PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FIFTH PARLIAMENT

FIRST SESSION

25 November 2003

(extract from Book 7)

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By authority of the Victorian Government Printer

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The Lieutenant-Governor

Lady SOUTHEY, AM

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FIFTY-FIFTH PARLIAMENT — FIRST SESSION

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Mr GAVIN JENNINGS

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The Hon. P. R. DAVIS

Deputy Leader of the Opposition:
The Hon. ANDREA COOTE

Leader of the National Party:
The Hon. P. R. HALL

Deputy Leader of the National Party:
The Hon. D. K. DRUM

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Drum, Hon. Damian Kevin	North Western	NP	Smith, Mr Robert Frederick	Chelsea	ALP
Eren, Hon. John Hamdi	Geelong	ALP	Somyurek, Mr Adem	Eumemmerring	ALP
Forwood, Hon. Bill	Templestowe	LP	Stoney, Hon. Eadley Graeme	Central Highlands	LP
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Hirsh, Hon. Carolyn Dorothy	Silvan	ALP	Vogels, Hon. John Adrian	Western	LP

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TUESDAY, 25 NOVEMBER 2003

Tuesday, 25 November 2003

The PRESIDENT (Hon. M. M. Gould) took the chair at 2.02 p.m. and read the prayer.

ROYAL ASSENT

Message read advising royal assent to:

Electoral (Amendment) Act
Emerald Tourist Railway (Amendment) Act
Residential Tenancies (Amendment) Act
Road Safety (Amendment) Act.

QUESTIONS WITHOUT NOTICE

Budget: surplus

Hon. PHILIP DAVIS (Gippsland) — I direct a question without notice to the Minister for Finance. I refer to the Auditor-General's 2002–03 report on Victoria's finances. Victoria's operating surplus has declined by an average of $660 million a year under the Bracks government — it now is only $54 million. Given that the government is relying on circumstances outside its control, such as property prices and investment returns, to keep the budget in surplus, will the minister assure the house that the government will stand by its commitment to a budget sector surplus of $100 million?

Mr LENDERS (Minister for Finance) — Yes.

Supplementary question

Hon. PHILIP DAVIS (Gippsland) — With expenditure growth exceeding revenue growth in every year of the Bracks government, how does the minister plan to achieve the government's surplus promise if the property boom or the recovery in international financial markets stalls?

Mr LENDERS (Minister for Finance) — The government has had a target of a $100 million operating surplus, which the government has met every year and has exceeded every year. The government has done that by balancing its requirements of service delivery — whether that be police, teachers, nurses, infrastructure or services to regional Victoria, or whether that be paying down debt, paying off unfunded liabilities or building for the state and cutting taxes. In all these areas the government has met its requirements by prudently managing its budget within the guidelines it set.

As I have reported to the house earlier, the government does not believe in having lazy surpluses, it wants them to work for Victorians. It wants them to work to build infrastructure and to deliver services, and the government has kept that balance. We hear what the Auditor-General says; we share his views — you need to balance these things, and that is what you do with budgets. Some of these things go up and down. We have balanced it, and AAA is here to stay with a balanced budget.

Wind farms: Challicum Hills

Mr PULLEN (Higinbotham) — Will the Minister for Energy Industries inform the house of progress in developing Victoria's renewable energy industry, and in particular advise of the community's response to the opening of the Challicum Hills wind farm?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — I thank the member for his question. At the weekend I, along with the Deputy Premier, John Thwaites, attended the opening of the Challicum Hills wind farm near Ararat. This wind farm is so far the largest wind farm in Australia and perhaps in the Southern Hemisphere. It has the ability to provide 25 000 homes with renewable, clean, green electricity. It represents a major milestone in the development of Victoria's renewable energy base. But this is not just about renewable energy; it is about jobs and economic development in regional Victoria, and importantly in the case of Challicum Hills, it was done without a single objection during the planning stage.

People in country Victoria are getting behind wind and supporting wind, and Challicum Hills is an example of that. Hundreds of people attended the opening. Among them were the local mayor, councillors and industry leaders. Members of Parliament attended — the member for Ripon in the other place was there, and even the federal member for Wannon, David Hawker, was there. Where was the state opposition? Given the importance of this event and given the fact that we are talking about the largest wind farm in Australia and in the Southern Hemisphere, you would have thought there would have been some interest from the opposition in this important development. At the opening the opposition was conspicuous in its absence. Let me make it clear: Robert Doyle was invited. Did he turn up? No. Bill Forwood was invited. Did he turn up? No. Ted Baillieu was invited. Did he turn up? No. Three noes! That is the level of commitment the opposition has to this important industry.

Members of the opposition are clearly only interested in scaremongering and making cheap political points in relation to this important industry. They want to destroy this industry. They are not interested in success stories

when it comes to wind power in this state. Unlike the opposition, the government is getting on with the job of delivering renewable energy in the state. We are delivering on our target of from 4 per cent to 10 per cent of energy from renewable energy sources by 2010. That is the government's target; it is a massive target. It wants to facilitate 1000 megawatts of wind energy in the state by 2006.

