade measurement legislation it is essential. I commend the bill to the house.

**Hon. E. C. CARBINES** (Geelong) — I am pleased to speak on the Utility Meters (Metrological Controls) Bill, which seeks to ensure that the measurement of electricity, gas and water is transparent so that both businesses and domestic consumers can have

confidence that they are getting what they have paid for. I am also pleased to know that the bill is not opposed by either the Liberal or National party.

The bill will ensure that businesses and consumers are getting what they pay for by extending the operation of current trade measurement laws to utility meters that measure electricity, gas and water. The bill has become necessary following the privatisation and corporatisation of utilities under the former Kennett government, which removed the very necessary government scrutiny of utility services. The Bracks government believes it is essential for all consumers of such services, both domestic and business, to have confidence in the integrity and accuracy of utility meters. Accordingly the bill provides a regulatory framework for ensuring the accuracy of utility meters, one that is consistent with legislation that applies to all other measuring instruments used for trade under the Trade Management Act of 1995.

The passage of the bill will see the transfer of the administrative responsibility for enforcing the accuracy of meters for gas, electricity and water from the Essential Services Commission to Trade Measurement Victoria. Trade Measurement Victoria operates under the Department of Innovation, Industry and Regional Development and is responsible for ensuring the technical accuracy of all trade measuring instruments. Accuracy of utility meters is paramount. Any person who seeks to certify the accuracy of a utility meter will need to hold a servicing licence with Trade Measurement Victoria.

The bill also provides for additional accountability in relation to the accuracy of utility meters by setting out the powers applying to Trade Measurement Victoria inspectors. In this way it is consistent with the Trade Measurement Act 1995 and ensures a seamless approach to guaranteeing the accuracy of measuring instruments used for trade in our state.

I am aware that the Honourable Wendy Smith raised some matters that she would like to have addressed. I would like first of all to assure the honourable member that the matters she raised have been raised with the department by the relevant companies, and meetings have ensued in which discussions have taken place and the issues and concerns have been addressed. For the benefit of the honourable member I would like to take her through those issues, or at least some of them.

I assure the Honourable Wendy Smith that existing metrological requirements will be maintained and transferred from the Essential Services Commission agreements into the regulations. There will be no additional level of regulation. Further, future regulations will only be framed after full and complete consultation with all stakeholders and all members of the relevant industries.

The honourable member raised issues concerning the penalties outlined in the bill. I assure the honourable member that the penalties listed there are maximums and are controlled by the Sentencing Act.

The definitions of ‘unjust’ and ‘incorrect’ exist in the current trade measurement legislation and have proven to be satisfactory. The definitions are taken from the *Macquarie Dictionary*. I hope that is of some help to the honourable member.

Consultation on the bill was widespread earlier this year with separate presentations being made for each of the energy providers, the water industry and the irrigation industry. During those consultations specific concerns were not raised about the intent or application of the bill.

The Bracks government is firmly of the belief that all consumers, domestic and business, benefit from having accurate utility meters. It is important that there is a consistent systematic regulatory framework in place to ensure that the accuracy of utility meters is maintained. This bill seeks to ensure the accuracy of gas, electricity and water meters, and therefore protects the rights and interests of all consumers. I commend the bill to the house.

**Hon. C. A. STRONG** (Higinbotham) — As has been said by other speakers, the bill brings utility meters dealing with the consumption of electricity, gas and water under similar regulations to that of all other meters which are regulated by the Trade Measurement Act. That in itself is a fascinating reflection on the way privatisation and the government’s view of the world have changed significantly. It is used as the excuse why these meters for electricity, gas and water, which are major commodities and very important to households throughout the land and in Victoria, have been unregulated under the normal regulations that all other trade measurements have to abide by.

Why were they exempt from the normal trade measurement regimes that everybody else had to conform to? Because in the past they were government owned. We have a strange double standard that when the government ran, owned and operated something it tended to set for itself different standards and, in many cases, a standard that was more flexible because the standard setter was inevitably the owner. The people who generally would have set the standards for utility

meters would have been the utilities themselves. In any other environment that would not have been the way to do things where you do not have the person who owns and supplies the commodity setting the standard or the measurement of it. You would not want, for example, the petrol and oil companies setting the measurement standards for petrol pumps, but government has been able to do that for many years.

The bill is a worthwhile step, a positive outcome from the privatisation process in that there has been a realisation that government should not be exempt from the same standards that it applies to all other businesses. Some people will take issue with some details of the bill, but the principle is to be supported in every way. It is an interesting reflection on how the world has moved on that suddenly these double standards are inappropriate and government services should be measured by exactly the same standards as the government tries to apply to the private sector suppliers of goods and services.

With those few comments, Madam Acting President, who took me to task and said that she has never heard me speak for 5 minutes before, I wind up my contribution.

**Motion agreed to.**

**Read second time.**

*Third reading*

**Hon. M. R. THOMSON** (Minister for Small Business) — By leave, I move:

That this bill be now read a third time.

In so doing I thank honourable members for their contributions. The Honourable Wendy Smith raised a number of issues and points for clarification, and the response to some were read into *Hansard* by the Honourable Elaine Carbines to clarify some of the major issues raised. Certainly with any further developments in regulations there will be full and detailed consultation with the utilities to ensure that we are, although regulating the industry, making it as easy as possible for those regulations to be met. I thank honourable members for their contributions to the bill.

**Motion agreed to.**

**Read third time.**

*Remaining stages*

**Passed remaining stages.**

## WRONGS AND OTHER ACTS (PUBLIC LIABILITY INSURANCE REFORM) BILL

*Second reading*

**Debate resumed from 10 October; motion of Hon. C. C. BROAD (Minister for Energy and Resources).**

**Hon. D. McL. DAVIS** (East Yarra) — I am happy to make a contribution to the Wrongs and Other Acts (Public Liability Insurance Reform) Bill and state that the opposition does not oppose this important bill. The bill has been a very long time coming and amends many acts and covers a large range of different issues.

Over the recent period many members of the community will be aware of the impact of the public liability crisis on many sections of the Victorian economy and community. There is a national and international crisis in this area, one that has built up over a period but has been worsened, as people will be aware, by the happenings on 11 September last year. It is a crisis that has influenced so many areas of the community as the impacts have slowly worked their way through the system.

In terms of the international situation, we have seen a slow and steady process over a long period which has been massively accelerated following 11 September. What has occurred is that the reinsurance agents — most of them based either in the United States of America or in Europe — have re-rated or re-examined many of the insurance issues and risks surrounding public liability insurance.

It is true that a number of insurance crises over recent periods — not only the events of 11 September but a number of other significant crises — have been massively costly for the insurers and the reinsurers, and have resulted in significant losses, many of which will take decades to recover from.

The impact of these changes over the recent period has, as I said, been profound in a number of different areas, and the impact has been manifested right down to local clubs and societies. The changes have impacted indirectly into professional indemnity areas as well, and the community as a whole has searched for a way through this process.

I know, for example, that the community as it has sought its way through has been guided very well by the federal government, in particular by Senator Helen Coonan, the federal minister with responsibility in these areas. She has led very effectively in this area by arranging the coordination through task forces and other mechanisms across the states in an attempt to

achieve a coordinated response that does not allow one state to go off in an unhelpful direction, while at the same time leading to a sensible and coordinated response that maximises the outcomes.

Having said that, I know some states have responded differently from others and I place on the record very early in this contribution that the Bracks government has not responded adequately. It has been tardy in its response, and other state governments in Australia have been swifter with their response to this crisis and have thereby prevented significant damage from occurring. I know that the Bracks government has tried to grapple with the problem, but there are a number of reasons why it has been slower than, for example, the New South Wales or Queensland governments — both Labor governments, I note — in developing a response. That slowness, in part, reflects the slowness of the Bracks government to reach any decision. It is a government that is not nimble and not able to take decisive steps, and with this bill finally coming to this place we see the tail end of that very slow decision-making process through which the Bracks government operates.

In New South Wales we saw the Premier step forward at a relatively early stage and make a number of clear statements as to how New South Wales would handle this crisis. Premier Bob Carr has been prepared to work very closely with the federal authorities to develop not only an outcome that is suitable for New South Wales but also one that fits with what is being done nationally. Victoria, in that sense, has been somewhat recalcitrant, and it has been the state that has needed the most encouragement and pressure to lead it to a sensible position.

I will say something about Australia's position in the insurance market. We are a small economy by any standards, and in the tertiary sector of the economy — the insurance and other sectors — we have had a much lesser role over a considerable period, and that has been manifested most strongly in this recent time as we have seen the reinsurers and other insurance bodies pull back from some insurance in Australia.

Part of the problem for Australia is that it needs to send a set of signals to the world about its ability to deal with these issues, about its preparedness to tackle these issues, and about its preparedness to place in position an environment that suits business and suits those reinsurance companies that want to play a part in the Australian market. At least one builder's indemnity insurance company has indicated that it was not prepared to come into the Victorian market until reforms were made, and that is a very closely analogous area to public liability insurance. I note that this government was again indecisive about that issue, and that indecision created a considerable problem for the Victorian building industry and the economy as a whole.

Turning to the bill itself, the bill amends the Wrongs Act 1958, the Coroners Act 1985, the Food Act 1984, the Goods Act 1958, the Essential Services Commission Act 2001, the Country Fire Authority Act 1958 and the Metropolitan Fire Brigades Board Act 1958. The scope of the bill can be seen in the number of different areas it touches.

I should make the comment that the failure of insurers in this area — the FAI group and HIH Insurance — certainly impacted very heavily in our local manifestation of the insurance crisis. I also make the comment that those insurance companies that have proved to be very difficult in their prudential focus and perhaps their ethics for a long period may well have set their policies at unrealistically low levels, and those unrealistically low levels eventually manifested disastrously for many in this country.

The failure of HIH Insurance had a profound impact, and again the view from the other side of the world, whether it be in Europe or the United States of America, was that Australia was not a good place to do business in this regard. Other insurers were unwilling to underwrite this sort of liability.

I recently attended a forum which looked closely at the difficulties faced by insurers in setting premiums and at the long-term tail on many insurance policies and products, and tried to establish how insurers could most sensibly set their rates to take account of future drawings on those products. Honourable members can appreciate the difficulties that an insurance company faces: it may take on a policy that draws premiums over a number of years, but when an incident occurs the company is then required to pay out, often over an extended period, or an incident may even occur but not manifest itself in a claim for a number of years.

Insurers face that difficulty of trying to estimate when a claim is likely to occur and how many claims are likely to occur; this is part of the phenomenon of underinsurance or underestimating we have seen with HIH and other insurers over the recent years. While low insurance premiums were a boon for the Victorian economy in the short term, they have created difficulties in the longer term and left people uninsured in many cases and underinsured in others.

I note that the steps that many insurers have taken over recent periods to cover themselves against losses have had significant impacts on businesses and on community organisations — for example, we have seen an outright refusal to insure certain products; we saw a tragic manifestation of that in the recent case of travel insurances where there has been a clear failure to insure people against terrorism. You can see why an insurer may be reluctant to do that, but you can also see the extraordinary impact that would have on those who are unable to obtain that sort of insurance. We have also seen insurers more steadily trying to define their risk to increase the level of deductibles at the front of policies, so that when claimants put forward their claims there is an excess to be paid, and insurers have increased the size of deductibles in many cases.

This not only discourages claims but also limits the financial loss of the insurer. It also forces the insured to look more closely at the risks, and part of what I will talk about in a short while is some of the risk management strategies. Certainly increased deductibles are an important mechanism in making the insured look carefully at what can be done in terms of risk management.

We have also seen an attempt to define risk at the other end of a claim — that is, to put limits on how long a claim will run and the numerical amount of claims. I understand why insurers have taken that tack but it has impacted and will impact very seriously on many businesses and community groups over the next period. Some industries are faced with the situation of not being able to get appropriate insurance, and I am sure the Honourable Graeme Stoney will make a contribution about adventure tourism later in this debate. He will talk about the impact on many adventure tourism operators who were unable to obtain insurance for a period. Certainly the Liberal Party struggled hard to put forward a package that would assist adventure tourism operators and was prepared to introduce a bill for which it sought government support. Unfortunately the government was not prepared to assist and was prepared to leave the adventure tourism industry floundering for a lengthy period. I am sure the Honourable Graeme Stoney will make much greater comment about adventure tourism.

There is also an issue of businesses beginning to look to second-rate underwriters for support and as a member of Parliament it is important for me to record my concern at that trend. We have seen underwriters in the Philippines, Mauritius and the Caribbean enter the market with reduced premiums that are obviously attractive and competitive. I would caution consumers about the use of those sorts of premiums and underwriters. You want certainty with insurance. You want to be absolutely certain that when you need to make a claim, you are able to claim your full entitlement. Of course insurance is one of those products that you hope you never use, but when you need to use it, you need to have certainty that the product that is on offer and that you have been paying for, is available in the way it has been described. I am concerned about the recent appearance of what I would call second-rate underwriters in a number of places around the world and caution businesses and others about using them.

I know the impact has been widespread on different businesses and community groups. For example, there has been a public liability crisis on licensed premises, which have found it difficult to obtain proper insurance. Venues supplying live or amplified music after 1.00 a.m. are required to have crowd controllers. That is a provision of the Liquor Control Act as directed by the Liquor Licensing Commission in consideration of noise and surrounding areas and on advice from police.

The premiums for crowd control security have risen by more than 200 per cent — in some cases by more than 250 per cent or 260 per cent. Obviously the cost of that kind of change is significant and either has to be passed on or absorbed by businesses. The basic insurance premiums for those periods, often over 200 per cent, have had a significant impact. The cover excludes claims for assault against crowd controllers by patrons in many cases. In other cases the excess is extremely large for any insurance.

I know many Liberal Party members and candidates around the state have had worrying examples presented to them. In Ballarat West a case was brought to my attention by the Liberal candidate, Judy Verlin. She talked about an important local basketball stadium — and perhaps the Minister for Sport and Recreation is aware of this issue. The organisation has time, capacity and networks to broker deals with large groups using the stadium, but the smaller volunteer organisations have experienced great difficulties. I will quote a person up there who said:

> We can't begin to see the face of the problem because many of the smaller community groups are just saying it's too hard and are ceasing to exist.

Volunteer team coaches with no history of claims have found it difficult in some cases to find appropriate and affordable cover.

The Buninyong Gold King Festival has also faced difficulties, and I see the Minister for Sport and Recreation nodding. He is obviously aware of some of

these examples. Kids have designed floats and parents obviously want them to go forward but at the same time it is very difficult to secure insurance. The Ballarat Begonia Festival has also faced difficulties, but I am not sure about the final status of that set of difficulties.

One of the Liberal Party candidates in the Geelong region, Stretch Kontelj, has made a number of comments to me about the roller rink in Newtown and its owner, Mr Raoul, who said he had seen premium rises of about 300 per cent in the last three years.

He said to me, 'It's like paying for the cost of a new transmission last year and being asked to buy the whole car this year'. He saw it as an absolute brake on his activities down there.

A number of people and organisations around country Victoria have found a great deal of difficulty — for example, local riding clubs and members of equestrian centres — but I will leave the Honourable Graeme Stoney to discuss those aspects of the debate.

Our candidate in Rodney, Simon Frost, also passed on to me difficulties that the electorate had faced with the Club Marine Southern 80 ski race along the Murray River at Echuca. The event is normally held on the Australia Day weekend each year; however, this year it was postponed to Easter. He says that it was up in the air for 2002. There are jurisdictional issues there as well as the impact of the insurance crisis.

Our candidate in North Western Province, Wendy Lovell, pointed out to me that a number of local Rotary, Lions and other similar organisations that use international insurance brokers on a large scale have also faced difficulties. Small organisations such as the Shepparton women's community services clubs have been unable to attract or secure insurance for similar activities. Such bodies, often unincorporated, face particular difficulties with reinsurers who may have more stringent demands than they once had to ensure that their losses are covered in a sensible way.

A number of the provisions of the bill are regarded by some people as controversial, but a sensible set of balancing steps need to be taken. The decisions on some of these areas are difficult — for example, the limitation of non-economic loss to the Transport Accident Commission limit of $371 000 is one thing that some people found difficult — but I can see the justification for some of these steps.

I know that the decision to ensure that there is greater personal responsibility in these areas, including an understanding that intoxication of a claimant by alcohol or drugs will need to be considered in determining liability or breach of duty. I note also the limitation on loss of earnings claims to three times average weekly earnings is also something that people have found difficult, but nonetheless it may well be justified because of the difficulty of the situation and the need to find an appropriate balance.

The changes in the discount rate from 3 to 5 per cent, which have been discussed as part of this bill, are for future economic loss and are significant steps.

The minister has talked at great length about the clauses that relate to Samaritans and their actions taken in good faith that prevent death or injury and help injured persons. He has also talked about the aspects that enable people to donate food for charity — that is, if the food, when it leaves them, is in good condition that they have taken all reasonable steps. These steps to assist Samaritans — to assist those who are wanting to do good works — are entirely reasonable and sensible and certainly the opposition has no difficulty with these measures.

There is a question as to whether many of the measures in the bill go far enough — for example, voluntary organisations and so-called Samaritans who may be protected in themselves but the liability is transferred in the same way to the voluntary organisation itself which will then have to be able to obtain appropriate levels of insurance; in many respects it is simply a matter of shifting the costs.

The allowance of waivers to exclude liability for recreational activities that are deemed risky is, in my view, justified. Again, the Honourable Graeme Stoney will talk about that approach. It is important that that section of the bill goes forward and that there are appropriate mechanisms in place that do not prevent this important sector of our economy being overly disadvantaged by the insurance crisis and the public liability difficulties that we have faced.

The aspects of the bill that relate to the collection of information are appropriate, but again this is an area in which the government could have gone further. In many ways that is the story of this bill: it is a bill that is late; it is a bill that is little; and it is a bill that shows very little creativity from the government. It is a bill that the government has moved too late in the day; a bill that the government has brought forward to attempt to meet its national obligations at a late point in the cycle.

I note that there may well be further amendments to the bill — I accept what the Leader of the Opposition told me just a few moments ago — but my understanding is

that the government is in the process of considering the reduction in the statute of limitation from six to three years. The opposition will be very prepared to discuss that with the government, although I think the idea of introducing that as a last minute amendment was surprising, to say the least.

There are a number of other aspects that need to be dealt with in the bill, too. I want to say something about the broader context of this bill. I made some comment about builders warranty insurance earlier, but there is another class of insurance that is related to these areas that has not been talked about so widely — that is, the difficulty that building consultants are facing in obtaining proper insurance.

**Hon. W. I. Smith** — Absolutely.

**Hon. D. McL. DAVIS** — The Honourable Wendy Smith may say something about that in her contribution. That matter must be tackled swiftly. The government again sat on its hands. Many of the building consultants provide very valuable advice to consumers that enables them to make more informed decisions about properties or buildings before purchasing or before undertaking various activities on these properties.

It is only reasonable that those building consultants ought to be able to obtain proper insurances. I briefly quote some figures that were provided to me recently about the scale of the issue faced here. I know that one building consultant that I spoke to was offered coverage of $1 million professional indemnity insurance at $43 000 annually with a deductible or an excess of $100 000 — an enormous premium, one would have thought, and that is certainly being faced in other areas of professional indemnity insurance, most notably in the medical, legal and accounting areas over the recent period.