This government has called upon the federal government to help facilitate that by increasing the mandatory renewable energy target to 19 000 gigawatt hours by 2010. Those are the actions this government has taken. When the opposition had a chance to do something of substance to support an important wind farm that is inland and was established without any objections from the local community, it was missing in action.

Budget: government business enterprises

Hon. PHILIP DAVIS (Gippsland) — I direct a question without notice to the Minister for Finance, and I again refer to the Auditor-General's report on Victoria's finances. Given that the net surplus in the general government sector would have been $62 million instead of $236 million if an extra $174 million had not been squeezed from government business enterprises last year, can the minister explain and justify taking an additional $145 million of additional dividends from Victorian water authorities and increasing their level of debt and liabilities during a year of exceptional drought?

Mr LENDERS (Minister for Finance) — Governments in this state for the last 148 years of responsible government and before in the days of an appointed Legislative Council have found various ways in which they draw to fund the state. Some of those are taxes; some of those are sale of assets; some of those are drawing dividends from government-owned instrumentalities. The Auditor-General has commented on this drawing of dividends from government-owned enterprises, but it has been the practice of governments of all political persuasions right through Victoria's history.

The number of government enterprises that dividends can be drawn down on has diminished significantly in the last decade due to the savage slashing, burning and flogging off of assets by the disgraced Kennett government. Following those seven years when gas, electricity and water was sold off by the Kennett government at various times, of course the capacity of governments to draw down on dividends has diminished.

This government, like the Kennett government before it, the Thompson and Hamer governments before it, the Bolte government, the Cain government, and even going back to the Country Party governments of Albert Dunstan, has drawn down dividends from government-owned enterprises. There is nothing untoward and nothing out of the ordinary for governments to prudently draw down dividends on government-owned enterprises. Governments do that following an assessment being made of whether it is appropriate and if it is an appropriate place to draw the revenue from. The Treasurer makes that assessment each year for government-owned enterprises.

The Treasurer made an assessment which was prudent and based on, as the Auditor-General has reported, a series of factors. In our comments in the report, the Treasurer and I, as finance minister, have commented on the reasons the Treasurer did it and why it was appropriate.

The Auditor-General has put out a report. He has commented on a practice that has existed for 148 years through every government, and the reasons why the government made that call are quite open and transparent and in the report.

Supplementary question

Hon. PHILIP DAVIS (Gippsland) — As the dividends taken from the water authorities were 69 per cent above the 2002–03 budget, what increase in dividends can be expected this financial year to help prop up the 2003–04 budget?

Mr LENDERS (Minister for Finance) — As I outlined in my answer to the initial question, the Treasurer makes a determination each year of what dividends can be drawn out of government-owned enterprises. That is an issue on which the Treasurer makes a ministerial determination and is an issue more correctly addressed to the Treasurer.

Commonwealth Games: athletes village

Ms ROMANES (Melbourne) — I refer my question to the Minister for Commonwealth Games. I ask the minister to advise the house of what action the Bracks government has taken to ensure that residents local to the site of the Commonwealth Games village in Parkville are kept informed of developments on the site.

Hon. J. M. MADDEN (Minister for Commonwealth Games) — I welcome the member's question. Ms Romanes has been particularly supportive of community representation in relation to the

Commonwealth Games, and I compliment the member on her active involvement in the process.

As members of the chamber would well be aware, the Commonwealth Games village will be located on the site of the former psychiatric hospital at Parkville and will provide accommodation for approximately 6000 athletes and officials during the Commonwealth Games in March 2006.

As part of that commitment and the Bracks government's commitment to involve the community in the development of the village, in February 2003 we established the Commonwealth Games village planning advisory committee as part of the public planning process for the village. The committee was instructed to take into account matters relating to the Commonwealth Games village development.

As part of its report the planning advisory committee recommended that a communications strategy directed at residents and affected stakeholders for the duration of the construction period and during the games mode be developed. In line with that and in response to this recommendation, the government committed to undertake a village development community information program throughout the construction — —

Honourable members interjecting.

Hon. J. M. MADDEN — I hear members of the opposition laugh. It is interesting, isn't it? They have only recently discovered the word 'consultation', and even now they are sceptical of it!

As part of our commitment to the program, we are ensuring that this is achieved. I am pleased to advise the house that a community consultative committee is being established in line with those recommendations. The main purpose of that committee will be to provide a forum for the communication of key issues relating to the impact of the games village development on local residents and surrounding areas.

It will report to the games village project control group and will consider issues relating to: traffic and transport; construction management and environment management plans; a community plan; and games mode operations.

As part of its terms of reference the committee will identify operational matters that potentially impact on local residents and surrounding areas. It will ensure key stakeholders views are considered during the development of the construction management and environmental management plans, and that also relates to a community plan and issues relating to traffic and transport and games mode operations. Also, the committee will provide input into the effective communication of information about the development to the local community.

I am also pleased to announce that this community consultative committee will be chaired by the member for Tarneit in the other place, Mary Gillett, who is the Parliamentary Secretary for Volunteers and Commonwealth Games. This proves that we as a government will deliver an outstanding Commonwealth Games, and it is another example of the Bracks government listening and working in partnership with the Victorian community.

Automotive smash repairers: code of conduct

Hon. P. R. HALL (Gippsland) — My question without notice is directed to the Leader of the Government in his capacity as Minister for Consumer Affairs, and it concerns automotive smash repair businesses and their relationship with insurance companies. I am aware that this matter was raised in the house on the adjournment debate by Mr Noel Pullen on 7 October; I am also aware that the minister wrote to the Victorian Automobile Chamber of Commerce about the matter on 26 August. In both responses the minister indicated the issue was being referred to the Australian Competition and Consumer Commission to seek resolution on a national basis. I ask the minister: what progress on this issue has been made since the ministerial council meeting of 1 August?

Mr LENDERS (Minister for Consumer Affairs) — I thank Mr Hall for his question and ongoing interest in the area of crash repairs.

As Mr Hall and certainly Mr Pullen before him have raised, this is clearly an ongoing issue that a number of small businesses — crash repairers, who probably more pertinently fall into the portfolio of my colleague Marsha Thomson — come to ministers in government saying that they are trying to do their business. They are seeking to do it and have a competitive market where lots of small traders are offering a service. Their anxiety is that some of the larger insurers effectively pick and choose and regulate which consumers go to them. They then, ironically as small businesses, effectively almost squeeze consumers because they cannot provide their market when there is such a narrow field of large insurers.

When you look at it from the perspective of the consumer who has a crash repairer — and we have probably all been in that situation where — —

Hon. Andrea Coote — I hope not!

Mr LENDERS — Mrs Coote says I hope not, but I certainly concede that some years ago I needed to take a car to be fixed. I must admit that I took the car into the depot, the depot sent me off to work in a taxi, and I came back some days later and picked up the car. I found that a good consumer service.

The issue Mr Hall and Mr Pullen earlier have referred to is how we as a government get the balance between small businesses trying to compete for business and dealing with the consumer interest of small businesses against the large insurers and consumers against everybody, I guess. The government has looked at whether it can do things under its own jurisdiction and powers. Certainly from the perspective of the state we try to ensure that consumer and business interests are met. We think a guaranteed way of making that work most effectively is to get consistency between jurisdictions.

A range of issues come into play. As Mr Hall said, I put this on the agenda of the ministerial council meeting which met some months ago, and the meeting has asked the Australian Competition and Consumer Commission (ACCC) to explore this from its perspective — a national and regulatory perspective — to see if it can work on getting that balance right across all jurisdictions.

The Standing Committee of Officials of Consumer Affairs is meeting as we speak, if not later this week. It is on its agenda, and I expect progress to be reported to the next ministerial council which, I believe, is some time in the first half of next year. At this stage it is in the hands of the federal regulatory body to advise us.

We do not want to go down a path where we are blindly introducing regulation that stifles business and does not assist consumers. The most effective way is through a federal approach. We will await the federal outcome. When the report comes back to us we will act as a state if we need to.

The message that I have for consumers in Victoria is that we seek federal approaches. As Mr Olexander well knows, when the federal government was asleep on the job on the issue of ethanol, the state government acted on its own. In this situation we await the report of the ACCC. Mr Graeme Samuel, the chair of the ACCC, is most aware of these issues, and he is a Victorian. I will be waiting for the ACCC's response first and for it to report to the ministerial council.

Supplementary question

Hon. P. R. HALL (Gippsland) — Given that smash repair businesses, particularly in regional Victoria, are coming under extreme financial pressure because of the influence of and the unrealistic payments being made by insurance companies, the viability of those businesses is under severe pressure. I appreciate that the minister has given an indication that he is prepared to wait for the federal jurisdiction, in this case the ACCC, to come up with making recommendations, but I seek a commitment from the minister that if this issue remains unresolved post Christmas as to whether the Victorian government will implement its own actions to deal with this matter in this state.

Mr LENDERS (Minister for Consumer Affairs) — I would first like to see what the ACCC's report says before giving that commitment. The preliminary view of the ACCC is that:

> a legislative regime, is at this stage not warranted;
>
> a nationally consistent approach is required that will reduce costs and uncertainty for business and consumers.

It also says that:

> the matter needs to be considered as a business to business issue; and,
>
> there is scope for industry to address the issues cooperatively.

I would want to first consider the final review of the ACCC, but I say to Mr Hall that we want to support small businesses and consumers and a market that works. That is a mindset that we will use when we receive these reports.

The PRESIDENT — Order! The minister's time has expired.

Information and communications technology: government appointments

Ms HADDEN (Ballarat) — I refer my question to the Minister for Information and Communication Technology, the Honourable Marsha Thomson. The government announced earlier this year that it would be appointing a whole-of-Victorian-government chief information officer and a chief technical officer. Can the minister inform the house of the progress of these appointments?

Hon. M. R. THOMSON (Minister for Information and Communication Technology) — I thank the honourable member for her question, and I am pleased to be able to announce to the house that the Bracks government has appointed its first

whole-of-government chief information officer (CIO) and chief technical officer (CTO). These are landmark appointments, because Victoria is the first of any state or territory government to establish such positions, and they confirm Victoria as a leader in e-government.