It is important to place on the record that the bill seeks a balance. I am not sure that there could not have been in some areas a better balance struck had the government moved more thoughtfully and more quickly. I believe this balance aspect of the bill — and obviously the bill is a bill of balance — is best shown when you look at the contribution of the Scrutiny of Acts and Regulations Committee (SARC) which picks up and discusses all the section 85 statement implications in the bill — and there are many! The bill contains many section 85 statements.

I draw attention to SARC's *Alert Digest* No. 8 and to its reference under section 4D(a)(i) of the Parliamentary Committees Act which relates to undue trespass to rights and freedoms:

> The committee notes that recovery of damages for injuries are limited by creating a cap on loss of future earnings of three times average weekly earnings and by creating a cap on general damages for pain and suffering and loss of enjoyment of life (non-economic loss).

Later the committee states:

> The committee notes that the bill provides that a good Samaritan is not liable in any civil proceedings for any act or omission done in good faith in providing assistance, advice or care at the scene of an emergency.
>
> The committee notes that the inability of an injured person to bring a civil action against a good Samaritan for damages for personal injuries may limit a person's common-law rights …

SARC correctly points out that this is a matter for the Parliament. The *Alert Digest* also states:

> The committee notes that the provision only provides immunity to a food donor where the donor did not intend that the consumer would pay for the food, the food was safe for consumption at the time of donation and where the donor explained the proper storage, handling and shelf life of the food.
>
> The committee notes that the question of whether the inability of an injured person to join a food donor in civil proceedings for damages abridges a person's common-law rights is a matter for Parliament to consider.

Later in the SARC report it states:

> The committee notes that the bill provides an immunity from civil proceedings against a volunteer for any act or omission done in good faith …
>
> The committee notes the exceptions to the immunity in proposed section 38 concerning acting outside the scope of the work, acting contrary to instructions or acting under impairment of drugs or alcohol.
>
> The committee notes that the question of whether the inability of an injured person to personally join a volunteer in proceedings for damages is justified is a matter for Parliament's consideration.

The committee goes on to refer to statements made separately under clauses 7, 9 and 10 concerning:

> … limitations of damages for personal injuries or death and immunity from civil proceedings for good Samaritans and food donors.
>
> Subject to Parliament's consideration …

It makes the point that these limitations are absolutely consistent with the purposes of the bill but the limitations on the rights of people to sue is something that the Liberal Party and Parliament ought not treat lightly. I reiterate that this is a bill of balance. It is a bill that tries to find its way through a difficult situation. It

is a bill that tries to ensure that the rights of people are protected to a reasonable extent but at the same time ensure that the impact of those legal rights is not so great that in effect what it does is put businesses out of business, put community groups out of operation, and change the face of our society as we know it. That certainly is what much of this insurance crisis has been doing in the recent period.

I also pay tribute to the work of my colleague the honourable member for Box Hill in the other place, Robert Clark, who has worked very hard in this area and has become something of a respected expert in finding a way through these difficult public liability matters. I note that the packages he has prepared find a way through and obtain appropriate insurances for those community groups. For example, at a very early point he prepared a very sensible package that enabled groups, such as community groups on government land, to work in a pooling arrangement with government through the Victorian Managed Assurance Authority.

This was the creative solution that many would have liked to have seen the government come up with. I commend the honourable member for the remarkable work he has done in this area. It is a pity that the government has been so tardy in dealing with this bill. It is a pity that in this area of genuine community concern the government has not been prepared to listen and to work cooperatively in a bipartisan public spirited way with the Liberal Party and the National Party to find a way through this difficulty at an earlier time.

I also note that there will need to be further work done in this area. I do not believe the public liability crisis we have faced over the recent period has yet abated sufficiently. I believe further steps will be required. This is not an area, as I say, that is static. It is not an area where there is not a changing balance, and I believe we will see the need in the next sitting of Parliament, and probably the one after that, to come back with further steps to deal with this particular crisis.

In conclusion, whilst many people regard insurance and the law around tort and insurance as a somewhat dry and boring area, it is an area that we have now learnt has an enormous impact on our lives. It is an area that the community needs to grapple with further. It is a bill that seeks a balance. I am not sure that it fully finds it and I am not sure that the opposition would not have liked to have seen much more in this bill and much more creativity as well. But at least the government has now taken one step — a step that brings it slowly towards national achievements.

I note there is always a need in this area of tort law reform or areas which touch tort law reform — and I would not regard this in any way as a robust tort law reform, but there are aspects of it — that whenever the activities of Parliament touch this area I think we face pressures from certain members of the legal profession, and it is important to place on the public record that the community needs to sets its own boundaries in this area.

It needs to be prepared to set proper parameters on the way the legal profession and the courts operate in this area, and it needs to do this with an eye to achieving community outcomes. There will be further steps here, and we will face further pressures from some in the legal profession.

In conclusion, the opposition does not oppose this bill but seeks to work with the government in future to provide a proper solution.

**Hon. R. M. HALLAM** (Western) — I rise to report that the National Party will not be opposing the Wrongs and Other Acts (Public Liability Insurance Reform) Bill currently before the chamber and to explain the reasoning which brought the National Party to that position.

It must be painfully obvious to all of us that public liability has been a community crisis coming for some years. I acknowledge that the HIH collapse and the madness of 11 September have actually accelerated the pace at which that crisis approached to the extent that it brought the features of that crisis into a much sharper focus and has galvanised the community into action, and maybe beyond that crystallised our thinking. However, it is painfully obvious that this bill should not be a surprise to anybody who recognised the danger signals from some years back. We were in crisis mode; we have had to recognise the reality of that. We need to address the root causes of that calamity, and to that extent my view is that the HIH collapse and 11 September simply brought forward the timetable of that program.

The bill before us addresses some of the root causes, and members of the National Party are prepared to acknowledge that, but in our view it does not go far enough, and it does not fully adopt the strategies we have been advocating. However, it is a step in the right direction. We expect that it will ease some of the community pressure, which we all recognise, and it is at least consistent with the strategies being pursued right across the Australian economy; it is consistent with the moves being taken by the commonwealth and the other state governments. It would be churlish for the National

Party not to accept the bill in the spirit in which it is offered to the chamber. I am happy to put on the record that I think congratulations should be extended to the minister directly responsible for this, the Minister for Finance in the other place, for the progress we have achieved thus far.

I would also say to the minister in the same spirit that he should expect us to continue to be advocates for further action to address the holes which we all acknowledge are still there in this general area. In other words, we say to the government, 'This is not the whole loaf, but we will have it and we are prepared to thank you for it'.

In essence, the bill restricts the entitlement to common-law damages in respect of public liability claimants. The most remarkable feature of the bill is that the Labor government is introducing it. I am sure there will be some in this chamber who will not be surprised to hear me comment about the double standards involved here, because despite all the rhetoric and the tub thumping we have heard about the sanctity of common-law rights of injured workers and the extent to which the Kennett government was demonised for having restricted those common-law rights and in spite of the fact that the current government went to the last election trumpeting a commitment to right the terrible wrongs inflicted on Victorian workers by restoring common-law rights, here we have the very same government doing precisely the reverse. It just so happens that it is in a different area of law. They are the same common-law rights; it is just the circumstances that have changed.

What makes it worse is that at least in respect of workers compensation we do not have this total lottery of the lot on one hand and nothing on the other because we have in this state a quite sophisticated statutory scheme to provide a replacement income to cover medical expenses and to compensate for permanent injury — in other words, in workers compensation there was a sophisticated safety net. There is no safety net in this area of law, yet here we have the same government taking exactly the opposite tack about common-law entitlements. I am sure honourable members of this chamber will forgive me for pointing out that anomaly.

I am amazed at the double standards of the Bracks government and of the elegance of the gymnastics. But I of all people should not look a gift horse in the mouth, and given my position and commentary over the years, I won't. I will just be grateful that Labor has seen the light at last and has been persuaded on this occasion to say no to the litigation lawyers. I acknowledge that that is of itself a massive turnaround. I would love to have been a fly on the wall when the discussions were taking place between the litigation lawyers and the responsible minister. I could have thrown a great deal of evidence and ammunition into that discussion. I would love to have been there and seen that.

I will return briefly to the community crisis which we acknowledge has been building up in the background for a number of years. I, for one, have absolutely no qualms about naming the party I hold responsible for the wave of destruction we now face and for the extent to which we are searching for a solution: the guilty party is the legal profession. I have said that on many occasions, and I am not going to walk away from it.

**Hon. Jenny Mikakos** — I take offence.

**Hon. R. M. HALLAM** — You get to follow me, Ms Mikakos, so I am giving you some fertile ground.

**Hon. Jenny Mikakos** — You certainly are.

**Hon. R. M. HALLAM** — I am absolutely amazed that the question of guilt and fault is still being debated and that the litigation lawyers are still professing innocence and challenging the data.

That is what they are doing, right now, today, in the background, because the no win, no fee brigade should accept responsibility not just for the increase in the level of litigation across the community but also for the unreal expectations of the average Australian that every mishap, whatever its nature, should trigger some sort of entitlement to be compensated. In other words, we have actually encouraged every Australian to the point where personal responsibility has simply gone out the door, and I hold the litigation lawyers responsible for that attitude.

This profession has been able to persuade the entire community to believe in Santa Claus, that somehow this magnificent allocation of insurance funds available to all and sundry on application is free. But of course we know that is not the case; someone has to pay the piper. Of course, it is the community at large through the increase in premiums. There is no Santa Claus; the community gets to pay.

I accept part of the guilt. I reckon the Parliament is to be condemned for allowing the legal profession to get away with it. We have allowed the lawyers to advertise their wares, particularly on TV, and to profit from a trade which until not long ago was outlawed as champerty or maintenance. If I sound passionate about this issue it is because I am passionate about this issue. The legal profession has a great deal to answer for in

the extent to which our community has been destroyed and the extent to which this bill conjures up some sort of eleventh-hour remedy.

I do not think anybody here would be shocked to hear me say that I would be delighted to support any action to restore that previous legal position, or at least to put some cost risk on the litigation lawyer. There has to be some downside to the urgings we are confronted with almost on a daily level in the press and on TV. I say to the government that we will not address this issue until someone is game enough to grasp that nettle. We will pretend until that issue is actually addressed.

I am not at all persuaded by the argument that case numbers settling at court do not reflect a major increase in litigation. That is what the legal profession would like us to believe, that there is no dramatic increase in case numbers, and therefore it claims some sort of absolution. That is nonsense, because the vast majority of small claims are settled by insurers out of court to minimise the cost. The vast majority of claims do not go anywhere near the court system. What is worse, we need to look at why they do not go near the court system.

I have a number of personal experiences I could relate to the chamber to demonstrate why I see grave danger in the component of small claims in overall costs because there is glaring evidence to suggest that the court costs themselves have now become the rationale for the lodgment of claims in the first place. In other words, because the claim is likely to be less than the cost to defend, the insurers are enticed to pay the claim and shut up about it. They are driven by the assumption that it is better to take the pain in the first hit and not proceed to court. The problem with that is that the lawyer in every case gets a cut of the action, and that is what is driving the cost base of the entire industry. That is why we need to go to the issue of the threshold in respect of claims and why I will spend some time on that a little later.

I am certainly not persuaded by the lawyers' bleatings that there is no inordinate increase in cases before the courts, because the reason for that is, as I said, that most of them are settled. Worse still, they are settled out of court because it is cheaper to do that than run the process of the court system. Nor am I persuaded by the Law Institute's bleatings that the insurance industry is using the HIH Insurance and 11 September experience to ratchet up the premiums. That is what we are being told. I have heard it again and again, that this is some sort of marketing opportunism. The problem with that is it does not explain what is actually happening out there in the community. We are told that this is the insurers taking advantage of the circumstance and lifting the premiums. But that is not the real issue. I can give plenty of examples of circumstances where it is not a matter of the level of premium causing the pain, it is the fact that many of my community groups simply cannot get cover.

No-one actually wants to know them. It would be nice if they had a choice as to whether they chose this premium or some other premium, but that is not the case. In many cases they simply cannot get the cover. If it is that the insurance industry is making a killing in respect of the experience of HIH and 11 September, then why aren't insurers rushing to take advantage of the new premiums? They are not. They are actually disappearing. They are saying, 'No, we don't want to cover that at any price', and that is the real concern. That is what is causing so much pain across the community. It is the fact that the insurers are assessing the risk and simply saying that they are not prepared to have a go at it.

I wish to make the point, as I do at every chance I get in this debate, that we are talking about insurers whose absolute livelihood depends on their ability to assess the risks. This is what they do; that is how they make their profit. They are saying in these circumstances, 'Don't worry about the premium levels, we do not want to be part of the action. We do not want your business'. They have worked out that the risk and therefore the costs are too high and that they will go somewhere else to invest their capital.

That is the real world, and Labor needs to understand it. I exhort government members to take on board that this industry is risk driven and that it is the assessment of the industry that is highlighting the extent of the crisis. That is why, for instance, our community structures are falling apart; our leisure industries are in crisis; employers are not willing to take on staff; and volunteerism is declining. It is the reason we do not have births at many of our country hospitals. It is why our doctors are retiring early, our sporting clubs are going out of business and our very way of life is under attack. The risk of being sued is just too great, and that risk is permeating every facet of our community.

The bottom line is that we have no choice other than to put some sort of fetter on the entitlements under common law. In other words, we actually have to put some sort of brake on the opportunity for individuals to sue for damages. I thoroughly support that concept. I am sure no-one in this chamber is surprised, given my position in relation to workers compensation. My only concern in respect of the shift in relation to common

law in this context is the time we have taken to actually get to that bottom line.

There are two things I want to say in that context. The first is that the National Party leader in the other place, the honourable member for Gippsland South, has been largely responsible for the driving of this remediation agenda. I commend him on that initiative. I take time out also to commend the honourable member for Box Hill in another place for the enormous horsepower and great sense he brings to a very difficult circumstance. The position of the Leader of the National Party is made even more meritorious because of his background as a well-known litigation lawyer prior to his entering Parliament.

It is no surprise to people who know people Peter Ryan and me that we have had some interesting discussions on this issue and that we have come to the question from quite different perspectives. It is a mark of a good man that notwithstanding his legal training and experience he is prepared to advocate that we have to restrict access to common-law rights — that that has to be part of the solution. I say to the chamber in respect of Peter Ryan: good on him!

The other issue I want to mention is the extent to which we can demonstrate that the Labor government has come kicking and screaming to the final position represented by the bill. It is not all that long ago that the most senior legal officer of the land, the Attorney-General, the Honourable Rob Hulls, was publicly denouncing insurers as villains and saying there was no way we should be restricting access to common law. I refer to an article which appeared in the *Herald Sun* of Wednesday, 10 July, which directly quoted Mr Hulls. It has this to say:

> And he has slammed the door on the industry's demand for tougher laws for personal injuries, saying there would be no NSW-style clampdown on claims in Victoria.

That was 10 July of this year. He went on to say:

> Until I am presented with cold, hard evidence, as chief law officer of this state I am extremely reluctant to take away people's rights …

He is reported as having said:

> … insurers had a sophisticated PR campaign but had produced no evidence of a blow-out in claims and court payments.

I just have to say I wonder where he has been, or — perhaps more significantly — where he actually went between 10 July and the day this bill was brought into the chamber.

I am not sure who it was in the Labor movement that convinced the Attorney-General to see reason, but whoever it was I extend my heartiest congratulations to them. It is a pity whoever it was who had that power of persuasion did not get to the honourable gentleman before the disastrous decision to return common law to workers compensation. I also say, as an aside, so much for the Attorney-General's bovver boy image — but, anyway, that is another issue.

I want to go to the question of timing in general because much has been said about the extent to which this government has been restricted by events beyond its control and the extent to which the program has been driven by the need to have this legislation consistent with strategies undertaken beyond our state borders.

Labor tells us that it is important we get this right and that any restriction of common-law entitlements or access is not to be rushed. We certainly agree with it to that extent. But we also acknowledge that we are not addressing this in a vacuum. As each day goes by, more small businesses are going belly up because of this government's reticence to take on the big issues and more of our community and sporting clubs are closing down. So we are torn between the extremes of getting it right on the one hand and at least sending out an early signal to the community that there were some changes in the pipeline, in the hope that we could entice people to hang on, even in the face of some major adversity.

It seems to me to be very relevant to make the point that on the question of timing there are some salient issues to raise. The first of those is: how come the Liberal Party was able to introduce the Adventure Activities Protection Bill last May? How come the National Party was able to produce the Civil Liability Damages Bill and have that introduced into the Parliament? How come the National Party was able to produce and introduce in this chamber the private member's bill designed to protect volunteers — the Volunteer Protection Bill? As an aside I make the point that none of those initiatives was taken up by the Labor government.

This is the point: all of those initiatives — that taken by the Liberal Party in opposition and those taken by the National Party — were taken without access to huge resources. In fact, we have been starved of support by this government. It has all been done on the smell of an oily rag. Yet here is government, with access to incredibly rich resources and support, still wandering around in the wilderness in terms of access to common law. I for one am not impressed with the statement that this bill is timely. That is simply not the case. I believe

more Victorians are being hurt each day because of Labor's tardiness.

I want to go to the specifics of the bill. I want to use the mechanism of part 1 to talk about the specifics of the legislation. The purposes of the bill are very well spelt out in the preliminary part of the bill. The first of those purposes, as set out in clause 1, is to amend the Wrongs Act:

> … to provide that issues of intoxication and illegal activity must be taken into consideration in certain claims in respect of death or personal injury.

So here we have the nominated benefit at the top of the list actually going to that issue. I hope no-one is surprised to learn that the National Party will certainly support that in the face of a couple of highly publicised recent cases. The one I recall most vividly concerned circumstances where a person committed an offence and then successfully sued the publican for serving him alcohol while allegedly under the influence, having claimed that therefore the publican somehow contributed to the commission of the crime. That certainly grabbed the attention of the community at large.

Then we had the case of a patron breaking into a licensed premises and the outcome that not only he but his mother were awarded costs for injuries caused by the licensee when he came across the intruder. We agree that that is madness and we should do something about it.

My understanding of the law is that any smart defence lawyer — and I hope Ms Mikakos is listening — would have already led evidence in respect of intoxication or intent in a case heard before the courts now. I am told that this is no different from that which we should expect to apply in the practicalities of the cases going before our courts. All this effectively does is say to the court: you must take that into account. I hope no-one in the Labor ranks is going to say: we need this simply because there are more deficiencies in the legal profession. I would have argued, at least from my perspective, that a decent defence lawyer would have made much of those circumstances. I presume that the court was aware that the intruder in that case was in fact an intruder — I take that as read.

In the event, we are not going to look that gift-horse in the mouth and we will support it. We make the point that on our understanding at least that is nothing more than codifying the practical application of the law as it stands today.

It is important to acknowledge the priority given to the next purpose, which goes to the question of an apology. The second-reading speech admits the shift in respect of the policy. To put that in context, the second purpose of the bill is:

> … to provide that an apology does not constitute an admission of liability in civil proceedings where the death or injury of a person is in issue.

I read the second-reading speech and was a bit bemused to see that it admits that this does not render an apology inadmissible and that it provides no defence where fault is acknowledged. My reaction in that case is to ask: well, what does it do? I am not sure what it does. Maybe we will get someone to explain that. In any event, I wonder how it got to be second in the priorities of the bill.