The appointment of Patrick Hannan as the CIO will assist the Bracks government to deliver our e-government strategy by providing authoritative advice and strong leadership on our major information and communications technology (ICT) issues right across the government. Mr Hannan has extensive experience in strategic planning and aligning ICT with business goals, including most recently acting as the inaugural CIO of the commonwealth defence department — not a small job at all. It makes him an excellent choice to be the first state-appointed chief information officer.

Appointed as the CTO is Mr Tony Aitkenhead, who will hold responsibility for the management and delivery of whole-of-government ICT contracts and projects such as the telecommunications purchasing and management strategy, which you have all heard me talk about in this house, Project Rosetta and Victoria Online. Mr Aitkenhead has come to the position with extensive experience in implementing large-scale ICT projects in various government departments and currently is in the Department of Human Services and has been doing a fantastic job with its e-government strategy for health.

The office of the CIO will provide a dedicated focus on the Victorian government's internal ICT policy, while Multimedia Victoria, in which the CTO's office will be located, will continue to be responsible for delivery of the government's ICT strategy and industry development for this state.

The Bracks government recognises the importance of innovation and new technology and the role it has to play in providing better government to the people of Victoria. It also adds to the economic growth of Victoria.

Does the opposition have an ICT policy? No, the opposition has no ICT policy — not one. But the Bracks government has not only a well-developed ICT strategy but a well-developed e-government-focused vision for delivering better government to all Victorians. On e-government the Bracks government is delivering.

Aged care: staff

Hon. ANDREA COOTE (Monash) — My question without notice is directed to the Minister for Aged Care, the Honourable Gavin Jennings. The 2003 community visitors annual report is a damning indictment against the department. The Public Advocate condemns the minister's department for neglecting the frail and elderly within our community, and the report says:

> Community visitors do not believe that these vulnerable frail elderly people are receiving the specialised care they need.

My question is: what has the minister done to address the deficiencies in professional standards, including a reliance on untrained staff?

Mr GAVIN JENNINGS (Minister for Aged Care) — I thank the member for the question. It is in fact a terrific question, because it demonstrates that there is a degree of concern and compassion out in the Victorian community for the care of those residents in supported residential accommodation throughout Victoria. Indeed, the community visitors who visit these institutions during the course of the year play a fantastic role on behalf of the Parliament and the people of Victoria.

As most members of the community understand, these are, by and large, private sector houses which bring accommodation care to 7000 Victorians. Of that 7000 the vast majority live in circumstances where they receive the appropriate degree of support from the proprietors of supported residential accommodation. However, there are some circumstances where the accommodation standards of those providers fall short.

The community visitors have done Parliament and all of us a service by providing documentation of their visits last year. There were 122 community visitors throughout Victoria, and they visited the 217 facilities across Victoria on about 1600 occasions during the course of the year. In 90 per cent of the cases for 90 per cent of the accommodation and for 90 per cent of the residents they gave a clean bill of health, but they did not give a clean bill of health to a number of services that are sorely lacking.

The question is: what is being done about that? For the last 8 if not 10 months urgent action has been undertaken by the quality assurance team of the Department of Human Services to turn around the situation where proprietors fall short of their obligations. They are required to develop personal care plans for each and every one of the residents in their care. It is their responsibility to ensure that the

residents' medication and recreational opportunities are provided for. Through quality assurance the accredited officers of the Department of Human Services are trying to ensure in a timely way that any issue that is drawn to the attention of the Department of Human Services is rectified immediately. That is a priority.

I would welcome the opposition spokesperson taking the opportunity to talk to the community visitors about whether there has been an enhanced turnaround time in the follow-through of issues they draw to the attention of the Department of Human Services. She will find the answer is yes.

I will be meeting with the community visitors shortly to talk about other ways in which we can improve the business performance and the quality of performance within the sector. Before this parliamentary sitting is finished I might come back to talk about some important reforms in relation to the business management regime within the supported residential services sector, because it is very close to being completed. Before the end of this sitting we should all be able to celebrate the enhanced capacity across the sector — —

Honourable members interjecting.

Mr GAVIN JENNINGS — There will be a ministerial statement on this subject probably during the 4 minutes available to me at a future question time.

Recently I joined with the sector in publicising a document which outlines the rights and responsibilities of residents and proprietors in terms of supported accommodation. Not only was that well received by the sector, but the community visitors themselves stood on the podium with me and said this is an important initiative. They recognise that important work is being done to improve the lot of residents of supported residential accommodation in Victoria.

Supplementary question

Hon. ANDREA COOTE (Monash) — I hope the minister addresses this issue in his next diatribe. My supplementary question is: why are there inadequate staff numbers and in some cases a lack of upright overnight staff specifically?