The third one I want to go to is a very important feature of the legislation we are considering. Paragraph (iii) of the purposes clause is:

> … to limit the amounts that may be recovered as damages for death or personal injury caused by the fault of a person.

The bill introduces caps on damages in three ways. First, in respect of future earnings there is a limit based on three times average weekly earnings. I am not sure what figure has been used and I know the issue was canvassed in the Legislative Assembly. I am hoping the government will identify which figure is to be used because the Australian Bureau of Statistics has three measures of average weekly earnings: full-time adult ordinary time earnings; full-time adult total earnings; and all employees total earnings. Given that they vary by almost 50 per cent across the range I am looking for some indication from the government as to what it believes currently constitutes average weekly earnings.

In any event, what this provision does is put a cap on the extent to which future earnings can be included in an award — namely, three times average weekly earnings, whatever that turns out to be, and we support that. That is a major part of our decision to not oppose the bill.

Non-economic loss — that is, pain and suffering and loss of enjoyment of life — has a cap at the moment of $371 380. That has been chosen because it reflects the same concept as currently applies under the transport accident system. We note that that is indexed and that it will be similarly indexed under the legislation before the chamber. On that basis we offer no argument; we offer our support.

Next is the complicated issue of the discount rate. We acknowledge that that is another effective cap on

damages. In this case the discount rate is specified at 5 per cent. In our view that is a substantial cap on the level of damages.

By way of background I simply state that when a court sets out to award damages it assesses the assumed future earnings of the claimant and then calculates the required capital award needed to produce that income stream. Then it goes the next step and discounts those earnings to take account of the assumption that the capital will be consumed over that period. In that way the higher the discount rate applied, the less capital assumed to be required to produce that revenue stream over the assumed timing of the payment.

So the discount rate is a major factor. It so happens that the Victorian Workcover Authority applies a discount rate of 3 per cent, which in my view is very generous indeed. Most courts across the land apply a discount rate of 5 per cent, and on that basis we say that the specification of 5 per cent in the bill is practical. We have no argument with the 5 per cent specified, particularly given the clause in the bill that acknowledges that this is to be subject to review in the future and that, in other words, the government has very wisely left itself with some room to manoeuvre.

We do have an argument with the concept of capping in that all of those means of capping in the bill apply at the top end. We reckon the government has dropped the ball because it has missed the very important point I was making before: that the major cost driver in the industry is not at the top at all, it is at the bottom. It is in the small claims and is represented by the extent to which the claim in the first place is less than the cost of defence. That is the real cost driver in the industry; and yet the government has remained silent on it.

We have to ask why, particularly when the industry is very clear in its advocacy in respect of this. It makes it abundantly clear that if we are going to do something about the costs of insurance and premium levels we have to address the issue at the bottom end of the spectrum. Our concern is that the costs will not be addressed at all unless a threshold is imposed. That is where we part company with the government.

The bill we brought before the chamber was prepared to address that issue. We bit that bullet and chose a threshold of $36 000 to be applied. We were told by the industry itself that we should expect to see that take about 75 per cent of the small claims out of the agenda. That is a very tough call because it is saying to the people caught up in it, 'We are sorry, but you cannot get a claim up at all unless it is $36 000'. We acknowledge that that is tough, particularly — and I return to the point I raised earlier — when you acknowledge that there is no safety net in this part. Our advice from the industry itself is that unless we are prepared to bite that bullet we are missing the main game.

The government kept saying in the past that it was unsure about this remedial package because it could not get a commitment from the industry. It did not want to go through the process of reducing costs to the extent that the bill does only to have the industry take it as a bonus. So on the one hand the government is saying that the cost driver is of importance in framing the bill, and on the other it is absolutely ignoring the fundamental advice offered by the very industry that is setting the premiums.

Like the Honourable David Davis before me, I have no doubt that the issue will come back before us in the chamber. It will come back again and again and keep coming back until someone in the Labor ranks is bright enough to say, 'We have to grasp the nettle of the threshold. We have to say that there will be a point below which a claim cannot be countenanced and will be struck out on the basis of the size of the claim in the first place'.

We do not enjoy knocking out the genuine small claimant, but we are realistic enough to have worked out that unless we are prepared to establish a threshold we simply will not get the outcome we are looking for. We came to the conclusion that we had to do something dramatic, and that unless we were prepared to address the costs incurred by the community — and that is who foots the bill ultimately — and unless we were prepared to do something about the culture which has been the major cost driver, we would not get the outcome we were looking for. We say that on that basis the bill is incredibly deficient, because it does not address the real issue.

I return to the comments made by the Honourable David Davis to support my argument. He said that the question of excess across the industry was becoming a bigger and bigger issue. In other words — leaving aside the question of premiums — more and more policies were being written with larger excesses, so a claim would only be contemplated if it were beyond the level at which the insured was assumed to cover his or her own risk. That is exactly the same principle that should be driving the issue at the end of the small claims, and the government has therefore missed the entire point.

I turn to the next issue raised in the purposes clause, structured settlements. I am delighted that this issue has now been put on the agenda, because we are now able

to contemplate that there is an alternative to lump sum capital awards where parties agree that that award should be expressed in part or in whole as an annuity. I understand that that is the equivalent of the actual capital sum converted to an annuity, and I know that it has been available to some degree at least in the past. I also know that the question of its application has been complicated by federal tax implications — in other words, the starting assumption, at least up until now, that an award made on the basis of an annuity shall attract the standard rates of tax as applied to weekly income.

I am told, and I am delighted to hear it, that the commonwealth has introduced legislation to provide some relief so that there will not be the continuing disadvantage in respect of the conversion from a lump sum to some form of annuity. We support the notion that we have now got at least another option. We are not convinced that that of itself will remove the allure of the lump sum dollar sign. We will reserve our judgment on that and expect to see it in the future. We would like to think that there is a chance to move away from the lottery mentality of the lump sum. We hope there is a way around it, and we acknowledge that the bill at least starts that process and we acknowledge the federal government for its preparedness to listen in respect of the tax implications. To that extent, we commend the government for its inclusion.

The next matter I turn to is clause 1(a)(v), which states:

> to protect good Samaritans providing assistance, advice or care at emergencies or accidents from civil liability for their actions …

I say without quibble that members of the National Party support that concept, but we note with some concern that we have now got an exclusion clause wrapped up in the form of that which constitutes good faith. We are concerned about that to the extent that we are aware of many circumstances in which the question of demonstrating good faith might be a difficult complication. In any event, in theory we have no argument about the concept of protecting good Samaritans.

We then go to the question of food donors. Clause 1(a)(vi) states:

> to protect food donors from civil liability arising from the consumption of donated food …

So far as it goes we are happy to support that, but we have some concerns, and I invite the minister to take those concerns on board and to comment on the issue in the course of responding on the third reading. If we get a comment from the minister we would be happy not to proceed with a committee stage on the bill. On the one hand I acknowledge, having spent more than 20 years in the fruit industry, that there are vast amounts of food thrown out daily. We also know that some of that waste is the direct outcome of the question of liability. In other words, we know there are many circumstances in which that food would be appropriately donated to charity if it were not for the attendant liability. The approach offered by the bill appears to be pragmatic to the extent that it goes to the issue of whether the food is safe and the extent to which that absolves the donor of liability. It then says that if there are special circumstances in the handling or storage then that should also be part of the safety requirement imposed upon the donor.

Then we read — this is the bit that concerns me — that the person actually distributing the food where he or she is a volunteer is also exonerated from liability, but the way the bill does that is to simply handball that liability onto the sponsoring not-for-profit or charity organisation. The second-reading speech is specific on that issue, and I shall dwell on it briefly because it seems to me to creates some real question marks. It talks about the balance being struck between the need to protect the volunteers against personal liability and the interests of those who might suffer injury, with which we do not argue, then it states that:

> This balance is achieved by providing that a volunteer cannot be held personally liable for anything done, or not done, in good faith by the volunteer while providing a service within the scope of community work organised by a community organisation.

Here is the rub. It goes on to say:

> However, the personal liability that the volunteer would otherwise have had is transferred to the community organisation.

That is an absolutely bald statement. My concern and that of my colleagues is that it might be worse than useless, because the Parliament is saying that it will do the transfer, and that might attract the prospect of litigation. I am not sure that that is what the government had in mind.

We support the notion that the volunteers should be protected. That should not come as any surprise; that is exactly what the bill we brought to this chamber not all that long ago did. That is the precise objective we were looking for. But if we simply achieve that by overtly transferring that to the sponsoring organisation, I am not sure those organisations will be too pleased about it. I want the minister to explain to the chamber how we can offer some comfort to those organisations in the

face of that specific comment she made in the course of bringing the bill before the chamber.

In other words, our concern is that it is a shift rather than a waiver of liability. As I said, National Party members are not sure how that might console the many charities that rely upon the generosity of others, and we think the bill might turn out to have an unintended consequence.

The next issue I want to go to is that of waivers, because in the scheme of things as I see them that constitutes the next most important priority offered in the bill. Reading again from clause 1, it states that the effect of the bill shall be:

> … to amend the Goods Act 1958 to extend the operation of Part IV of that Act to additional services and to provide for waivers permitting self-assumption of risk by people who choose to participate in inherently risky activities.

It is not the theory we are worried about; it is the practical application of that legal change. It is a fundamental concept which underpins the bill and it raises the questions as to whether a participator in a high-risk activity is able to sue the provider for any mishap that he or she suffers and why someone who is, by definition, obviously aware of the personal risk should not accept some responsibility for the decision to participate in the activity in the first place. That comes back to that concept I raised earlier about personal responsibility.

We are told that in this case the bill strikes the appropriate balance between the right to contract around all the risk on the one hand and the assumed protection that the average participant should be entitled to expect in relation to gross negligence on the other hand. But I am not sure that anything much has changed in that the waiver is, we are told, ineffective against recklessness and against gross negligence.

My concern is that both those issues are highly subjective and that they would be issues determined after the event by a court. My view is that time alone will tell whether these so-called reforms will provide any protection to the adventure provider. It sounds very good in theory — very good indeed — and we acknowledge that, but the question will still revolve around the question of what constitutes 'recklessness' and what constitutes 'gross'; I suspect that this, too, will be an issue that will come back to the Parliament again and again. They are the main features of the bill and they are the issues upon which the National Party framed its response to the legislation.

In summary, National Party members welcome the Bracks government's attempt to address the crisis of public liability currently confronting the Australian community. Our concern is that this bill does not go far enough, and that in the face of the news we are confronted with every day of more and more community organisations and small businesses hitting the wall, we need a response from government which is much more courageous than the one we have before us. But we acknowledge that the bill is a step in the right direction. We acknowledge that a very big threshold has been crossed by Labor to the extent that the bill encroaches on the holy grail of common law, and we take some comfort from the assumption that now that that threshold has been breached, we may get to see a more practical agenda in the future.

I note, for example, the minister's comments when she introduced the bill, and I refer to page 3 of her second-reading speech where she says:

> The government's approach has tackled the insurance problems on several fronts.

This next sentence is the bit I want to refer to in particular. She says:

> The focus has been primarily on prudent and short-term interventions to help the most severely disadvantaged.

No-one would argue with that, but that was exactly the same rhetoric that was being used not all that long ago to justify the return of common law in workers compensation. So what has changed? We now have Labor acknowledging that unfettered common law may have a flow-on effect which produces severe disadvantage for some in the community. That is effectively what the minister is saying. Our response to that is, how the wheel has turned.

For all that, National Party members shall not oppose the bill, but we are looking for clarification on some issues that have been raised in the currency of the debate here and in another place. I reiterate that we are looking for some clarification as to what particular figure or what particular classification the government uses in defining average weekly earnings. We would settle simply for a response as to the classification of that; we are not challenging the figures, but we would like to know where they are coming from. We would like to know the basis upon which the government expects the costs of the industry to be driven down when it has not introduced a threshold and when the evidence coming before anyone who is prepared to ask is that that is the major cost driver in the real world. We would like to know how government can expect the costs, and therefore the premiums, to decline if in fact it

is not prepared to grasp the nettle of the small claims. And finally we would like to know what comfort our not-for-profit and hard-pressed charities can take from the bill when it specifically exempts volunteers from personal liability but does so by simply passing that liability on to the organisation providing the service. We would like to know how the government sees this new bill being of advantage to those organisations.

As I said, if we get a reasonable response to those three issues the National Party shall agree to leave being granted to pass the committee stage. On that basis I report that the National Party shall not be opposing the bill.

**Hon. JENNY MIKAKOS** (Jika Jika) — I rise to make a contribution to this debate in support of the Wrongs and Other Acts (Public Liability Insurance Reform) Bill. I will seek to make a contribution on behalf of the government and I will attempt to answer some of the matters on which the Honourable Roger Hallam has sought clarification during the course of his contribution.

Insurance is a fundamental part of our lives today. It is an important component of Victorian business, and it constitutes a very large component in many of our day-to-day activities. Over a number of years now we have seen increasing problems in the cost of insurance premiums and also in the lack of insurance cover for some types of risks. I do not want to get into a blame game here tonight. Some of the reasons for these problems are well known and have already been canvassed.

They relate to the failure of the insurance market and the failure of adequate numbers of underwriters who are prepared to enter the Australian insurance industry and offer affordable public liability insurance. They also relate to the collapse of the HIH corporation, which is the biggest corporate collapse in Australian history and the terrorist attacks in the United States of America last year.

The authors of the Trowbridge report, who were the consultants to the federal working party of finance ministers, looked at a period of approximately 10 years and found that there had been a steady increase in the number of claims and the average cost of claims above inflation over that time.

It is a bit unfair to attribute the increasing number of claims to litigation lawyers, as Mr Hallam has sought to do. It is difficult to find reasons for the increasing number of claims being made. Some of those reasons may well relate to people being better educated about their rights and to people being more affluent and seeking to make financial redress of their losses. They may well relate to other matters such as advertising, but I do not accept that advertising on its own is a problem at this time.

**Hon. R. M. Hallam** — It would be inappropriate if you did!

**Hon. JENNY MIKAKOS** — I should point out that I have never practised as a litigation lawyer, Mr Hallam. I am not seeking to spring to the defence of my former colleagues in the legal profession, but I have looked at the facts in the Trowbridge report and it is important to have a balanced debate on this issue and not seek to point the finger solely at litigation lawyers.

The HIH royal commission is an important development which will go a long way to coming up with some explanations not only for the collapse of HIH but also the problems inherent in the Australian insurance industry at the moment. We need to be mindful of the fact that the Australian insurance market is a very small one; it represents only 2 per cent of the world's general insurance market. Many of the problems we are experiencing in Australia relate to problems that large multinational insurance companies are having overseas. The insurance crisis, as some people have described it, is applicable to most developed countries at the present time, and Australia is only one of the countries that have been hard hit by the price of insurance today and the lack of insurance cover for some types of risks.

Some of the underlying causes for the problems we are experiencing today relate to the uncertainties faced by insurers entering the Australian insurance market. That needs to be acknowledged, particularly where there is a perception, as has been documented in the media, by some insurers based overseas that there has been an extension to the law of negligence particularly following some very high profile cases in New South Wales. Some of those perceptions are ungrounded and unfair, but it is important that we seek to establish greater certainty for insurers operating in the Australian insurance market and to encourage them to offer insurance coverage for a wide range of risks and also to keep their premiums at affordable levels to ensure that businesses and voluntary organisations can continue to operate.

The Victorian government has sought to respond to the problems faced by the insurance market on many fronts. It has made a number of announcements and has taken a range of initiatives over time to deal with this issue — for example, in September 2001 the then

Minister for Finance, the Honourable Lynne Kosky, and the Minister for Small Business announced a meeting with key industry and community groups. That was the first of such initiatives in Australia, so Victoria was at the forefront in addressing a problem in the community, seeking to engage in dialogue with key stakeholders in coming up with solutions to the problems being experienced.

On 27 March this year the current Minister for Finance, the Honourable John Lenders, announced that thousands of community organisations would benefit from a $330 000 grant for the development of risk management activities. The project was headed by the Municipal Association of Victoria and was designed to help community groups control the sorts of risks that lead to public liability claims. That announcement followed a detailed ministerial statement by the finance minister in the Legislative Assembly on the previous day. Earlier this year the government also announced a new public liability insurance scheme to provide affordable insurance for thousands of not-for-profit community groups including arts, cultural shows, community festivals and youth groups.

The scheme was developed after a statewide public liability survey of more than 10 000 community organisations was undertaken, and I acknowledge the work Our Community played in organising that survey. The scheme was developed through a partnership between the Victorian government, the Municipal Association of Victoria, Our Community and Jardines, which is a leading insurance broking firm.

In addition to that, the government has sought to provide insurance industry data to potential new insurers to make it easier for them to enter the insurance market, and it has dealt with particular problem areas on a case-by-case basis. For example, it developed a 10-point plan for builders warranty insurance including a new dispute resolution agency, and it sought to facilitate insurance cover for pony clubs and other organisations affected by the lack of cover being offered for those types of organisations. Further, the Victorian government has been involved in discussions with finance ministers at the national level who have been meeting for some time now to try to come up with a uniform solution to the insurance problem across the country.

I reject the assertions made by the Honourable David Davis that the government has been slow to act on this issue. We have moved appropriately and in a considered way to deal with this issue. The problem that was experienced very early on was that the insurers were loath to provide much insurance data. I am pleased that as a result of the Trowbridge report that type of data was made available to the finance ministers around Australia to enable them to properly assess the level and cost of insurance claims.

It should be noted that the Trowbridge report found that New South Wales is experiencing the highest level and cost of claims in Australia. Thankfully, Victoria does not face problems to the same degree.

**Sitting suspended 6.30 p.m. until 8.06 p.m.**

**Hon. JENNY MIKAKOS** — Before the dinner break I was discussing the government's multi-pronged response to the insurance problems in this state. I discussed the various measures and initiatives the government had developed in response to these problems. The bill before the house constitutes just one of those measures. It has been developed on the basis of a consistent and principled approach to compensation for acts of negligence. It is a balanced approach between the interests of not-for-profit community organisations and business and the interests of injured people.

I refute the comments made before the dinner break by the Honourable Roger Hallam suggesting that this legislation was in some way contrary to the government's position on the protection of common-law rights generally. The government does not make these changes to the common law lightly. It does so only after considering all the public policy interests involved. In this case, as I indicated, I believe we have come up with a considered and balanced approach to this problem.

I now turn to the various provisions of the bill. I refer firstly to the provisions relating to intoxication and illegal activity as contained in clauses 3, 4 and 5, which seek to make a number of amendments to the Wrongs Act 1958. These provisions seek to ensure that in actions for damages for death or personal injury in determining whether the plaintiff has established a breach of the duty of care owed by the defendant the court must consider, among other things, whether the plaintiff was intoxicated by alcohol or drugs voluntarily consumed and the level of intoxication and whether the plaintiff was engaged in illegal activity.

As the Wrongs Act has separate provisions in relation to occupier liability, clauses 3 and 4 also amend those provisions to ensure that intoxication and illegal activity are matters the court must consider as to whether a duty of care has been discharged.