Mr GAVIN JENNINGS (Minister for Aged Care) — The specific question the member has drawn attention to is legitimate; it is to make sure of an important level of staffing. In the majority of services there is adequate care, but in some circumstances, particularly with services that are known as the pension-only sector — that is, facilities where the only income is based on the pensions of the residents — the economic viability is marginal. In the last few years the Bracks government has put specific emphasis on ensuring a high level of support for these accommodation facilities. In the last budget over $13 million was allocated to home and community care for residential services in the future, and in the future we will be addressing this question.

The PRESIDENT — Order! The minister's time has expired.

Consumer affairs: trade measurement

Hon. J. G. HILTON (Western Port) — I refer my question to the Minister for Consumer Affairs. Can the minister inform the house what the Bracks government has done to ensure that Victorian consumers are getting what they have paid for when buying their weekly groceries?

Mr LENDERS (Minister for Consumer Affairs) — I thank Mr Hilton for his question and for his ongoing interest in consumer affairs. I have seen Mr Hilton in action with some of the senior citizens groups in his electorate. He knows that grocery prices are a big issue for a lot of people in his electorate of Western Port Province, and particularly for those down in Bass Coast Shire.

Mr Hilton has asked what the government is doing to ensure that what you see is what you get. It is a very good question and, in some senses, it is a difficult one for governments to deal with.

Governments can pass legislation requiring corporations to deal with consumers in a certain way, and this government does that. We made amendments to the Fair Trading Act, the Trade Measurement Act and a number of other acts. Governments can also provide information through education in the community, and this government does that. One of the ways that we as a government operate in our interface with business is to try and find areas where compliance with the law is not working, and then to try and engage with those businesses in a mutual and respectful situation where we deal with the compliance issues.

Clearly the underweight and undermeasure issue is an ongoing problem that hurts consumers because they do not get what they pay for, which undermines confidence in the entire retail system, but it also hurts businesses. Businesses get fines from government, they have compliance costs and ultimately they lose market share if they have a bad reputation.

The government has put out the *Guide for Packers, Importers and Sellers of Pre-packaged Foods, Beverages and Groceries*. Mr Hilton will be interested in a suggestion I have — that is, that Mr Olexander should read this guide closely!

This guide is specifically designed to equip manufacturers to make the correct decisions that protect consumers by giving them the right measurement when they go into a shop but also to protect the manufacturers' reputation by ensuring that their quality assurance procedures are enhanced. That is of critical importance.

On 13 November I opened a conference across the road from here at which this guide was launched. We had 188 industry representatives come along to the launch of this package. I opened the session, and various officials from Trade Measurements Victoria, which is part of Consumer Affairs Victoria, spoke about compliance in governments and other issues to try and persuade industry why it was in their interests to be with consumers with the same interests.

This book is full of a lot of helpful hints for industry. One example we used concerned a quality assurance manager in a large company who goofed. In the end the product recall cost millions of dollars, so the government is trying to assist businesses to make the correct decisions so they do not find these problems, and that helps consumers.

The title page of the guide is headed 'Purpose of this guide', and it sums up what the guide is all about. It states:

> Increased understanding of and compliance with trade measurement requirements, including labelling of packages
>
> Minimisation of overfill —

which is again in the interest of companies, because they do not waste money putting in extra product —

> Reduction of raw material wastage
>
> Increased buyer satisfaction and confidence
>
> Increased profitability

The penultimate purpose — that is, increased buyer satisfaction and confidence — is ultimately the one that goes directly to Mr Hilton's question about what the government is doing to assure consumers. We are enforcing our laws. Although we could do it through inspectors, fines and a whole range of things, the most effective way is to ensure that the manufacturers and retailers themselves see it as being in their interest, for the protection of their reputation, to put in the packages what is meant to be in them.

The government is dealing with consumers and with business. We have them working together, and we have a good outcome. This government is listening, acting and governing for all Victorians, and that is a good outcome.

Royal Children's Hospital: AKZ Consulting

Hon. D. McL. DAVIS (East Yarra) — I direct my question to the Minister for Finance. By way of example I refer the minister to the consultancy contract between the Department of Human Services and the firm AKZ Consulting, which is owned by Andrejs Zamurs and Kerrie Cross-Zamurs. How do accredited purchasing units within departments like the Department of Human Services report those instances where government guidelines on tendering are either not observed or are waived?

Mr LENDERS (Minister for Finance) — Mr David Davis has asked a very specific question on what the advice would be in the Department of Human Services.

Hon. Philip Davis — You are responsible for the providers.

Mr LENDERS — I can answer Mr David Davis without Mr Philip Davis's assistance. He may feel threatened that Mr David Davis is doing the numbers on him, but I can answer without his assistance.

By example of the Department of Human Services, I can answer him in general terms, or I can take it on notice and get him a specific answer as it applies to the policy. I will take it on notice and get him a specific answer.

Supplementary question

Hon. D. McL. DAVIS (East Yarra) — I appreciate the fact that the minister will come back to the chamber with a specific example — before the Parliament rises, I am sure. I also ask him how are contracts where the guidelines have not been followed reported to the Victorian Government Purchasing Board, and in what circumstance is he, as minister, advised of such matters.

Honourable members interjecting.

Hon. Philip Davis — Let him answer.