I note that the provisions seeking to declare the existing common-law framework and the issue of duty of care

in relation to these types of matters received a fair bit of publicity recently in relation to a case in New South Wales. That was the case of *Fox v. Peakhurst Inn Pty Ltd* in the District Court of New South Wales. A teenager broke into the premises of a hotel and was discovered by the hotel manager. The teenager was struck by the hotel manager and eventually was awarded $50 000 in damages as the force used was found to be excessive and the injuries sustained in this case were extreme.

However, it is important to note that in view of the fact that this case has received a lot of publicity, this particular decision of the NSW District Court related to an intentional act of assault rather than the act of negligence although the public perception may well have been otherwise.

It is important to note that the provisions in the bill seek to assist the courts in identifying issues that must be considered in assessing the duty of care owed by a defendant to an injured person

The provisions in the bill that relate to apologies are contained in clause 6, which amends the Wrongs Act, and clause 12, which amends the Coroners Act 1985. There is considerable confusion in the community about whether a person who is alleged to have injured a third party places themselves at an increased risk of civil liability by apologising to a third party. This view can prevent open communication by a health service provider or other business with a consumer where the consumer has suffered physical injury in the course of receiving services.

This particular concern and anxiety in relation to an apology is particularly a problem in the health care area where we have medical practitioners and other health care workers who, in fear of liability, are discouraged from engaging in open communication with their patients where an adverse event has occurred. This includes reluctance to express sorrow or regret where a patient has been injured in the course of receiving medical treatment.

This failure to express sorrow can be interpreted by a patient as indifference to their suffering. That can lead to anger and increased risk to commence legal proceedings being the only available means of redress. The perception that giving an apology may give rise to legal prejudice can constitute a problem in the health care area as it can in many other areas.

It is understood that at common law a mere expression of regret or sorrow does not amount to an admission of civil liability. The bill seeks to codify the common law to provide a greater certainty to medical practitioners and many other people in the community.

The bill is not confined to expressions of sorrow made by health service providers. It would apply to an apology made by any person or organisation and provides that an apology does not amount to an admission of liability in relation to the range of proceedings or matters that give rise to personal injury. The provisions make clear that saying sorry does not in itself amount to an admission of liability in negligence or any other kind of civil liability, unprofessional conduct or unsatisfactory professional performance — for example, in respect of professional registration under the Medical Practice Act — nor will it give rise to liability for the purposes of coronial proceedings.

In addition, the provisions provide that an organisation or professional may choose to waive or reduce the fee payable for a service as a practical measure to reduce the risk of litigation or as a means of expressing sympathy. The bill therefore provides that the fact that fees have been waived or reduced does not amount to an admission of liability in relation to any of these proceedings.

The bill does not apply to an apology where there is a clear acknowledgment of fault as in those cases where the maker of the apology has in effect fully admitted legal liability. This would arise, for example, in the case of a doctor saying to a person, 'I'm sorry your father died in surgery as I was terribly drunk at the time'. That is an indication of gross negligence and in those kinds of situations the health care provider would not be able to obtain legal immunity merely by virtue of saying sorry.

I want to turn to the provisions that relate to personal injury damages as these are probably the key provisions in the legislation as it relates to providing greater certainty to insurers in the future. The provisions in clause 7 of the bill seek to do a number of things. They seek to impose caps on past or future earnings, caps on non-economic loss, and it also contains some provisions relating to the discount rate. I will turn to each of those provisions and discuss them briefly.

As all honourable members know, the award of damages by a court aims to restore plaintiffs to the same position they were in before their losses or injuries occurred. It is a difficult task for any court to be able to estimate matters such as future medical expenses let alone subjective issues such as pain and suffering and the future earning potential of a plaintiff.

It is therefore difficult for a court to properly assess the amount of damages that would in effect put the plaintiff back into the same position they would otherwise have been in had they not been injured. On occasions this has led to some very large damages awards. Unfortunately the media tends to focus on the types of cases where there are multimillion-dollar awards and seeks to suggest to the public that these are the norm.

I would argue that these are generally the exception to the norm and usually involve people who have suffered extreme and severely debilitating injuries where they may be quadriplegic or paraplegic and there are some very expensive ongoing medical and carers' costs involved.

The findings of the Trowbridge Consulting report, which I discussed briefly in the introduction to this legislation, were that there are a growing number of claims in the smaller cost category. These claims involve minor injuries, and it is really this type of claim that is growing in number rather than the big awards, despite the media perceptions.

By introducing caps on certain damages the bill seeks to give greater certainty as to the potential claim costs they may incur in the future. One of the things the bill seeks to do is to set limits of three times the average weekly earnings for loss of past or future earnings or deprivation or impairment of earning capacity or loss of expectation of financial support. I note that three times the average weekly earnings is an income level achieved in only a few cases. As I indicated, these tend to be people who are very high income earners, so this cap will impact only on those high income earners and therefore a small number of court awards every year.

I note that the Honourable Roger Hallam in his contribution sought clarification of the definition of average weekly earnings. Clause 7 of the bill, in new section 28F(3)(a) — which will be inserted into the Wrongs Act — refers to the average weekly total earnings of all employees in Victoria. My understanding is that this is a definition that is provided by the Australian Statistician and should therefore be readily understood by Mr Hallam.

The other provisions in clause 7 seek to impose a cap on non-economic loss. These tend to relate to matters such as pain and suffering and loss of enjoyment of life rather than quantifiable costs that relate to medical treatment or forgone earnings. The determination of non-economic loss is necessarily more subjective than the determination of economic loss, and the purpose of imposing a cap is to provide the courts with guidance as to community standards regarding the maximum amount that should be awarded in the most serious of cases, with less serious cases receiving proportionately less. The amount of $371 380 specified in the bill is equal to the maximum amount of damages for non-economic loss that may be awarded under the Transport Accident Act 1986 and, as under that act, this maximum amount is indexed annually in line with changes in the consumer price index.

The other provision contained in clause 7 relates to the discount rate. This is commonly understood to be the rate that is applied by a court in awarding damages to convert a lump sum amount to take into account a projected income stream — expecting of course that a plaintiff would invest that amount — and to convert that lump sum into a present value. Currently the applicable discount rate in Victoria is 3 per cent, and the bill seeks to increase this to 5 per cent. The bill further provides that the discount rate can be adjusted from time to time by means of regulation, having regard to the investment returns applicable at any period in time.

The average returns over a reasonable period of time, say 5 to 10 years, is considered to be the appropriate basis to avoid excessive fluctuation or too frequent adjustment of the rate. Five-year average returns for commonwealth bonds over the last 15 years, for example, have been very stable and have averaged just under 5 per cent to just under 7 per cent. This indicates that the discount rate of 5 per cent is therefore an appropriate rate having regard to the relatively risk-free earning rate that applies in Australia at the present time.

I now wish to turn to the issue of structured settlements and the provisions contained in clause 8 of the bill. A structured settlement is a settlement in which all or part of the damages award is paid in the form of an annuity or annuities and may include a deferred lump sum. It is only reached when all of the parties have agreed to such a payment. Unfortunately until the present time the federal income tax arrangements have not favoured such structured settlements and annuities have been considered, for example, as assessable income, as have some deferred lump sums.

As a result of discussions between the various state finance ministers and the federal government at the meetings of finance ministers that have occurred during the course of the year agreement has been reached for the federal government to move to change the federal income tax law to remove the disincentive for structured settlements. I understand the federal government has in fact introduced those amendments to the Income Tax Assessment Act and that the legislation is still before the federal Parliament.

What that legislation will do is seek to provide a tax exemption for structured settlements that meet certain eligibility criteria.

This bill endeavours to provide for structured settlements that will meet the agreement that has been reached by the various state ministers and the federal government to ensure that structured settlements can take place where there is agreement between all the parties concerned.

I now turn to clause 9 of the bill which relates to good Samaritans. The government is moving to provide legal immunity from civil proceedings to good Samaritans who provide assistance, advice or care in good faith to other persons in an emergency or accident. The provisions in the bill make clear to the community that well-intended efforts voluntarily undertaken by would-be rescuers, including health care professionals, are to be protected and are in fact to be encouraged.

The bill also proposes to cover the actions of emergency workers, Country Fire Authority members or volunteers, whose actions as good Samaritans are outside the scope of the relevant acts which establish their duties and authorised activities. There has been no case in Australia to date where a health service provider has been held liable for providing assistance in good faith. The government is seeking to clarify these issues to provide greater certainty to members of the public.

In our community we value people who perform acts of heroism and risk their own lives to save people in emergencies. In fact we honour those people with awards every year and we want to encourage people to continue to provide assistance in cases of emergency without fear of being sued. There is a safeguard in the legislation that requires behaviour to be conducted in good faith and it is expected that the position of good Samaritans in common law will be retained in the terms of the legislation as it stands in relation to the good faith immunity requirement.

I will turn now to the provisions relating to food donors. These are contained in clause 10 of the bill and also part 4 of the bill as it relates to amendments to the Food Act 1984. At present the Food Act 1984 does not apply to food that a food business gives away. A charitable body which gives away food and undertakes no food retail activity is not registrable under the act. Neither is it required by law to adopt a food safety program, although it may do so in the interests of risk management. Under common law a person or food business that negligently supplies unsafe food which causes damage may be held liable to pay damages. It is for this reason that some businesses, fearing potential liability, have been reluctant to donate food to charities and a great deal of food is currently going to waste.

I note that in 1986 an estimate of the amount of food thrown out each year in Melbourne was 280 000 tonnes, a figure that is likely to be much higher today. That is a huge waste of a very valuable resource in this community that could be put to good use. It is for this reason, and having had discussions with charities such as the One Umbrella charity that processes donated food into pies for distribution to the needy, that the government is seeking to provide protection for food donors in this area and is providing a protection that is similar to legislation passed by the province of Ontario in Canada and the state of New York in the United States.

The provisions provide legal immunity to persons who donate food in good faith for a charitable or benevolent purpose with the intention that the consumer of the food will not have to pay for the food. There are other requirements in order to obtain that legal immunity. For example, food must be safe at the time it is donated to the charity, and also the donor must advise the charity as to the appropriate handling and processing requirements of the food.

I now turn to the issue of volunteers, in particular clause 11 as it relates to immunity for volunteers. In his second-reading speech the minister said that about 1.2 million Victorians volunteer each year in various capacities. Last year we recognised many of those individuals as part of the festivities for the International Year of Volunteers. It is important that we offer protection to people who volunteer their time and energies to the community for no reward.

The potential liability that exists at the present may discourage volunteers from continuing to offer their time to help others. Although common law provides some protection for volunteers, it is important we address community concerns by putting the matter beyond doubt. The amendments contained in clause 11 seek to achieve a reasonable balance between the need to protect volunteers against personal liability and the interests of those who suffer injury. This balance is achieved by providing that a volunteer cannot be held personally liable for anything done, or not done, in good faith by the volunteer while providing a service in relation to community work organised by a community organisation. I note, however, that the personal liability the volunteer would otherwise have had is transferred to the community organisation.

Mr Hallam raised some concerns about transferring the risk on to the community organisation. However, I note

that after the passage of this legislation the risk that will exist in respect of those voluntary organisations will be no different to the risk that falls on to those community organisations at the present time.

We are not seeking to impose additional risks or burdens on those voluntary organisations. The government has sought to decrease the cost of premiums for these types of voluntary and not-for-profit organisations by facilitating a new community insurance scheme that has been established by the Municipal Association of Victoria, Jardines and Our Community. In this way we are ensuring that not-for-profit community organisations can continue to obtain affordable public liability insurance.

I will now discuss briefly the provisions for waivers as this issue came up for considerable discussion not too long ago when opposition members sought to introduce a bill in relation to adventure tourism. In response to that legislation I indicated on behalf of the government that a major failing of the legislation had to do with the fact that it was not linked with any changes to the Goods Act or the Trades Practices Act. We have taken up this issue at the national level and agreement has been reached with the states and the federal government to make some changes in respect of enabling adventure tourist operators, for example, to better utilise waivers in their business practices.

The federal government has introduced the Trade Practices Amendment (Liability for Recreational Services) Bill, which will amend the Trade Practices Act so that suppliers of recreational services may require consumers to agree to limit or exclude the supplier's liability under the warranties implied into the contract by section 74 of the Trade Practices Act for death or personal injury arising from the supply of those services.

Part 5 of this bill seeks to amend the definition of 'services' in the Victorian Goods Act so that it is similar to or as wide as the definition that will be introduced into the Trade Practices Act. Part 5 will also extend the application of the implied conditions and warranties set out in part IV of the Goods Act to apply to most consumer contracts and services in Victoria. It will amend the monetary threshold held for a contract to be considered a consumer contract covered by part IV from the current limit of $20 000 to $40 000 in line with the Trade Practices Act. It will provide for a waiver to operate in respect of recreational services which will exclude the operation of the implied condition that recreational services are to be rendered with due care and skill. In effect this will prevent a consumer from suing the adventure tourism operators under the Goods Act for breach of the conditions in sections 91 and 92 of the Goods Act.

Some safeguards are provided in part 5 to provide protection to consumers. Those safeguards include that waivers will be ineffective where the operator has performed an act with reckless disregard for the consequences of the act or omission. A waiver is ineffective where the operator has made a false or misleading statement in or in relation to the waiver form. In addition, the provisions in part 5 will provide for a pre-disclosure regime through proposed regulations which will prescribe the form of waiver to be used. It is also anticipated that risk management strategies will be undertaken by the operator and a clear explanation of the effect of signing the waiver will be provided.

Part 6 of the bill deals with the Essential Services Commission Act 2001 and seeks to address an important issue, in my view, to do with the collection of data on the industry. One of the major difficulties the government has faced in determining an effective policy response to insurance issues has been the lack of comprehensive standardised data on claims costs. The bill provides for the Essential Services Commission to use its information-gathering powers to obtain comprehensive standardised state-based insurance data for Victoria and to advise government ministers on issues relating to such data.

In the Premier's media release of 2 September the government indicated an intention to appoint a specific insurance commissioner as a member of the Essential Services Commission. The commissioner of course will have the responsibility of collecting data on private insurers and also statutory insurers. It is also anticipated that the Essential Services Commission will cooperate with the Australian Prudential Regulatory Agency to ensure insurance data is coordinated and exchanged between those bodies so that information that is consistent and practical is available to both levels of government.

The final provisions I wish to discuss are in to parts 7 and 8 of the bill relating to the fire services levy. Part 7 seeks to make amendments to the Country Fire Authority Act 1958 and part 8 amends the Metropolitan Fire Brigades Act 1958. As honourable members know, Victoria's fire services are largely funded by insurance companies. The fire services determine annually the amount required in total from Australian-based insurers. In respect of overseas insurers, a contribution is collected directly from property owners insured by overseas insurers. Usually these are large businesses rather than home owners.

As a result of significant increases in premiums, the contributions collected from insurers are now greater than has previously been estimated. The bill enables property owners to have part of their contribution to a fire services levy refunded to them, where that is applicable. It also provides for more effective reconciliation between the amounts collected by each insurer in respect of the fire services levy and the amounts that they actually remit to the Metropolitan Fire Brigades Board and the Country Fire Authority. The bill requires insurers to provide information to the state of Victoria that enables reconciliation between these amounts to occur and imposes penalties for failure to provide the required information.

This bill is a very important measure. It is a major step in the government's total package in dealing with the insurance problems being experienced in the state and around Australia. There is no quick fix to the problems currently faced by the insurance sector. The package of changes and reforms contained in the legislation will provide an opportunity for significant insurance premium relief in the long term.

I note also that the Minister for Finance in a media release of 11 September called on the Australian Competition and Consumer Commission (ACCC) to ensure that the benefits of Victoria's insurance reforms are passed on to consumers. This is a very important announcement that the minister made. It is now incumbent on the ACCC and the Australian Prudential Regulatory Authority to properly regulate the insurance sector and to ensure that insurers do pass on to consumers the benefits of these changes. In his media release the Minister for Finance said:

> A conservative estimate is that at least $50 million will be available to stabilise public liability premiums. The government is particularly pleased that of this $18 million will be available to assist the current problems with medical indemnity insurance.

The minister's statement was in relation to the estimates made by independent actuaries that indicated that the government's package would provide a significant saving for insurers. Therefore there is an opportunity for insurers to pass on to Victorian consumers their considerable savings, to bring down premiums and to offer policies for a greater range of risks.

I note that an outstanding issue that will come up before this Parliament in this sitting relates to legal costs. Mr Hallam indicated that the government has not put any thresholds in for people to be able to take legal action. That is not in fact the case. The government announced as part of this package of reforms that it would make changes in legislation to ensure that a legal costs threshold would be introduced, preventing the recovery of legal costs as a matter of course in court proceedings for claims under $30 000 and limiting recovery of legal costs to up to $2500 for claims between $30 000 and $50 000. Further, as part of the additional changes that will be coming to the Parliament, there will be changes that will be seeking to encourage greater mediation between parties in these types of disputes and encouraging parties to stay out of the court system.

I note also that the other outstanding issue for all states and the commonwealth is to consider the extent to which state statutes and federal statutes should be amended to clarify the laws of negligence. I note that the second and final report of Justice Ipp's committee has recently been concluded and that the final report will be considered by the next meeting of finance ministers to be held on 15 November. I understand those issues will also be considered by the next Council of Australian Governments meeting towards the end of November.

In conclusion, the legislation offers a very balanced approach to this important issue of the problems being experienced in the insurance sector. It is a balanced approach that takes into consideration the interests of not-for-profit organisations and businesses in this state and balances them across the interests of injured people. I commend the bill to the house.

**Hon. W. I. SMITH** (Silvan) — The Liberal Party does not oppose this bill. But in saying that I indicate that this bill is too little, too late. While the bill has started to address some of the issues that are of concern in the public liability debate, it has completely failed small business. One of the greatest issues facing Victorian small businesses for a number of months — in fact for about 14 months — has been public liability insurance: access to public liability insurance and affordability of public liability insurance. That is what the debate on this bill is about: how will the bill bring down public liability insurance premiums — make policies accessible and affordable? The bottom line is that it will not.

The Bracks government, in its usual indecisive manner and with its lack of ability to tackle the difficult decisions and issues, has not helped small business and community organisations. The government has vacillated for months and months: it has held talkfests, it has written letters to the federal government, it has blamed insurance companies and it has tried to take credit for the actions of others, such as pooling arrangements put in place by the Municipal Association of Victoria. Instead of decisive, responsive and

immediate action, this government has failed to act until individual sectors reach crisis point. The government's response — this bill — will not solve the industry's problems. It is too little, too late.

I look at other states in Australia — Labor states — that have taken the lead on this issue. The Labor state government that led in this issue was the Carr government. In March — we are talking eight months ago — the Carr government released a ministerial statement that started to combat the problems.

Increases in public liability insurance have placed some small businesses at risk of continuing; home affordability particularly is under serious threat, with builders and subcontractors having increases in public liability and professional indemnity insurance. In this area of building and subcontracting, surveys that have been taken are starting to show that without public liability insurance it is expected that up to 60 per cent of small businesses will go. It puts the Victorian public at great risk. Some businesses are now unable to obtain that insurance at any price.

However, as I said, the Carr government eight months ago issued a ministerial statement that actually led every state in Australia except Victoria. Victoria was the last mainland state to introduce public liability insurance. Let's look at what the ministerial statement from the Carr government said because Queensland and South Australia have followed. Victoria is the only state that has not taken the hard decisions and followed. Carr's ministerial statement said that:

> New South Wales will address the increasing size and number of public liability claims. New South Wales will introduce tort law reform legislation for personal injury cases.

A leader in Australia — introducing tort law legislation. What has this government done? It has completely walked away from this. Why has it? Because the Bracks government is a complete captive of the Labor lawyers.

New South Wales proposed a number of measures. By March the New South Wales government had already introduced restrictions on lawyers advertising in this area. The government also decided that other measures would be introduced to discourage speculative claims. A plaintiff's lawyer can be made to pay the defendant's legal costs if the plaintiff loses and the court decides that the claim was speculative and not supported by evidence.

In March New South Wales also decided that it would propose to require plaintiffs to provide expert evidence of negligence up front. New South Wales also acknowledged that one of the problems appeared to be the number of small claims that are argued in a way that drives up legal costs and makes insurance claims more expensive. The Honourable Roger Hallam clearly explained the impact of small claims and what they are doing to public liability insurance.

In New South Wales the Carr government said a way to address this is to cap legal costs for small claims to a proportion of the claim. This would mean that no-one was prevented from bringing a small claim, but the cost of arguing the claim would have to be kept at a realistic level. Another way of addressing the problem, it said, was the introduction of thresholds to preclude trivial claims. And what did the government do here? It picked up none of those issues.

I specifically mention the Carr government because I am not only saying that our Labor government has not performed; I am looking at its brother Labor states throughout Australia that picked up the issue, took the hard decisions and ran with the issue. But not the Bracks government! The Carr government decided it would propose to change the law to exclude claims that should never be brought and provide defences to ensure that people who have done the right thing are not made to pay just because they have access to insurance. That is obviously in regard to good Samaritan legislation, which I must say has been picked up here. The bill has certainly tried to take up some initial issues and it is a start, but it is just a start.

The Carr government proposed to ensure that a warning of risk becomes a defence for risky entertainment or sporting activities, and it also very clearly said that the proposed uniform tort laws should be adopted nationally. Well, they have not been. However, Queensland picked up the Carr government's reform very quickly. The *Australian Financial Review* of 8 May proclaimed the New South Wales and Queensland rush to limit personal liability damages. The article said:

> The push to tackle Australia's spiralling insurance crisis gained momentum yesterday —

this is in May, many months ago —

> when NSW and Queensland unveiled major reforms aimed at restricting damages payouts.
>
> Queensland Premier Peter Beattie said the government would ban jury trials for people seeking personal injury payouts as part of a wider legislative push to address the crisis in public liability and medical indemnity insurance.
>
> Under reforms approved by state cabinet yesterday, lawyers in Queensland would be banned from advertising on a

> no-win, no-fee basis and some personal injury payouts would be capped.
>
> …
>
> The Insurance Council of Australia welcomed the move, saying NSW and Queensland had moved quickly on reform.

But in Victoria the government was doing nothing. The only people who started to pick up the issue were members of the Liberal Party. In May we introduced in the upper house a bill to try to save the adventure tourism business. By then 60 businesses had closed down and towns like Mansfield and others in the adventure tourism sector were starting to close down or were being faced with not being able to get public liability insurance cover for a year. The situation was urgent because the policies had to be renewed by 30 June. There were 300 operators.

As I said, the Liberal Party initiated a bill on adventure tourism, brought it in as a private members bill in the upper house and had it passed in the upper house — but it was refused debate in the lower house. That was the Bracks government response in May of this year.

The Institution of Engineers Australia, in response to the crisis, wrote to every member of Parliament in Australia in July of this year. The sleeper in the public liability issue is professional indemnity, but the Bracks government has not tried to tackle that issue, even though professional indemnity insurance is closing businesses down. The Institution of Engineers said in its letter that many of its 14 500 Victorian members were unable to obtain public liability insurance. The letter states:

> Government focus has been on problems associated with public liability insurance, home warranty insurance and medical indemnity insurance. It is now time to focus on professionals and business, particularly the impact of recent events on professional indemnity insurance across the professions.
>
> …
>
> Members have advised us that … some engineers have experienced rises in premium costs ranging up to 600 per cent. From our investigations, we know that the rise in premiums cannot be attributed to a rise in claims.
>
> What is of more concern is the complete withdrawal of cover by insurance companies for a broad range of engineering services, without any real assessment of the risks involved in providing cover in these areas.

Many of their members had had no claims, yet insurers were refusing cover:

> … simply because the insurer perceives that there may be some risk in the future.

The institution's letter went on to say that there were businesses closing down, a trend that would:

> … directly impact on the health and safety of the community …

In July the *Herald Sun* printed articles saying that public liability insurance premiums for Victorian businesses had risen by an average of 74 per cent in the previous year — and still the Bracks government was doing nothing; whereas the South Australian government actually recalled its Parliament during the parliamentary break to bring in legislation on public liability. And what were we doing? We were doing nothing. We were having a talkfest!

The Victorian Employers Chamber of Commerce and Industry (VECCI) was seeking reforms on public liability insurance and businesses were unable to obtain it at any price. There was a crisis in small business and other industries, and the government was not listening. Also in July an *Age* article headed 'State employers warn of litigation threat' states:

> Victoria is at risk of becoming Australia's litigation capital if the state government fails to reform public liability insurance payouts awarded by courts …
>
> The Victorian Employers Chamber of Commerce and Industry yesterday revealed that 100 surveyed businesses paid an average 74 per cent more for public liability insurance …

I will not quote the figures but obviously 74 per cent was a huge hike. The article continues:

> VECCI chief executive Neil Coulson said that the rise …

Honourable members on the other side can sigh and look bored, but let me tell the minister that many small businesses are closing down. Many small businesses cannot obtain public liability insurance, and this government has introduced legislation that will not reduce premiums or make insurance more accessible.

Victoria stood alone in July as the only mainland state that had not introduced or announced reforms to public liability insurance payouts. VECCI at that time said that some businesses included in its member survey had taken out loans or extended overdrafts to finance insurance policies. The surveys they ran showed that businesses across a range of sectors were being hit by higher premiums.

We knew that; and it was not just the engineering community, not just building and not just construction; it was finance, property and business services organisations as well. That last group suffered the highest average premium rises: 208 per cent!

Recreational and personal businesses had the second-highest increase, at 169 per cent.

Accommodation, cafes and restaurants also saw their premiums more than double.

The *Age* of 24 July recorded that:

> Accommodation, cafes and restaurants also saw their premiums more than double. They reported a 115 per cent climb in insurance rates.
>
> The three sectors of building and construction, manufacturing and retail trade all reported increases between 41 and 49 per cent. State's employers warn of litigation …

In August the *Australian Financial Review* ran an article about tort law reform reporting that Suncorp GIO, an insurance company, had snubbed Victoria and turned its back on it. It states:

> … Suncorp excluded Victoria when it said it would re-enter the small business public liability market because the southern state had failed to follow other states in reforming negligence, or tort, law. Victoria … was the only state in Australia that has done nothing on public liability reform.

The Victorian Employers Chamber of Commerce and Industry picked this up, and an article in the *Age* of 27 August under the headline 'Chamber blames Bracks for insurance crisis' reports it as stating:

> The Bracks government's failure to introduce reforms limiting civil liability payouts has left businesses without access to public liability insurance …
>
> The chamber's chief executive, Neil Coulson, said Australia's second-largest insurance group had decided not to make its public liability policies available in Victoria because of the government's inaction.
>
> Suncorp GIO decided to re-enter the public liability insurance market in other states after withdrawing its policies earlier this year. New South Wales, Queensland and South Australia have made legislative changes to entice back Suncorp and other insurers.
>
> Mr Coulson said the Bracks government had done nothing after promising in May to examine reforming civil liability payouts.
>
> 'While all other mainland states have pressed ahead with such reform, the Victorian government appears to have sat on its hands', he said.
>
> …
>
> A Suncorp spokeswoman yesterday confirmed the company would not be offering public liability cover in Victoria until there were reforms.

The *Sydney Morning Herald* of 8 August this year, in an article headed 'Engineers forced to go uncovered', states:

> One in four engineers has been hit with premium rises of up to 300 per cent and more insurance pain may be on the way.

The *Australian Financial Review* of 3 September referred to builders facing a new warranty cover crisis. The Bracks government had not introduced legislation and had done nothing to implement tort law reform or anything in regard to capping small claims, but it withdrew its support for one of the sector's main insurance providers. The article states:

> In a move that is expected to cause critical delays for home builders and renovators, the government is expected to confirm today it has withdrawn its reinsurance support to Dexta Corporation, one of just three warranty providers in Victoria.
>
> The government has been providing reinsurance to Dexta since the agent's leading European reinsurers quit the market earlier this year after reassessing their global exposures …
>
> Although the government yesterday informed Dexta it would not renew its reinsurance agreement when it expired on 30 September, it was last night taking advice from the Master Builders Association of Victoria, which has warned about the implications of the move.

The *Australian Financial Review* of 4 October complimented the New South Wales and Queensland governments and reported that New South Wales had pushed ahead with its own negligence reform laws and the Queensland government by October this year had introduced a second tranche of its legislative package in regard to reform. What had Victoria done by then? Nothing.

What does the bill do? Labor's public liability legislation will not make public liability and professional indemnity insurance more available or more affordable for small business. Nor does it tackle the huge number of exaggerated or unjustified claims for minor injuries that are causing massive legal costs and undeserved payouts that threaten small business, recreational bodies and community groups across Victoria. This bill will not prevent massive compensation payouts being awarded to people injured while committing criminal offences. On criminal activities and drunkenness, all the bill requires is that the court must consider these matters. This is no more than the law already requires.

The waivers provision of the bill will not provide certainty to an operator such as an adventure tourism operator, therefore no improvement to the costs and availability of insurance will occur. The claimant's lawyers will be able to argue the waiver was not properly drafted and therefore does not apply to their claim. However, the waivers approach also means that people can be asked to give up all legal rights to sue, even for the most serious injury caused by clearly negligent conduct by the operator of a facility or activity. If in fact the waiver does apply, they will not

receive any compensation. This bill will not tackle that law reform. It will not help lower premiums and will not make insurance more accessible.

In contrast, the Liberal Party has taken a decisive stand on the public liability and insurance crisis. In May we introduced the Adventure Activities Protection Bill to address the costs and availability of insurance in the adventure tourism industry. That bill passed the Legislative Council but the Bracks government refused to debate it in the Legislative Assembly.

In September we released Liberal reform initiatives to tackle the public liability and insurance crisis. I commend the work of the honourable member for Box Hill in the other place and his intelligent grasp of the situation and his depth of understanding in introducing the eight initiatives which are fundamental to our policy. Those initiatives are based on: personal responsibility; supporting community participation; prevention of injuries as well as treatment; fairness, certainty and commonsense in our legal system; and ensuring the seriously injured are properly looked after.

I shall briefly map out the eight initiatives. They are to:

1. ensure that where people voluntarily engage in a risky recreational activity, they accept responsibility for minor injuries incurred in the course of that activity;

2. introduce proportionate liability where several defendants separately contribute to an injury or loss;

3. make law firms which take on cases on a no win, no fee basis responsible for ensuring the other party's costs are paid if their client loses the case and is unable or unwilling to pay;

4. require no win, no fee advertisements to disclose that the client will generally be liable to pay the other side's legal costs if the client loses;

5. allow reputable business and community organisations operating on state government land to obtain public liability cover jointly with the government at an incremental cost reflecting the risk involved, thus eliminating the current requirement for them to provide $10 million of cover to the government before being allowed to operate;

6. provide risk management guidelines to businesses and community organisations through the government's in-house insurer, the Victorian Managed Insurance Authority;

7. assist industry and community associations to establish pooled risk management and insurance arrangements; and

8. put industry associations and associations of community organisations in contact with reputable and relevant potential overseas insurers where they cannot find affordable insurance within Australia.

I acknowledge the work done by the shadow Minister for Finance because it is extensive and comprehensive and leads the way in public liability policy.

In conclusion, the Bracks government has been indecisive and weak. The bill may be a start, eight months later, after all the other states. However, many of the provisions in the bill are of little benefit and fail to tackle the main issues relating to the escalating numbers of small claims, often unjustified and exaggerated. The Bracks government is a captive of the Labor lawyers; it is Workcover revisited in the way the Labor lawyers have caught Labor.

The legislation will fail small business in Victoria. It is too little and too late.

**Hon. E. G. STONEY** (Central Highlands) — In my short contribution I will concentrate on the public liability insurance aspect of the bill, which covers many issues. I am surprised that public liability did not warrant legislation in its own right, stand-alone legislation, because it is probably the most important and serious issue facing tourism operators, many organisations such as community groups, pony clubs and all forms of business in Victoria and indeed Australia.

I agree entirely with the Honourable Wendy Smith that the government's efforts with the bill have been pathetic, it is far too late and will not reduce insurance premiums. That is the bottom line. The only thing that counts in this debate is whether premiums will be reduced. I do not believe the legislation will work in reducing premiums, which is a sorry state of affairs.

The third paragraph of the second-reading speech says:

> The government's objective is to ensure insurance is available and affordable for business and the wider community, to protect Victoria's reputation as a good place to live and do business.

Unfortunately the Insurance Council of Australia does not agree with that comment. A media release dated 30 September headed 'Insurers release report card on liability reforms' states:

> There is a significant risk that the reforms in Queensland, Victoria and Western Australia will not reduce claims costs or improve the predictability of claims in any meaningful way. The ineffectual nature of these reforms is likely to adversely affect outcomes not only in these states but in the wider Australian market as well.

There has been some debate tonight about waivers. The second-reading speech refers to waivers and talks about:

> … provision for waivers that will allow people to accept responsibility for their participation in risky activities …

The value of waivers is highly debatable. Waivers will require extensive legal drafting to be any use at all. Mr Sandy Tod of the now — I am sorry to say — disbanded Mansfield Public Liability Insurance Taskforce agrees that the value of waivers is highly debatable. Mr Tod wrote me a letter with a section about waivers. He said:

> Waiver reforms are a minefield, do not impress the insurance industry and have been largely unsuccessful in all other countries in which they have been introduced. This government purports to have been guided by the Canadian model in adventure tourism with regard to waivers.

Mr Tod asks:

> What evidence gathered from that model is there to support reductions in premium levels flowing from such waivers?

That is a very pertinent and valid question. The Honourable Wendy Smith was critical about waivers and the Honourable Jenny Mikakos did not give any assurance that waivers will reduce premiums. I would have thought that the lead speaker for the government would have given us some basic reassurance about the value of this bill. I sat here tonight for over an hour looking for reassurance — —

**Hon. R. M. Hallam** — Broken-hearted.

**Hon. E. G. STONEY** — I think the industry will be broken-hearted, Mr Hallam. It is a sad state of affairs that the government, after all these months, has not been able to give us any solid assurance that any of this legislation will be of any value in reducing premiums. A reduction in premiums is really the bottom line.

Mr Tod commented:

> The government has not seriously addressed the harnessing of claims under $50 000. These claims represent some 90 per cent by volume and in excess of 70 per cent by dollar value. In the Victorian tourism sector such claims represent in excess of 75 per cent of dollar value. The Trowbridge report also highlights their enormous significance nationally to all industry sectors.

Mr Hallam and Ms Smith both highlighted the important issue of small claims and the impact of small claims on this debate. Mr Tod expressed some serious concerns. He has studied this at length with the assistance of Peter Clark, SC. Those two gentlemen know exactly where we are with this whole debate and neither of them is impressed with what is being presented here.

Mr Tod summed up the legislation as follows:

> The reforms enacted by this bill will not provide significant premium relief. The insurance industry has enunciated this fact quite clearly. There is, however, some evidence to suggest that numbers of groups who achieved insurance cover this year will be unable to renew with their current facilities next year and will therefore be in a worse position than they were earlier in this year.

To add credence to that statement, which I know to be correct, there is one operator in Mansfield who has just renewed his insurance for a premium of $30 000. That operator's turnover is $150 000, so immediately he is faced with running an unviable operation. I know he has decided to pay the $30 000 in the faint hope that this legislation will assist him next year. I hesitate to say it, but I believe this legislation will not help that operator. Many operators have bitten the bullet. They have paid enormous premiums, and I believe they are going to be sadly disappointed. Next year premiums will not come down.

There were nearly 20 horse operators in the Mansfield district. There are now four, and I make the prediction that unless something major happens in a couple of years there will not be any small operators running horse groups in the Mansfield area. There will be not one person, from generations of families who know the mountains, that people will be able to ride with into the mountains. The general riding public in Victoria and the members of the public that enjoy adventure tourism will be the poorer. The blame for that lies squarely at this government's door. The bill does not encourage people to take any responsibility for their own actions. Without that basic premise I fail to see how any legislation can significantly reduce premiums.

With the Honourable David Davis and the Honourable Wendy Smith, I congratulate the honourable member for Box Hill in another place, the shadow Minister for Finance. He made a last-ditch stand to put in this bill the basic thrust of the adventure activities bill — and Ms Smith quickly outlined those earlier. The honourable member for Box Hill put amendments which the government refused point blank to accept.

This looks like the end of it for the time being, so I will take the opportunity once again to congratulate and thank the Mansfield Public Liability Insurance Taskforce and people like Mr Sandy Tod and Mr Peter Clark, SC, and others who have put hundreds of hours into developing a worthwhile and workable proposition that was rejected outright by this government.

As Ms Smith said, we tried again with the Adventure Activities Protection Bill in the other place — we tried very hard to resurrect it, and we failed. I think history will show that that bill in some form or another will come back. Certainly, unless people take responsibility

for their own actions in some form or other, I fail to see how premiums will be reduced.

The government has also ignored the opportunity to reduce the $10 million public liability cover requirement for operators on public land. I understand that if the government reduced this to a $5 million cover there would be a savings of approximately 40 per cent in premiums to operators. This is something the government could do overnight — it could do it very quickly if it wished — but indeed it just shows that the government does not really want to or does not have the capacity to assist operators in an area where it certainly could.

In conclusion, in the autumn sitting I made a comment in this place about the bottom line needed to reduce insurance premiums. I said, as reported at page 1661 of *Hansard* of 6 June 2002:

> It is clear the government does not subscribe to the basic philosophy that people should have a choice to take some responsibility for their own decisions. Without this basic premise adventure tourism in Victoria will wither away ….

I stand by that comment.

**The DEPUTY PRESIDENT** — Order! I am of the opinion that the second reading of this bill requires to be passed by an absolute majority. I ask the Clerk to ring the bells.

**Bells rung.**

**Members having assembled in chamber:**

**The DEPUTY PRESIDENT** — Order! In order that I may ascertain whether the required majority has been obtained, I ask those honourable members who are in favour of the question to stand where they are.

**Required number of members having risen:**

**Motion agreed to by absolute majority.**

**Read second time.**

*Third reading*

**Hon. C. C. BROAD** (Minister for Energy and Resources) — By leave, I move:

> That this bill be now read a third time.

In doing so I firstly wish to thank honourable members for their contributions to the debate and I also wish to by his invitation respond to some matters raised by the Honourable Roger Hallam in the course of the second-reading debate.

Firstly, in relation to the matter of average weekly earnings I can indicate that the bill clearly states 'average weekly total earnings of all employees in Victoria', which I am advised is the broadest possible definition.