Mr LENDERS (Minister for Finance) — Again, my eternal gratitude to Mr Philip Davis, who is acting as my interpreter and now my protector: I am eternally in his debt. I am pleased that this goodwill has broken

out in this chamber since last week, when things were — —

Hon. B. N. Atkinson — Once you sleep together ...

Mr LENDERS — I will not pick up Mr Atkinson's interjection!

On the specific issue that was raised, I draw the house's attention to Mr Roger Hallam's response to a question from Mr Theophanous, of all people, on 4 June 1996. It is one that finance ministers periodically get; they are asked questions by members opposite about areas of other ministers' responsibility. I will take — —

The PRESIDENT — Order! The minister's time has expired!

Housing: high-rise estates

Ms CARBINES (Geelong) — My question is to the Minister for Housing. As the minister is well aware, much of Victoria's public housing stock is located in large inner urban towers. Can the minister provide the house with an update on how the Bracks government is improving the condition of the high-rise buildings?

Ms BROAD (Minister for Housing) — I thank the member for her question and her continuing interest in the Bracks government's actions to improve Victoria's public housing high-rise towers. The government is committed to improving high-rise public housing. We are investing in a strategy that improves the physical as well as the social environment, improves security, improves building and tenancy management and enhances the role of tenants in the management of the buildings they live in. A major component of the Bracks government's strategy for the high-rise buildings is implementing a program of progressive physical improvements.

I am happy to provide the house with an update on the progress we are making. In 2002–03 the program provided for major upgrading of 271 units. In older persons' buildings 146 bed-sits were converted to 72 one-bedroom units, and the fire safety programs in all 13 buildings were completed. In 2003–04 the Bracks government has allocated around $67 million for upgrading the high-rise buildings.

It is important that this is seen in the context of the government's overall commitment to the improvement and physical upgrade of all Office of Housing stock including the high-rise towers. Last financial year we invested a total of some $170 million to improvement and upgrades and a further $85.8 million to maintenance, and we plan to make a similar investment this year. Since coming to office the Bracks government has invested almost $600 million in improving and upgrading public housing stock.

Maintaining and refurbishing Victoria's high-rise buildings is not just the socially responsible thing to do by Victoria's public housing tenants; it is also the financially responsible thing to do by all Victorians. The towers, indeed all of Victoria's public housing stock, represent a significant amount of state government assets — around $10 billion in fact.

Because it is a responsible economic manager, this government will continue to ensure that that stock is constantly improved and upgraded. This is in stark contrast to the actions of the former Kennett Liberal-National party government. When it was in government it allowed billions of dollars of public housing stock to simply run down and rot. It spent a shameful $7 million over the seven years it was in office improving our ageing family high-rise housing stock, in contrast to the $9 million it spent doing up 1 Treasury Place for itself.

The Bracks government will continue to get on with the job of improving and refurbishing our high-rise assets, because it is the socially responsible thing to do as well as the financially responsible thing to do for all Victorians.

QUESTION ON NOTICE

Answer

Hon. P. R. HALL (Gippsland) — I seek an explanation as to why I am yet to receive an answer to question 940 on the notice paper. This question was asked on 7 October of this year. It is a question to the Minister for Local Government for the attention for the Minister for Water. I wrote to the Minister for Local Government last week seeking an indication of when I was to get an answer. Now I need to formally raise in the house why I am yet to receive an answer to that question.

Ms BROAD (Minister for Local Government) — I thank the member for his correspondence. I will raise the matter with the Deputy Premier, the Minister for Water, and ask him to expedite a response to the member.

MEMBERS STATEMENTS

Leader of the Government: performance

Hon. BILL FORWOOD (Templestowe) — Last week this Parliament was reduced to a position of contempt and ridicule before the people of Victoria by the incompetence and ineptitude of the government led by a petulant little schoolboy who masquerades as a leader. It is apparent to everybody that the Leader of the Government has been in this place for less than 5 minutes and he certainly does not understand how the place operates.

All his behaviour last week led to was a situation where it was demonstrated time and again that Mr Lenders is completely out of his depth. You do not have to believe me on that — talk to his backbench, because members of his backbench came over and said, 'Gee, wasn't he bad last week? He did not know what he was doing'. We could do nothing but agree. And then what did he do?

Honourable members interjecting.

The PRESIDENT — Order! I ask the house to come to order to allow Hansard to record the proceedings of the house.

Hon. BILL FORWOOD — And then outside he goes and lays a few porky pies before the television, a few more lies to the radio stations, trying to shift the blame for the behaviour he perpetrated in this place. As everybody knows, under standing order 9.2.4 the Leader of the Government could have brought the proceedings to a close at any time. He could have done it at any time. He was not prepared at 4 o'clock; he was not prepared at 10 o'clock; he was not prepared at — —

Honourable members interjecting.

The PRESIDENT — Order! The honourable member's time has expired.

Terrorism: Istanbul bombings

Mr SOMYUREK (Eumemmerring) — I rise to condemn the terrorist bombings in Istanbul last week that destroyed the British Embassy, killing 27 and injuring hundreds of others. Among the dead was Mrs Nazime Erkmen, a 58-year-old woman who was a member of Australia's Turkish community. My condolences go to the family and friends of Mrs Erkmen.