Secondly, in relation to volunteers, I can indicate that the bill does not create any new liability for charities or not-for-profit organisations as it has always been possible to sue the organisation. I can also indicate that there is very little, if any, experience of either volunteers, food donors or charities being sued. The purpose of the bill is to alleviate concerns by volunteers or food donors that they might be sued. Charities involved in food donations have not sought an exemption. They are, I am advised, implementing a risk-management plan in respect of food handling and the bill represents an appropriate balance between the concerns of volunteers and the interests of those who may suffer injury.

In relation to apologies, I can indicate that the bill is intended to encourage apologies by providing that saying sorry cannot of itself be taken as an admission of guilt. The bill does not make apologies inadmissible for the reason that such a blanket provision could be unfair in certain circumstances to people who have suffered injury. The example I am able to provide is that if someone were to say, 'I'm sorry, I injured you; I was drunk at the time' it would be unfair for the statement about being drunk to be inadmissible simply because it was attached to an apology. The bill, therefore, allows a statement to be admissible as evidence of liability if it contains a clear acknowledgment of responsibility.

**The DEPUTY PRESIDENT** — Order! I am of the opinion that the third reading of this bill requires to be passed by an absolute majority. In order that I may ascertain whether the required majority has been obtained, I ask those honourable members who are in favour of the question to stand where they are.

**Required number of members having risen:**

**Motion agreed to by absolute majority.**

**Read third time.**

*Remaining stages*

**Passed remaining stages.**

## ROAD SAFETY (RESPONSIBLE DRIVING) BILL

*Second reading*

**Debate resumed from 15 October; motion of Hon. C. C. BROAD (Minister for Energy and Resources).**

**Hon. G. B. ASHMAN** (Koonung) — I rise to speak on this bill at 9.25 p.m., noting that new business was introduced after what has been our traditional closure for new business but also noting that the chamber agreed to a suspension of so much of the sessional orders as would prevent us from introducing new business after 9.00 p.m. today.

In speaking to the bill I indicate at the outset that the opposition does not oppose it. The policy of not opposing road safety measures continues what is a long tradition of support for road safety measures from all the parties. I note that when we were in government in coalition with the National Party, the Labor Party generally supported road safety measures. The tripartite support on these issues has been with us for very many years — certainly for as long as I have been a member of this place, and I hope we can continue with that level of support on legislation such as this.

The purposes of the bill are stated as introducing measures to deter excessive speeding; expanding the circumstances of immediate licence suspension for learner permits or probationary drivers when alcohol offences are involved; and clarifying some issues in relation to the failure at a breath test. The bill also makes minor amendments to the Marine Act. They clarify the scope in relation to failing a breath test. The amendments to the road safety legislation will be mirrored in the Marine Act and, as we are all aware, the breath-testing regime under the Marine Act mirrors that under the Road Safety Act.

The major changes are to penalties for speeding. It is now proposed that there be an automatic licence suspension for being 25 kilometres per hour over the speed limit; previously it was 30 kilometres per hour. This is a measure that we, as an opposition, certainly support, because 25 kilometres per hour over any speed limit, whether it be a 40 kilometres per hour speed limit or a 110 kilometres per hour speed limit, is a very substantial margin over the posted limit. There would probably be only one road in Victoria where you may be able, even with some creative arguments, to say it was safe to be travelling at 135 kilometres per hour. This measure is very sensible. This bill now puts in place a one-month automatic suspension for exceeding the speed limit by 25 kilometres per hour.

The new penalties also increase the number of demerit points lost through an offence. I will read out some of the changes that will be made. The current fine for 15 kilometres per hour over the limit is $125 and the loss of 1 demerit point; that will be increased to $200 and 3 demerit points. The present fine for travelling 25 kilometres per hour over the limit is $200 and the loss of 3 demerit points; that goes to $265 and 4 demerit points. The current fine for 35 kilometres per hour over the limit is $265 and the loss of 4 demerit points; that will be increased to $360 and 6 demerit points. The current penalty for driving at 45 kilometres per hour over the speed limit is $360 and 6 demerit points; the proposed fine will be $430 and 8 demerit points. The opposition does not have any problem in supporting these changes to the penalties.

**Hon. K. M. Smith** — Revenue raising.

**Hon. G. B. ASHMAN** — However, we raise some issues in relation to the percentage changes in the fines. Mr Ken Smith interjects that this is revenue raising. He may be right, because at the lower end of the scale the increase in the fine for travelling at 15 kilometres per hour over the limit is 60 per cent. At the upper end the increase in penalty for driving at more than 45 kilometres per hour over the limit is 19.4 per cent. It begs the question: have these been structured at the lower end to capture more revenue? The lower target has seen revenue raising by fines increase from about $100 million two years ago to $336 million in this financial year — quite a significant increase by anybody's standards.

The speed limits in some areas need to be reviewed. With these new penalties and with the policy that is now in place, with the police adopting almost a zero tolerance to speeding, some consideration needs to be given to reviewing the posted speed limits on a significant number of roads. There are a number of examples across Koonung Province where the limits have been subtly reduced. The roads still have all the appearances of roads that would normally be posted with speed limits of, say, 70 kilometres per hour, but we find they are now posted at 60 kilometres per hour, and — surprise, surprise! — those roads regularly have speed cameras on them. They are roads where the average motorist would not consider 70 kilometres per hour to be an inappropriate speed for that section of road.

By way of example, I cite one new piece of road in Mitcham Road between Donvale and Mitcham. Mitcham Road comes off Doncaster Road to Springvale Road. It is a dual carriageway and is posted

at 70 kilometres per hour. Once you cross Springvale Road you find Mitcham Road is still a dual carriageway, but it is posted at 60 kilometres per hour. It is a new section of road, so it is built to a very high standard. It has all the appearances of a road that would normally be posted at 70 kilometres per hour. That road is subjected to quite rigorous policing. I can say that I see a speed camera there probably three or four times a week — and I hasten to add that it has not captured me. The argument that some of these changes target the lower brackets rather than the high-risk end has some validity.

There are also some changes in the bill to the drink-driving provisions, particularly in relation to learners permits and probationary licence-holders. There is a loss of licence for those people currently at .00 — zero — and the bill will take it to .07. We think it should remain at .00 because there should be no tolerance on P-platers and learners who exceed the zero blood alcohol provisions.

I will read a short passage from a letter that was forwarded by the shadow Minister for Transport to the Minister for Transport on 8 October about this legislation. The section I will read is about the reforms for the on-the-spot loss of licence for learners and probationary licence-holders. He says:

> The opposition wishes to suggest that the government introduce an amendment to create a clear and definitive 'zero means zero' approach to such learners and probationary drivers BAC. Your legislation provides for an ambiguous approach to this area and, given the rising road toll and the increased number of inexperienced drivers on the road, such ambiguity is not constructive to a successful road safety campaign. I also note that this bill also continues the Bracks government's focus on penalties (revenue), but ignores issues of driver education (an expense). The opposition supports increased driver education and notes that a report completed by the Professional Driver Trainers Association of Victoria about the *Problems of Novice Drivers*, which was submitted to you on 31 May 2000, has still not received a response. This is undisciplined and it is no wonder that the road safety message from the Bracks government isn't getting through to the public.

With this debate on the legislation the opposition was handing an opportunity to the government to amend this legislation to reflect the zero policy that we all believe ought to be included. It would have been quite easy for such an amendment to have been negotiated while the bill was between the houses, but it appears the government is not prepared to pursue that at this stage. Clearly when in government we would move very quickly to introduce zero means zero in relation to P-plate drivers and learner drivers.

The suspension of licences for people exceeding the blood alcohol limit is strongly supported by the opposition. We know that at random breath-testing stations only 1 in 200 drivers registers above the legal limit, but when it comes to fatalities and severe-injury collisions it is something in the order of 1 in 4 that exceeds .05. We know that in the road toll, 25 per cent of death and trauma can be attributed to alcohol. We know there is a percentage of probably approaching 20 per cent — Mr Brideson might be able to elaborate on this — of drivers who are also under the influence of other drugs. If we can remove these people from the roads we have a significant opportunity to reduce our road toll. Given those statistics, one wonders how effective the zero tolerance on speed is, and indeed whether that is the right target for the attention that we are giving it.

We support the changes that provide for the immediate suspension of a licence for a drink-driving offence when the driver is likely to be charged with more serious offences. There has been an anomaly where the police have not suspended licences of drink-drivers when they have been considering more serious charges. Certainly from the opposition's point of view it is imperative that we get these people off the road immediately rather than delay while the police develop further charges. That clause is quite strongly supported.

There are also other changes which we support in relation to demerit points for P-plate drivers which bring our demerit point system into line with that of the other states.

In concluding, I will go back to the speeding issue and make one further comment, one which has been made in earlier debates on road safety measures in relation to the accuracy of speedometers in cars. The Australian design rule allows for a 10 per cent variation in the speed reading. We all recognise that being 5 per cent over the limit is fairly difficult to judge in some driving conditions. When that is coupled with what is recognised as the inaccuracy of some speedometers, the zero or almost zero tolerance on speeding that the government is pursuing is a little harsh.

I refer to a couple of examples that have been reported to me, and some personal observations. I am not suggesting that the Vicroads speed reading device on the Hume Highway is 100 per cent accurate, but we would hope it is reasonably accurate because many people use it as a means of registering or recording their speed and checking their speedometers. Over the past months I have gone past that point on a number of occasions. In the Commodore I am currently driving, 100 kilometres an hour on the speedometer showed up

on the speed test at 98 kilometres an hour. I went up a couple of weeks ago in an Audi A4 and 100 kilometres an hour on the speedo showed up as 97 kilometres an hour; in a Land Rover 100 kilometres an hour showed up as 93 kilometres an hour; and in a BMW 100 kilometres an hour showed up as 104 kilometres an hour, so there is some variation there. If the tolerance is only 1 or 2 kilometres there is an opportunity for people to be booked. I defy anyone to keep such an accurate check on their speed.

The Liberal Party will be saying to the community that it would be prepared to reintroduce a 10 per cent tolerance and to take a more commonsense approach to the enforcement of these speed limits. We do not see road safety as an opportunity for revenue raising. We see our responsibility as one of providing safe driving conditions and a safe driving environment for people, but certainly not pursuing them for what we see as generally being relatively minor misdemeanours.

The Liberal Party does not oppose this legislation. As I stated at the outset, we will continue to support road safety initiatives, even if we disagree at the edges with some of them.

**Hon. B. W. BISHOP** (North Western) — I am pleased on behalf of the National Party to speak on the Road Safety (Responsible Driving) Bill. At the outset I thank the minister's department for its usual informative briefing. I have found its briefings to be good and departmental officers are willing to come back to us with any information we might require.

The purpose of the bill is straightforward. It is to amend the Road Safety Act 1986 to introduce measures to deter excessive speeding; to expand the circumstances in which a learner permit or probationary driver, or a repeat offender for drink-driving, may be immediately suspended for certain offences involving alcohol; to clarify the scope of failing a breath test offence; and also to amend the Marine Act 1988 to clarify the scope of failing that particular breath test offence.

As usual the National Party has consulted widely on this bill, as it does with all road safety bills. I will comment on some of the responses we received. The only one not fully in support fairly questioned the science and research of the effectiveness of reducing the speed limit by, say, 5 kilometres an hour, and the effect that would have on safety. Another response from the Australian Drug Foundation said that:

> The changes proposed to the Road Safety Act appear reasonable. The proposal for immediate on-the-spot suspension of licences acts to remove dangerous drivers from the road sooner, and removes dangerous loopholes.
>
> The proposal to lower the limit at which probationary drivers face interim suspension is also reasonable. These are inexperienced, often young, drivers who were supposed to have been driving with a zero blood alcohol concentration. The P-plate system has been in place and enforced for long enough for all participants to understand and have strategies in place to observe the restrictions of that licence.

I spoke with David Cumming, the government relations manager for the Royal Automobile Club of Victoria, which is also supportive of the proposal, as is the Victorian Alcohol and Drug Association.

I received an informative letter from Ken Dowsley, who is the executive officer of Roadsafe Wimmera. This came into my possession because Mr Dowsley was contacted by the honourable member for Wimmera in another place, Hugh Delahunty, who as usual did his community work well by personally contacting the responsible people in his electorate. Mr Dowsley has some good suggestions that I will put on the record. He says he would be tough on high-level speeding, but in a bit more detail Mr Dowsley suggests on drink-driving:

> There is really no excuse for driving with BACs at a level that reduces driving capability so I support the move to make the penalties literally on the spot. The next step I would be suggesting for serious repeat offenders would be to impound or confiscate the vehicle.

On demerit points, Mr Dowsley's views are as follows:

> While the proposals have some merit (no pun intended) I am disappointed that the focus is still so heavily on penalising drivers. Alternative measures with a more preventive flavour could include:
>
> > Making 120 hours of supervised driver practice mandatory for L-platers — with the idea of raising the 'crash proofness' of young drivers so as to significantly cut their crash risk in their first year or two of driving.
> >
> > Significant increase in checking of licences to remove the increasing number of unlicensed drivers from our roads …
> >
> > Mandate lights on for all vehicles. Also known as daytime running lights (DRL) this is now being included in the driving policies of some major organisations — for example, Telstra, Vicroads. In Victoria the expectation is of a 16 per cent reduction in road fatalities if all vehicles ran DRLs. (This approach has significant value for our older drivers as they need more light to see properly. It also lets the rest of the community see them earlier and react to avoid possible problems.)

I thank Ken Dowsley, who is well known to many of us because he has worked in the Wimmera for a long time, for his practical and thoughtful suggestions on road safety.

The National Party will not oppose the bill. It would like to look at the excessive speeding philosophy which flows from the bill. It will discourage excessive

speeding by requiring the automatic licence suspension of drivers speeding by 25 kilometres an hour or more over the limit. This is a 5-kilometre an hour reduction in the current trigger point for automatic licence suspension of 30 kilometres an hour.

The bill imposes longer suspension periods for high-level speeders: at 25 to 35 kilometres an hour over the limit, one month's suspension; at 35 to 45 kilometres an hour over the limit, six months suspension; and at 45 kilometres an hour or more over the limit, 12 months suspension.

Some other changes introduced as part of the responsible driving package will revise the structure of the speeding demerit point thresholds and speeding fines. We understand the changes to the speeding fines may be in force by the end of the year. There is no change in fines for offences of less than 10 kilometres an hour over the speed limit.

When my parliamentary colleagues and I had this discussion we concluded unanimously that we could not argue against the intent of the bill but would in fact support it. Out of the discussion came the thought: I wonder where the bidding war stops in relation to political parties and other organisations relative to this particular issue. We wondered where the line might be drawn in the sand — the line that balances safety and the practical use of motor cars and all the other issues that we, particularly in country Victoria, live with on a day-by-day basis.

There is no doubt that Victoria has an excellent record in road safety. We started off seatbelt legislation. Our innovation in drink-driving laws has shown strong leadership. The speed penalties are quite heavy, and the demerit points are certainly a deterrent and make people use our roads safely.

In our discussions we were concerned whether, if the pressures on our motoring public became too great, the community's attitude to the law would turn the other way so people would not be supportive and may not be cooperative. There was a bit of philosophy, I guess, displayed in the discussions members of the National Party had on this bill, and that might be mirrored by what a lot of people in our community think.

The other issue we talked about was the proposed or real — I am not quite sure which it is — reductions in the tolerance relative to speedometer readings in cars. If the police are looking for people driving over the speed limit on our roads, what is a reasonable tolerance level for that? In an article in the *Sunday Herald Sun* of 7 April Sue Hewitt made the point that:

> Thousands of Victorian motorists face speeding fines under tough new zero-tolerance guidelines because their speedometers are faulty.
>
> Mechanics say thousands of cars, including new models, have speedometers as much as 10km/h out. And they claim many older cars have worn mechanical speedometer equipment that can fail.
>
> They say testing equipment is not a simple task and that the police minister André Haermeyer is being unreasonable in demanding drivers check speedometer accuracy.
>
> …
>
> A recent court case supports their claims with a booked driver found to have a speedometer that was more than 20 per cent inaccurate.
>
> …
>
> Police are cracking down on motorists with moves to cut the tolerance level to 3 per cent.
>
> Ian Howard, who has tested speedometers in Geelong for 31 years, said he regularly saw motorists who had absolute faith in faulty speedos.
>
> 'We've had customers with new cars come in because they have thought they were sitting on 100km/h and they've been booked for doing 110', he said.
>
> One customer had been booked twice by radar and, after having the equipment repaired, took the bill to the new car dealer.
>
> 'The dealer said sorry, but it (the speedometer error) meets the Australian design rule of plus or minus 10 per cent (error)', Mr Howard said.

They are the issues that are being discussed in our community.

I must have had a quiet weekend or two looking at the weekend papers. I noticed, again in the *Herald Sun* — I think last weekend — an article by Chris Tinkler. I will read a paragraph or two:

> All proceeds from speed and red-light camera fines should be put directly into road safety initiatives, a former top police officer says.
>
> Bob Falconer, former Western Australia Police chief and Victoria Police deputy chief, yesterday called for the Victorian government and opposition to make election pledges to commit the funds to a special pool.
>
> …
>
> Mr Falconer said that Victorians should ensure every cent was pumped directly to safety initiatives, as happened in WA.

So it is in the media, it is in the community's eyes and it is on people's lips as they talk about the issue of tolerance in relation to speed guns or the use of radar on our roads.

That is one issue, but the other question we should ask ourselves is: what is the right speed limit? Around

schools there is a bit of the 'Watch my lips' stuff. I suspect that in the next week or so the National Party will be releasing some very good policies. Around town is it 40, 50 or 60 kilometres an hour? In the country is it 100 or 110? I know that in country Victoria, particularly in north-western Victoria, we have a speed limit of 110 kilometres an hour on the Calder Highway from Wycheproof right through to Mildura. I know, and Mr Craige would know, that it took an awful lot to get that 110 speed limit on that road.

**Hon. W. R. Baxter** — Mr Craige's predecessor went to water on it.

**Hon. B. W. BISHOP** — I do not think that is right, Mr Baxter. I am sure that any of our ministers for roads who had experience in country areas would have been keen to see the 110 limit introduced on that piece of road between Wycheproof and Mildura. But it is true that it took five years to get that into place. It is true, too, that there was some resistance in a number of quarters. I think it was in 1999 that the speed limit was lifted.

I am certainly not aware of any increase in accidents since the introduction of that much-sought-after lift in the speed limit on that part of the Calder Highway. I might say that we put a bit of work into that, and a number of people in this house would realise that. We were very tempted to start the higher speed limit at Charlton, but decided to go back to Wycheproof because there are a couple of waterways between Charlton and Wycheproof that could present some risk if the extra 10 kilometres an hour had been allowed on that section of road.

When I think about Charlton I am reminded of the Charlton Driving Training Centre. The honourable member for Swan Hill in another place, my colleague Ron Best and I believe it does a fantastic job. It is unfortunate that to the best of our knowledge — and we are quite sure of this — it is not really strongly supported by the police force, the bureaucrats or academia. But it was supported by road ministers we had in this state who were very generous in finding enough funding to keep that school alive. Even though it was struggling we kept it open on a hand-to-mouth basis. I thank the Honourables Bill Baxter and Geoff Craige for their support — off their own bat, I might say — for that. It was greatly appreciated across that part of Victoria.

During that period Monash University was contracted to do a study on the driving school. It was some time ago, but it was a really wishy-washy report that I was quite disappointed in. It did not home in on what the Charlton Driving Training Centre really does. I suspect most views were that the training of our drivers should be done on the road. I can assure honourable members that the Charlton Driving Training Centre has some very good documented results which would convince anyone who thought about it at all that its program is worth while.

I can remember that at the time we tried to get money out of the Transport Accident Commission and could not crack even a dollar out of it. I am absolutely sure it would have been just as good an investment as a lot of the commission's ads and programs given the results out of that driving training program. Last week the police were having an open day at the Charlton Driving Training Centre. I hope that went well. I am sure it would get a bit more publicity for the centre. Let's hope it gets a bit more support and the right word gets out about it.

When we were in government as a coalition we almost got the Charlton Driving Training Centre on a sustainable footing by adding the programs into education. I suspect we probably need three training centres around country Victoria contracted out to the schools. I hope to see that process come to fruition in the next few years.

Coming back to the legislation, the bill tightens up on the blood alcohol content of learner drivers and probationary drivers in relation to on-the-spot suspensions from .15 to .07, and .07 is the trigger to an on-the-spot suspension of licence. On-the-spot suspension will also be in place for repeat drink-driver offenders. Previously suspension could not be imposed until the driver was charged; and that could well be a week or two weeks later. Also in the past the interim suspension could only take effect when the driver was charged with drink-driving under the Road Safety Act and may not have been an option if they were charged with a criminal offence such as manslaughter or culpable driving while under the influence of alcohol. In some cases the investigation may have had to stretch out over some weeks prior to charges being made, so those people would be on the roads during that time without having their licences suspended.

We have no problem with these tougher rules. The on-the-spot suspension has been applied to permit-holders, probationary licence-holders and repeat drink-driving offenders. In fact, a number of people in my electorate have suggested that to me — that they should be dealt with on the spot to take them off the road to ensure the safety of other drivers on the road. I think that will get quite strong support across a wide

sector of our community. The same provision is added into the Marine Act 1988 as well.

Probationary and learner drivers will also be exposed to tougher demerit point rulings. If they go over 5 points in the year they will face loss of licence, and additional points lost over 5 will incur further penalties in relation to the loss of licence. That is a reasonable move to make; otherwise it might be two years before they would have a lesson learnt that might save their lives and someone else's as well. During the briefing I was rather uncomfortable with that provision as I believed it would overpenalise probationary and learner drivers. My discomfort was about the translation of points and the compensation level of points, so I was pleased to see the amendment that removes that possibility adopted in the upper house.

The bill also deals with the scope of testing in relation to drink-driving. I will not go into that into that in detail given the time of night, but it certainly clarifies the situation.

The National Party does not oppose the bill. It does raise concerns about what we might loosely term the bidding war. Where is the practical balance between the sensible and practical application of speed limits and safety? Our party also raised its real concern about the margin of error in speedometers, which may not be taken adequately into account if the police reduce the margin for error when they are out on the roads looking for speeding motorists.

The National Party does not oppose the bill but asks the government to take into account the issues raised during this contribution.

**Hon. G. D. ROMANES** (Melbourne) — I am pleased to have the opportunity to speak on the very important Road Safety (Responsible Driving) Bill this evening. The bill is important because it provides increased penalties for drink-driving offences and for speeding offences. The aim of the bill is to reduce the number of drivers on the roads who put themselves and others at risk. We know that speed kills and that 20 per cent of fatal accidents in Australia are due to excessive speeds. We know also that the combination of drinking and driving is lethal.

The bill, therefore, puts forward a number of measures as part of a consistent, coordinated approach the government has been taking through its Arrive Alive strategy to reduce speeding and reduce drink-driving. Some of those measures we have seen introduced over the past year or two are: the setting of appropriate safe maximum speeds, such as the 50-kilometre-an-hour default limit in residential areas; the increasing likelihood of detection of speeding through the safety camera program; the Transport Accident Commission Wipe Off 5 campaign; measures like the alcohol ignition locks to prevent serious and repeat offenders re-offending; and penalties for excessive speeding that better reflect the real risks — which is what we are dealing with in the bill before the house.

Research has shown that if all drivers complied with the speed limits — for example, in the 60-kilometre-an-hour zones — 25 per cent of crashes would be avoided. The government is faced with the complexity of the situation on the roads and the search for triggers that will engender behavioural change in drivers to produce a safer situation on the roads for all concerned. Those measures are beginning to work, and after the introduction of the 50-kilometre-an-hour speed limit in residential streets we have seen a 13 per cent reduction in casualty accidents and a reduction of over 40 per cent in pedestrian fatalities in pedestrian streets.

The Road Safety (Responsible Driving) Bill introduces tougher penalties for excessive speeding. The bill will discourage excessive speeding by imposing automatic licence suspension for drivers speeding at 25 or more kilometres an hour over the limit. That compares with the current 30-kilometre an hour limit, so there is a 5 kilometre an hour reduction from the current trigger point for automatic licence suspension. That will affect some 42 000 drivers, the number of people who were caught last year doing 25 kilometres an hour over the speed limit. That is a not insignificant netting of drivers who have been speeding excessively on the roads.

The tougher penalties will impose longer suspension periods for high-level speeders exceeding the limit by 35 kilometres an hour or more. There is a range of progressive increases for high-level speeders in terms of automatic licence suspension periods. Those measures reflect the increasing danger to the community, and speeding drivers are a greater danger to the community the faster they drive. Considerable research has been conducted, such as by the road accident research unit in South Australia, which shows that you double the crash risk for every extra 5 kilometres an hour over the speed limit. The provisions in the bill reflect that research and the need to increase penalties in proportion to the danger that speeding drivers pose to the community.

One of the key provisions is on-the-spot suspension of licences or permits of dangerous drink-drivers. It introduces on-the-spot suspensions for drink-drivers who represent an unacceptably high risk to public safety because of their past patterns of behaviour — for

the very large amount of alcohol they may have consumed before driving. That is a significant change from the current situation where there are interim licence suspension provisions in the pretrial situation. These currently exist in the Road Safety Act but can only be activated where drivers are charged with drink-driving offences involving a blood alcohol content (BAC) of .15 or above or repeat drink-drivers charged with exceeding the legal limit.

However, the requirement that the person be charged with a drink-driving offence before an interim suspension may be imposed and before the community can be assured that such a driver can be taken off the roads can delay the interim suspension by several weeks due to difficulties of paperwork and ensuring that all the right processes have been undertaken. In some cases where persons are charged with the more serious offence of culpable driving rather than drink-driving the interim suspension provisions do not apply. In fact, the police will often not lay a drink-driving charge to avoid criminal and summary cases running concurrently. Therefore, unfortunately the situation as it currently stands is often that the offender, while the charge is being laid and in the pretrial situation, continues to drive and creates a high risk on the roads. The bill is designed to try to get those high-risk drivers off the roads.

The new provisions for on-the-spot licence suspensions relate not only to high-level or repeat drink-driving but also to probationary and learner drivers whose blood alcohol content exceeds .07. The Liberal Party has made a strong statement that it will revisit this issue if it wins government and that there should be a zero-equals-zero approach to learner and probationary drivers in this situation rather than a .07 approach before an on-the-spot suspension of licence occurs. The opposition is taking a misleading and duplicitous position because when it comes to sentencing a probationary or learner driver who has been convicted of drink-driving zero already means zero, and this will not change.

A probationary driver who is convicted of driving with any alcohol in his or her bloodstream will be punished, including facing licence loss as follows: probationary drivers detected with blood alcohol content of .05 or above already face automatic licence cancellation and disqualification from driving for a six-month minimum. This disqualification period increases with the BAC reading.

As well, probationary drivers detected with a BAC above zero but less than .05 already receive 10 demerit points which can result in three months suspension if they reach 3 points in a three-year period. The bill significantly increases these penalties with regard to demerit points for probationary drivers and tightens them considerably.

It is important to bear in mind the strong principle in our system of law that a person is presumed innocent until proven guilty and, as such, penalties are not normally imposed until the person has admitted guilt or has had an opportunity to answer the allegations in court. The purpose of the on-the-spot suspensions is public safety rather than punishment. The provisions apply where there is a clear-cut case of serious risk to community safety if these people continue to drive. Therefore the cut-off point for on-the-spot suspension of licence for novice drivers with a BAC is .07, which reflects the seriousness of the situation of inexperienced drivers drinking and being let loose on our roads.

This is an extremely important bill and needs to be seen within the context of the range of measures the government has been putting forward over the last year or two to try to tackle this serious issue of the road toll in terms of road fatalities, casualties and injuries.

The other issue raised by the Honourable Barry Bishop and the Liberal opposition is the commitment of the Liberal Party to reintroduce 10 per cent tolerances for motorists with regard to the design standards of speedometers rather than the current 3 per cent that is in place at this time. I contend that that is a scandalous position to hold because it is the equivalent of wanting people to drive at .05 blood alcohol content in risk terms. It is a misplaced position and a populist gesture, although out of tune with public thinking, because there is widespread public support for the safety initiatives that the government is introducing in the bill and the range of other measures in its Arrive Alive strategy.

No revenue raising is incorporated into the bill despite what the Honourable Gerald Ashman said earlier, because this bill deals with tightening the thresholds, increasing the penalties and endeavouring through those changes and triggers to send out warning signals, particularly to young people and repeat offenders through the demerit points system. They are warning signals designed to try to get drivers to voluntarily ameliorate their behaviour and to think about changing their driving practices to become safer drivers on our roads.

These measures are needed and are very important, particularly in relation to young and inexperienced drivers. I was talking with someone over dinner this evening; there is a phenomenon of young people thinking somehow that they are invincible — and we

all went through that a long time ago. Therefore it is absolutely vital that the provisions of the Road Safety (Responsible Driving) Bill pass through the house this evening and become law in Victoria. I commend the bill to the house.

**Hon. ANDREW BRIDESON** (Waverley) — As has already been alluded to, the opposition does not oppose the Road Safety (Responsible Driving) Bill. The bill forms part of the government's Arrive Alive strategy which, as chairman of the Road Safety Committee, I certainly support. The changes proposed by the bill will mean tougher penalties for speeding and drink-driving. There are very compelling reasons why the opposition does not oppose the legislation. Essentially it can be summarised by the police concerns over the mounting road toll. There are community concerns about the angst that is caused in families and the community at large over road fatalities and injuries. The Transport Accident Commission statistics on road deaths are dramatic, and the costs of accidents to the community are an unnecessary burden.

I want to record the causes of road accidents and show how the only way to change driver behaviour really seems to be by hitting the hip pocket, by taking more demerit points off drivers and maybe in some cases by taking licences away from them. Even today in one of my local newspapers, the *Waverley Leader,* published on 15 October, I was staggered to read that with the tougher penalties that have been in existence for some time, people still flout the law. The paper states:

> A learner driver was among 177 people charged with drink-driving by Glen Waverley police since July last year.

That is an astronomical figure! It is unbelievable that that number of people would go out, drink and drive. In fact it is really worse than that because the highest level of those who were booked in Glen Waverley had a 0.209 blood alcohol level — more than four times the legal limit. It is just incomprehensible that people drive in that condition. Heaven knows what sort of condition the driver accompanying the learner was in! The article continues:

> Senior-Sergeant Archer —

from the Glen Waverley police —

> said 11 drivers charged in the past year had been involved in car accidents, including the learner …

Senior Sergeant Archer is alarmed at the increase just in the last two months. It shows that even with our tough penalties, people will still flout the law.

Let us look at the numbers of deaths that have occurred on the roads, and again it is incomprehensible. In 1997, 284 people died on the roads. In 1998 the number of road deaths was 291; in 1999, 300; in 2000, 313; in 2001, 335; and up until 14 October, 310. That is a slight drop compared to the same time last year, so perhaps there is a slight improvement in the road toll. We should not get too carried away with it; there are lots of other factors which need to be taken into consideration, and maybe one is that it has been a relatively dry year and there tends to be less serious accidents in dry weather.

When you look at the statistics that the Transport Accident Commission puts out each week, it is somewhat alarming to see the number of males who are killed in road accidents compared to females. So far this year 82 females and 228 males have been killed — a substantial difference. Maybe we should be aiming education at male drivers. I will have more to say about education later.

It is also interesting to note that a large number of deaths continue to occur in rural Victoria, and that is something else which the government should address. While I am talking about rural roads, the Road Safety Committee made 50 recommendations earlier this year as a result of an inquiry into rural road safety and infrastructure. One of the recommendations made — recommendation 45 — was that road safety officer positions be created at a local government level to promote road safety both within councils and in the wider community, with substantial financial assistance from Vicroads. The reasons the committee made that recommendation are set out on page 125 of the report of the Road Safety Committee. I do not want to put those reasons on the record tonight. Suffice it to say that they are in the report.

I was personally disappointed that that was one of four recommendations the government did not agree to when its response to the inquiry was released last week. I think that if local road safety officers were employed in the local government area that would go a long way towards educating the community about better attitudes towards driving. It is something I hope future governments might pick up in time.

There are essentially three main causes of road accidents: human, environmental and vehicular. But the greatest reason can be attributed to the human factor. People speed, drink, do not wear seatbelts, drive when they are tired and are careless. These are the major reasons why people kill, injure and maim themselves and others and cause misery to family members, relatives, neighbours and community members. As I

said in my opening, the only means we seem to have to change people's attitudes is to hit the hip pocket, take their licences away and increase the number of demerit points for unlawful driving practices.

I was going to put on the record the costs to the community of casualty crashes. These are phenomenal. If we can just reduce the number by one accident per day we are going to save our community an enormous amount of money. In Melbourne the average cost of a motor car accident with a casualty is $90 000. In some areas of the state the cost is $148 000. These figures were provided to the Road Safety Committee by Vicroads experts or came from rural shires that my committee visited.

The government should put more emphasis on driver training. There should be driver training programs which look at changing driver attitudes and behaviour. Perhaps we need to give a new reference to the Road Safety Committee to review driver training.

This year I have had the good fortune to attend two advanced driver training courses. Each of those courses was different in style. With a combination of both of them we could develop a very good course. When honourable members change their motor vehicles I recommend they attend the course, which they are allowed to do.

**Hon. G. R. Craige** — Encourage them!

**Hon. ANDREW BRIDESON** — Yes, we should encourage all members of Parliament to do that.

In conclusion, this bill represents a significant package of measures to improve the safety of all road users. It introduces some important measures to deter speeding drivers. We ought to look at the persistent speeding driver in the same light as we regard drink-drivers — they are socially irresponsible. This bill goes a long way towards trying to change their behaviour and attitude.

**Hon. G. R. CRAIGE** (Central Highlands) — I rise to make a brief contribution to the debate on the Road Safety (Responsible Driving) Bill and indicate that the opposition does not oppose this bill.

My points are around the issue of governments and the community being prepared and willing constantly to change legislation and not being afraid to do so. In respect of road safety the law must remain relevant. I can recall a brief stint during which I was the Minister for Roads in the Kennett government, and I reflect on my ministerial colleagues who continually made statements about the frequency with which road safety legislation was passed. I indicated to them that that was a good thing because it meant that we were always trying to change legislation so that it was relevant. Therefore I say to this Labor government, 'Don't be afraid; remain relevant'.

Most importantly in road safety our tradition in this state has been one of continual bipartisanship. You have to work at it; it does not come easy. I encourage the Labor government to continue to work with the Liberal opposition and the National Party and Independents and not to use road safety in any way, shape or form as political point scoring. It is not the way to ensure great outcomes in road safety.

I reflect on two people — the late Frank Green and Jim Murcott — whom I had a great deal of respect for and knew well. I spent a lot of time with both those gentlemen. One of the lessons they taught me was that road safety was a very complex jigsaw, that there were many pieces in it and that each and every one of them was important. No one piece was more important than the other. At times in road safety we tend to forget that.

I encourage the Transport Accident Commission, police and Vicroads to continue to work in the belief — and I know they do — that no one of them has the answers and that education is important. Training, booze buses and radar equipment are important, police presence is important and road infrastructure is important — but none of them is of any greater importance than another. They are all vital for great outcomes. The real message is that they all play a role collectively.

Isn't it an area full of instant experts? It worries me from time to time in the field of road safety that some organisations feel as though they have all the wisdom and answers, and if you do not do what they want it is wrong.

In the overall issue of road safety in particular we have to move past that and have a collective outcome about it. I know that at times politics interferes, but I always like to hope that as we continue to change and focus on the outcomes of any road safety legislation we can look at it in a concise way, that we can be inclusive, and that we can sit down, consult and arrive at outcomes. At times training and education get left behind a little, but a greater effort has been made over the last six to nine years in respect of training and education.

I want to conclude my remarks around training and education, and in particular the current situation with some agencies, in particular Vicroads, arguing with the Transport Accident Commission about on-road training and giving little credit to off-road training. It is time we

forgot about that issue and got on with the job. Both are equally relevant and off-road training certainly has a place in our road safety agenda. I hope the philosophy of some organisations changes.

I conclude my remarks by saying there are many agencies and bodies, including privately run organisations, that provide defensive driving courses off-road, including at Charlton. I am really proud that I have just been elected by the community in Kilsyth as a board of management member of the Metropolitan Traffic Education Centre (Metec). It is a community not-for-profit organisation that was founded in 1971.

Places like Metec play an important role in the overall picture of road safety. They provide pre-licence school programs for children from the age of 16 years. What I particularly like about Metec, and the reason I agreed to be on the board, is that it has objectives that a lot of people talk about — that is, things like attitude, like learning to be patient and trying to instil in young children that patience is important on the road. Other things include a preparedness for and a recognition of hazards, being aware and the correct attitude to the driving task.

That is a part of the basic criteria Metec has in talking to the young children. The course is booked out consistently throughout the year. It is one of the most popular courses, and it deserves to be recognised that it does play a role. I would be the first to say that obviously the time is getting near when we need statistical data and support on certain research to see the benefits of the programs and to see where the young kids who have gone through the program are today. We should study where they have ended up in with respect to the roads issue. Metec also runs advanced defence driving, caravan towing, horse float towing, four-wheel driving and motorcycle testing out there. Charles Gorman, who was the general manager of Metec for 11 years, has recently retired, and Chris Bigg-Wither has taken over as general manager. We welcome him.

I wish to place on the record that there are many organisations out there that are playing a role. We should all be big enough in the quest for a reduction in the number of people killed or injured on our roads to become inclusive and not treat differently those who are seen to be a bit different. I say they are part of a jigsaw; they may be a smaller part of the jigsaw, but they are still part of it. You do not get to complete any jigsaw unless you have all the pieces in position. I encourage all future governments, no matter what persuasion they may be, to be brave and not to be afraid of changing road safety legislation because it must at all times remain relevant.

**Hon. A. P. OLEXANDER** (Silvan) — I rise to speak on the Road Safety (Responsible Driving) Bill introduced by the government in order to encourage responsible driving and to introduce measures that are aimed at deterring speeding and also to amend the Road Safety Act 1986. In making my contribution I would like to speak directly on two of the main points of the bill — that is, speeding and drink-driving.