The bombings in Istanbul, like those in New York and Bali, were acts of bastardry planned and carried out by the most nefarious terror organisation in the world — al-Qaeda. Much has been made of the so-called theory of the clash of civilisations between the West and Islam. However, the Istanbul bombings show that the clash is between terrorism and civilisation. Turkey was no doubt chosen as a target due to its pro-Western policies and its thriving, secular, liberal democratic political structure. The Turkish nation has endured a lot of pain and spilt much blood as it has built its democracy — and no amount of bombs from terrorist groups such as al-Qaeda will lessen the resolve of the Turkish nation to retain what it has proudly built.

The Istanbul bombings also demonstrate that while much of the discussion surrounding the al-Qaeda attacks has concerned American, British and Australian military involvement in Iraq and Afghanistan, these terror attacks are not about Iraq and Afghanistan. If they were, Turkey would not have been a target. These attacks are about a group of psychotic zealots attempting to achieve some ill-defined objectives by causing maximum destruction and mayhem to the international community and misery in families like the Erkmens.

Debate interrupted.

DISTINGUISHED VISITOR

The PRESIDENT — Order! Before I call the next speaker I draw the attention of the house to Mr Ken Clark, who is from the legislature of the state of Arizona in the United States of America. I welcome him to the chamber today.

Debate resumed.

Employment: mature age

Hon. ANDREA COOTE (Monash) — I refer to the recently announced program entitled 'Experience at work: building your 45-plus work force'. I totally agree with the whole thrust of this program and know it is endorsed by the Victorian Council on the Ageing. According to the report, workers aged 45 years and over are a significant and growing sector of Victoria's work force and they stay in the job for a longer time, with 66.6 per cent staying in a job for five years-plus, compared to 38.5 per cent for 25-year-olds.

It is pleasing to see that the government is now recognising this age group, and I am particularly interested to see whether it is as good in reality as its rhetoric. I wonder how many of the minister's retiring

employees in the departments of aged care and Aboriginal affairs are offered the option of returning on a casual or consultancy basis? I would like to ask the Minister for Aged Care to ensure that all of the age-balanced work force checklist items on page 24 of the guidelines are implemented in practice by all government departments.

John Curtin Memorial Hostel, Creswick

Ms HADDEN (Ballarat) — On 14 November 2003 I had the great pleasure of attending the opening of the extension of the John Curtin Memorial Hostel at Creswick. The new extension consists of 16 dementia beds and is named the Sir Alexander and Lady Millie Peacock Wing. The new function room is named after the late Bill Huntley. The John Curtin Memorial Hostel was opened by the then Labor Prime Minister, Mr Bob Hawke, in the early 1980s, and since then it has gone from strength to strength. It now provides 59 places and has an additional three respite places for hostel residents from Creswick and district.

I wish to congratulate the chief executive officer, Melinda Martin-Khan for her dedication to the redevelopment project, as well as to the residents' needs. I wish Melinda and her family well for their move to Brisbane in the new year. The members of the board of management, who are volunteers and community members, are also to be congratulated on their hard work in the planning stages for this new extension over the last few years. Also a big thankyou for the commitment, hard work and dedication of the staff and their families and the residents who proudly call the John Curtin Memorial Hostel their home.

Consumer and tenancy services: delivery

Hon. A. P. OLEXANDER (Silvan) — Eighteen agencies which are currently funded by Consumer Affairs Victoria under the statewide tenant and consumer support program are at risk. These services have been in existence for over 20 years and are an integral part of local community service provision. Agencies have been advised by the Minister for Consumer Affairs, John Lenders, that a new program service model is to be initiated. The proposed model, interestingly, does not include the funding of services in their current state of availability at the local community level. An outcome could mean the centralised delivery of phone service, conciliation and community education from the Melbourne office of Consumer Affairs Victoria. Members of the community are always at risk if they do not understand particular legislation and how it impacts on their tenancy or particular contracts as consumers. Agencies want to continue offering advice on a local level in relation to the Residential Tenancies Act, rooming house and caravan park provisions as well as consumer and fair trading legislation.

Workers understand what is happening within their community because they observe trends and have forged valuable networks with other community based agencies, with tertiary institutions and government departments. This did not happen overnight and took many years of nurturing and mutual respect for the best practice outcome of the client. I encourage community members to support statewide agencies to remain and continue to deliver real services by signing a petition that is circulating which will be presented to Minister Lenders — —

The PRESIDENT — Order! The member's time has expired.

Point Nepean: future

Hon. J. G. HILTON (Western Port) — On Sunday, after I had recovered from the event on Saturday night, I attended a rock concert at the Portsea pub. As someone whose favourite group is the Rolling Stones or as they are now described, the Strolling Bones, it was very much a journey down memory lane. The concert was free and the artists included members of Daddy Cool and Pictures, a local Melbourne-based band. The purpose of the concert was to save Point Nepean. The attendance was in the hundreds, and the audience was addressed by Will Baillieu, a local resident, and Chris Smyth, the president of the Victorian National Parks Association. The endorsed Australian Labor Party candidate for Flinders, Mr Simon Napthine, was also in attendance. Not one person wanted the disintegration of Point Nepean. Everyone wanted one park and one manager as per the state government submission. When is the commonwealth government going to listen to the people of the Mornington Peninsula?