I also note that although the Liberal Party will not oppose this piece of legislation, as a member of this place particularly concerned with road safety and efficient road safety strategies in my electorate of Silvan I wish to speak briefly on some of the provisions in the bill that concern me.

Excessive speeding is obviously one of the main contributors to the road toll in this state and is classified as being excessive when a vehicle is being driven 30 kilometres per hour or more in excess of the actual speed limit. The proposed legislation would cut the 30 kilometres per hour excess down by 5 kilometres per hour, redefining excessive speeding as travelling in excess of the speed limit by 25 kilometres per hour. Focusing on excessive speeding is, in my view, a move in the right direction.

On the point of excessive speeding, however, it is disappointing when drivers are often more concerned about receiving a ticket for speeding than about losing their lives or putting the lives of others at risk. Even so, booking people for travelling, say, 3 kilometres per hour over the speed limit in a 80 kilometres per hour-plus zone is not being proactive about the road toll. In the view of many in the community it is mere revenue raising.

To give honourable members a perspective on how much revenue is raised by speed cameras I have some comparative figures related to the death toll and revenue raised by those means. In 1993 there were 436 deaths and $95 million was raised by speed cameras. In 1999, the last year of the Kennett government, there were 384 deaths and $99 million was raised. In 2001, under the Bracks government. there were 444 deaths and $206 million was raised — over twice the amount raised by speed camera fines for the same period of the Kennett government.

It is excusable for many in the community to believe this is mere revenue raising. Supporting this sentiment are the Royal Automobile Club of Victoria spokesmen, Ken Ogden and David Cumming. They were quoted on 8 September as branding this legislation smacking of revenue raising which lacks total public support. Road safety is such a critical issue in Victoria, and indeed

anywhere in Australia, but there has always been a bipartisan approach to these issues.

I will not point out some further statistical data because of obvious time limits, but I will say that Victoria has always had an excellent road deaths rating in terms of the national average. Using speeding fines to compensate for poor economic management is not good government nor is it helping us to reduce our road toll. The figures demonstrate that clearly. The government needs to initiate more innovation and thinking about driver safety, not budget deficits.

In conclusion, I wish to raise one point on demerit points — no pun intended! I want to bring to the attention of the house the implementation of provisions the government has proposed. Under the bill probationary and learner drivers could lose their licence or permit if they incur 5 points in any 12-month period. The general application of 12 points in three years will also apply to them. I hope this will encourage younger drivers to learn from their mistakes but also allow them to continue gaining valuable experience on the road if possible, even if there has been a minor road offence. That said, I wish the bill well, but reiterate my earlier point that the Bracks government needs to take heed of the road toll and act efficiently to curb it, rather than hitting drivers with ridiculous fines for travelling slightly over the speed limit.

**Motion agreed to.**

**Read second time.**

*Third reading*

**Hon. C. C. BROAD** (Minister for Energy and Resources) — By leave, I move:

That this bill be now read a third time.

In doing so I thank honourable members for their contribution to the debate.

**Motion agreed to.**

**Read third time.**

*Remaining stages*

**Passed remaining stages.**

## REGIONAL DEVELOPMENT VICTORIA BILL

*Introduction and first reading*

**Received from Assembly.**

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

## SENTENCING (FURTHER AMENDMENT) BILL

*Introduction and first reading*

**Received from Assembly.**

**Read first time for Hon. J. M. MADDEN (Minister for Sport and Recreation) on motion of Hon. M. R. Thomson.**

## ADJOURNMENT

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

That the house do now adjourn.

### Port of Melbourne: channel deepening

**Hon. ANDREA COOTE** (Monash) — My matter is for the Minister for Ports, but I see her scurrying away. She could have stayed to listen to my matter, but she has chosen to scurry out of the chamber. I want to raise with the minister the proposal to deepen part of Port Phillip Bay's shipping channels.

My electorate of Monash Province includes the suburbs of Port Melbourne, St Kilda, South Melbourne and Middle Park, all of which are famous for their beaches and views of Port Phillip Bay. These beaches are enjoyed not only by the local residents but also by thousands of Victorians who flock to the area on the weekends and whose predecessors visited the area since the beginning of the last century.

The minister will be aware that Melbourne's bayside communities are very concerned about the effects of channel deepening and what that will do to the local beaches. Some are working on their own environment effects statements. I understand that the government has given in-principle support to the proposed channel deepening.

I ask the minister — it is a great pity she had to go — what is the current status of the environment effects statement process and what will she do to protect Port Phillip Bay's coastline from any negative consequences of the deepening?

### Tourism: Orbost facility

**Hon. P. R. HALL** (Gippsland) — I raise for the attention of the Minister for Tourism and the Minister

for Environment and Conservation tourism promotion in the town of Orbost. Orbost is in a bit of strife up there with its tourist promotion facility. Currently it offers visitor and tourist information services out of the rainforest centre building which is a Department of Natural Resources and Environment asset located in Orbost. However, the current services are a partnership between the Shire of East Gippsland, Lakes and Wilderness Tourism and Parks Victoria. They are the three organisations that currently contribute to the operation of that facility.

The Shire of East Gippsland has recently terminated its tourism promotion agreement with Lakes and Wilderness and it will not be renewed after 31 December 2002. Also, Parks Victoria's input to that partnership has been on a reducing scale with a limited contribution this year and no contribution made for 2003. Consequently we can see that tourism promotion in the town of Orbost is in desperate circumstances. Given that we have had some significant cutbacks in the timber industry in that part of East Gippsland, tourism is supposed to be the saviour for the people of the area. Without a tourism promotion organisation and facility one can hardly see tourism bringing the sorts of benefits this government would like to envisage for this part of East Gippsland.

I am calling on the government, through the Minister for Tourism and the Minister for Environment and Conservation, to make an immediate commitment to ensure that tourism promotional services in Orbost post the end of this year are still viable. I seek a contribution from the government to ensure that that occurs.

## Bellarine Peninsula Community Health Service

**Hon. E. C. CARBINES** (Geelong) — I raise with the Minister for Health in the other place a matter concerning the Bellarine Peninsula Community Health Service. The service is held in extremely high regard across the Bellarine Peninsula and has primary care facilities at Point Lonsdale, Drysdale, Portarlington and Ocean Grove. It also runs aged care services, Coorabin and Sims Lodge in Point Lonsdale and Ann Nichol House in Portarlington. The Bellarine Peninsula Community Health Service is one of Victoria's few community health services that provide such a broad range of services to the local community.

Last year the federal government granted the service an extra 30 bed licences for Ann Nichol House to double its capacity to serve the growing needs of the frail aged on the Bellarine Peninsula. However, in making this welcome announcement the federal government most disappointingly refused to allocate any funding to finance the necessary upgrade of Ann Nichol House to cater for the 30 new beds. The Bellarine Peninsula Community Health Service is now faced with the very difficult proposition of having to raise over $1 million in funds to build the extension of Ann Nichol House or lose the 30 bed licences.

The service has approached the federal member for Corangamite, Stewart McArthur, for assistance with funding, but he clearly stated in the *Geelong Independent* of 27 September 2002 that it was unlikely that any funding would be available for the Bellarine Peninsula Community Health Service. Accordingly, given the refusal of the federal government to allocate funding to the service for the upgrading of Ann Nichol House and meet the needs of the frail aged in our community, I seek the minister's advice on behalf of the residents of the Bellarine Peninsula.

## Macclesfield Primary School

**Hon. A. P. OLEXANDER** (Silvan) — I seek the assistance of the Minister for Education Services on an issue related to the Macclesfield Primary School in my electorate. The last time there was a facility upgrade at this school was to build a fire refuge back in the 1980s. The four portable classrooms that are currently on the school site are covered in mildew and are mould-ridden. They are cold in winter, hot in summer and past their use-by date. The old classrooms are undersized compared to today's standards.

School council president, Mr Cordell, said the school council was desperate to replace the four portables with permanent classrooms, with purpose-built teacher preparation areas, withdrawal spaces and room for information and communications technology.

Funding to address this deplorable neglect of school property is urgently required, and I ask that the minister immediately assist Macclesfield Primary School in the development of a master plan to upgrade its school buildings.

## Mildura courthouse

**Hon. B. W. BISHOP** (North Western) — My adjournment issue this evening is directed to the Attorney-General in the other place. I again raise the issue of the new Mildura courthouse, which has been a long time coming. I have observed that the site has been cleared and secured in preparation for the building works to commence. I understand and appreciate the government's wish to involve the local justice community in planning decisions for the new building

and I have attended two briefings on the plans, which appeared to me to be quite suitable.

In mid-July advertisements were placed in newspapers calling for tenders to undertake construction of the new Mildura law courts. Expressions of interest were again being sought from suitable building contractors at the end of September because, according to a statement to the local newspaper from Mr Rowell, the project manager, the response to the initial call for tenders 'could have been better'. This re-advertisement made it clear that previously submitted expressions of interest still remain in the running to win the tender.

Can the Attorney-General please advise me whether this latest advertisement has produced any more acceptable tenderers, and if so whether there is now a definite starting date for the construction of the new Mildura court complex?

## Local government: rate concessions

**Hon. G. K. RICH-PHILLIPS** (Eumemmerring) — I wish to raise for the attention of the Minister for Community Services in the other place the availability of municipal rate concessions for certain pensioners. Under the current state scheme there is a rebate of up to 50 per cent for council rates, up to a maximum of $135 per annum for eligible pensioners and low-income earners.

As honourable members will be aware, in recent years there have been substantial increases in the value of residential properties. In turn, through the revaluation process of local government that is required every two years, there has been a commensurate increase in local government rates. It has reached a point where the rebate of $135 is no longer adequate for low-income earners. Indeed, the constituent who approached me has given the example of his place in Dandenong. The value of his property has increased from $80 000 to $120 000, which has meant that his rates have increased from $370 to over $550. As a consequence, the cap of $135 on the rebate means that his expenditure on rates has dramatically increased.

I am delighted to say that since I first brought this matter to the attention of the shadow minister, Robert Doyle, now the Leader of the Opposition in the other place, he has announced that the next Liberal government will increase this rebate by 50 per cent to $200 per individual per annum, which I am delighted to hear. Unfortunately, he is not able to implement that undertaking until after the next election and in the interim something needs to be done to address this situation. I seek from the Minister for Community Services an undertaking from the government to match the opposition's commitment of an increase to $200 for the municipal rates rebate, and ask that it implement that prior to the next election.

## Drought: government assistance

**Hon. E. J. POWELL** (North Eastern) — I would like to raise an issue with the Minister for Small Business and I am pleased to see her at the table. Yesterday, in question time, I asked the minister to establish a special unit to deal with the particular problems facing small businesses — under which I include primary producers — that are affected by the drought.

The minister advised that the Department of Innovation, Industry and Regional Development is developing a package of regional assistance. I am pleased to hear that, because the department has offices and staff in Shepparton who are very helpful and provide services and advice to small business. While I have asked the government for assistance, my community is prepared to help itself. Leaders in the Shepparton community are meeting to form a community group to assess what the needs are and to find solutions. The Kyabram Community and Learning Centre briefed me on a rural crisis team leaders meeting, held locally.

The issues identified locally are: an increase in stress, depression and anger; the need to promote healthy eating and lifestyles; the need for more funds for rural counsellors and financial counsellors; the need for more funds for service providers for training and skilling-up those who have lost their jobs; and farming skills training needs to be subsidised by the government because farmers do not have the extra funds to spend on training. The government needs to talk to the banks about supporting our local communities and ask them to be lenient with overdraft blow-outs, to not charge a fee for the restructuring of loans if they need to be restructured, and to provide interest-free loans.

As these issues are across a number of government portfolios I again ask the minister to set up a special drought unit with representatives from the appropriate government portfolios to work with local community groups, councils and businesses to assist people in drought-affected areas to overcome the problems over the next months.

## Peninsula Health Care Network

**Hon. B. C. BOARDMAN** (Chelsea) — I ask the Minister for Small Business to refer to the Minister for

Health the adjournment issue I raised last Thursday regarding various activities at Frankston Hospital. I must stress that these allegations are not mine — they were published on the Crikey web site on 10 October. However, I draw to the attention of the house section 10 of the ministerial directions under the Financial Management Act, which states in 10.1.2(ix):

> The accountable officer must ensure that all cases of suspected or actual theft, arson, irregularity or fraud in connection with the receipt or disposal of money, stores or other property of any kind whatsoever under the control of the department are notified to the minister and the Auditor-General as follows …

It goes into a number of cases where that needs to be followed. Paragraph (x) states that:

> A register must be maintained by each department of all advices provided under (ix) —

which I have just mentioned.

To determine the veracity of these allegations there is not only an obligation that they be reported to the minister, and indeed the Auditor-General, but they must also be investigated. I inform the house that I have spoken to the chairperson and the chief executive officer of Peninsula Health who both gave me a different perspective on these allegations, and I am appreciative of their contact. I am in no way able to judge whether these allegations are correct or otherwise. However, it is essential that the Minister for Health enters the debate and gives the Parliament an assurance that the information is false. The individuals who have been named must be presumed innocent until proven otherwise. For that reason it is reasonable that the minister clear the air on this matter and give an unequivocal explanation as to the events at Frankston Hospital.

I note the health network has released a statement which reads in part:

> The facts in Mr Boardman's speech were that a senior executive left the organisation over two years ago, prior to my appointment, and another left recently.

It further states:

> The recent annual audit found no financial irregularities. Following the audit a matter arose not associated with building contracts and appropriate action was taken.

I am not aware whether the individuals concerned or Peninsula Health have initiated any legal action against Crikey, but I reiterate my earlier comments that these allegations must be investigated. I am confident that no official notification has been made to the Auditor-General. These allegations have been placed in the public domain by a third person and it is therefore essential that the Minister for Health give an immediate assurance that they have no foundation. Only in that way can proper confidence in the Frankston Hospital be maintained.

## Marine safety: commercial vessels

**Hon. C. A. FURLETTI** (Templestowe) — I raise a matter for the Minister for Ports, who I note is not here to respond directly. One of the deficiencies of this government is that the responsible ministers are not here to respond directly. I look forward to a prompt response to the issue I raise.

Mr Ronald Cumming of Warrnambool is a retired marine engineer with more than 35 years seagoing experience. He has been communicating with the minister and Marine Safety Victoria about a number of concerns he has about marine safety and the inconsistency of the application of marine law and regulations. He has written to the minister and to Marine Safety Victoria on a number of occasions, but it appears he has not received a response.

He expressed concerns about what he regards as serious breaches of marine safety regulations by some of the craft that sail the Yarra River and Port Phillip Bay. He referred to the absence of safety briefings for passengers on ferries and other craft, the existence of unsecured deckchairs on marine craft, and of diesel fumes coming from the engines, which he considers to be dangerous.

Mr Cumming refers to reports of the prosecution of a boat operator in Port Campbell who was fined some $5000 for having no safety briefing and loose seats on his vessel. He has supplied clear photographs, of which I have received copies, of a ferry trip he took from Southbank to Williamstown verifying his concerns and pointing out breaches. He is concerned that safety issues are not policed. He seeks an explanation for the inconsistency of the enforcement of marine safety regulations, a full and detailed response to his letters and an explanation as to why he should not be concerned about Marine Safety Victoria not fulfilling its role and obligations.

## Bass Highway: duplication

**Hon. K. M. SMITH** (South Eastern) — I refer to the Minister for Transport in the other place an issue regarding the public sector asset investment program which was released last Thursday.

I have gone through this document looking for what is going to be done with the Bass Highway. Honourable

members will be very much aware that the Bass Highway leads to the motorcycle grand prix this coming weekend, and it has traffic going to the super bikes and to the penguins — and it led to Seal Rocks before the mob on the other side sent the company broke. More importantly, it is the road that leads to San Remo and will get me home safe and sound. It leads to Phillip Island, Wonthaggi and Inverloch, which is a growing area.

The thing that concerns me most is that a Vicroads document was put out when Mr Craige was the roads minister. It was not Mr Craige's document but a document of Vicroads which put a very high priority on the duplication of the Bass Highway. Anybody who has travelled down to look at the penguins of recent times or gone down to look at the demise of the Seal Rocks project will have seen that the road has been duplicated around the area of the tram stop down towards the Gurdies. That was all programmed by the Kennett government and nothing, absolutely nothing, has been set aside — not 1 cent has been set aside by this government for the ongoing upgrading of the Bass Highway.

The total ignorance of this government of the importance of that road is a disgrace, an absolute disgrace. It is a major artery into the West Gippsland area. It is a major artery to the biggest tourist attraction in Victoria. It is tourist buses that go down there, loaded with people who have come from around the world to look at the penguins and who used to go down to look at Seal Rocks until the government sent the company broke. What is going to happen? Nothing is going to be done about upgrading that road any further than it is.

**Hon. M. R. Thomson** interjected.

**Hon. K. M. SMITH** — It is not good enough. The minister can laugh, but she had better not travel down that road because she will be putting her life at risk. It is an absolute disgrace what the Minister for Transport has done to the people of West Gippsland. He has not duplicated the Bass Highway. He has not looked after the Leongatha railway. I want something done down there for the people who are travelling into what will be my part of the electorate after the next election. Labor had better do it, or else.

## Responses

**Hon. M. R. THOMSON** (Minister for Small Business) — The Honourable Andrea Coote raised a matter for the Minister for Ports in relation to the deepening of the Port Phillip Bay shipping channels and asked what is the process for the environment effects statement. I will raise that with the minister for her direct response.

The Honourable Peter Hall raised a matter for the Minister for Tourism and the Minister for Environment and Conservation concerning the Orbost tourism promotional services and the fact that they have ceased to be funded and supported by the Shire of East Gippsland and is seeking support from the Victorian government to ensure that those services remain viable. I will pass that on to the ministers for their direct response.

The Honourable Elaine Carbines raised for the Minister for Health a matter concerning the Bellarine Peninsula Community Health Service in relation to a licence to have a further 30 extra beds down there for the frail and aged. The federal government will not fund the extension of the facility to enable that to occur and she seeks the minister's advice on how to proceed from here for that community to meet its needs.

The Honourable Andrew Olexander raised a matter for the Minister for Education and Training concerning Macclesfield Primary School maintenance. I will pass that on to the minister for her direct response.

The Honourable Barry Bishop raised a matter for the Attorney-General concerning the Mildura courthouse and the advice on acceptable tenders and whether there is a definite date for commencement. I will pass that on to the Attorney-General for a direct response.

The Honourable Gordon Rich-Phillips raised a matter for the Minister for Community Services concerning concessions for municipal rates for pensioners. I will pass that on to the minister for her direct response.

The Honourable Jeanette Powell again raised with me the matter of the drought and communities. An interdepartmental committee is working to provide a whole-of-government support for drought-affected areas and to meet those needs, so that is occurring. There are meetings with communities to discuss ways in which they can be supported.

The Honourable Cameron Boardman raised a matter for the Minister for Health concerning the Frankston Hospital. I will pass that on to the Minister for Health.

The Honourable Carlo Furletti raised a matter for the Minister for Ports from a constituent in relation to marine safety regulations and apparent breaches that are occurring.

The Honourable Ken Smith raised a matter for the Minister for Transport in relation to the Bass Highway. I will pass that on.

**Motion agreed to.**

**House adjourned 11.10 p.m.**