Water: conservation

Hon. D. KOCH (Western) — I congratulate Mr Wavell Pyke of Stawell for bringing to my attention the red tape surrounding the Bracks government rebate on installing rain water tanks. Customers who purchase rainwater tanks with a minimum capacity of 600 litres and have them installed by qualified plumbers are eligible for $150 rebates under the Water Smart Homes and Gardens rebate scheme. Mr Pyke was frustrated, saying that in order to be eligible for the $150 rebate he had to forfeit $90 of the rebateable amount to meet compliance demands. Mr Pyke had to pay $90 to claim the $150 rebate — hardly an incentive to install a water

tank. Not good enough, Mr Bracks. This scheme is supposed to provide customers connected to mains water supplies with unadulterated rebates off their water bills for installing rainwater tanks.

Further to my adjournment debate contribution on 14 October, I again demonstrate the inequity of these rebates where only people connected to mains water are eligible for water-saving rebates. It shows how mickey mouse these rebates are. Surely if the Bracks government were serious about encouraging Victorians to use water wisely, it would ensure that total net rebates were applicable to applicants.

Geelong: triathlon world cup

Hon. J. H. EREN (Geelong) — I had the great pleasure of attending the International Triathlon Union world cup event held along the waterfront at Eastern Beach in my electorate of Geelong on Sunday. The event brought the spotlight of the world on to our waterfront as more than 100 athletes competed. The Geelong round of the event was a precursor to the world championship in Queenstown, New Zealand, next month, and needless to say the action was red hot.

Hundreds of people attended to catch a glimpse of the action, and I was happy to be in the thick of things afterwards, representing the minister in handing out medals to the winners. Once again this shows everyone that Geelong is indeed the place to be. It was a world-class event, and the visitors to the region I spoke to on Sunday were all impressed with the setting for the competition. It was good to see that Victoria can host world-class events away from metropolitan Melbourne, and it is a credit to the organisers that everything went so well.

I congratulate the organisers and the competitors, especially Craig Walton of Australia, who was first in the men's event, and Wieke Hoogzaad of the Netherlands, who took the women's honours. I would like to make a special mention of Geelong's Kate Allen, who came sixth in the women's competition. It was a terrific effort. Once again well done to one and all.

Vocational education and training: rural buses

Hon. B. W. BISHOP (North Western) — Peter Huttig, president of the Hopetoun Secondary College school council, wrote to me saying that for the past couple of years students from outlying areas like Hopetoun have been able to access vocational educational and training (VET) courses in Horsham, 120 kilometres away, by utilising a partially funded bus service. This service has three buses with one running from Hopetoun to Horsham, picking up students along the way. The service has been very effective and popular, and the number of students able to access VET programs has increased substantially.

Prior to the establishment of the bus service these students had very limited access to the range of VET studies. The Department of Education and Training has contributed towards the cost of running the buses which has been greatly appreciated by the community. Although no decision has been relayed as yet, there is a real concern that the department's funding may cease. That would have a dramatic effect on the students' capacity to access VET programs and would put at risk a number of the programs because of insufficient numbers.

A full user-pays system is too costly, and if students become reliant on parents for transport the whole community would be disadvantaged as there would be a big reduction in student numbers. This is an issue of student access and equity in country Victoria. I request that the Minister for Education and Training continue the funding for this important access to VET programs.

Legislative Council: sitting hours

Hon. KAYE DARVENIZA (Melbourne West) — In today's members statements we saw Mr Forwood strutting his stuff in an attempt to win back his backbench. The opposition knows full well that on Thursday night and Friday morning the government had an agreement with it to have four speakers, but the opposition broke that agreement. It reneged and ratted on the agreement. All the opposition intended to do was grandstand; it was a grandstanding operation. I congratulate our leader, Mr Lenders, on upholding the forms of the house.

Honourable members interjecting.

Hon. KAYE DARVENIZA — Members complain that the government did not use the gag to close down debate. That is the difference. This government showed democracy in action by letting the debate go on. What a laugh that members opposite should get out the standing orders. This is about Bill Forwood — —

Honourable members interjecting.

The PRESIDENT — Order! Mr Forwood has had his opportunity. I am sure Hansard wants to record this, just as it did the earlier one.

Hon. KAYE DARVENIZA — That is right. Mr Forwood knows how to dish it out, but he has to

learn how to take it too. This is about Mr Forwood being upset because last Thursday night and Friday morning he was not able to put the gag on Phil! That is what he wanted to do, but to date all he has done is grandstand for the backbench — —

The PRESIDENT — Order! the member's time has expired.

Glen Eira: candidates

Hon. C. A. STRONG (Higinbotham) — Yesterday I received a letter from Mr Paul Perlich of 1/411 Glen Eira Road, Caulfield North. It states:

> Re: Pullen's remarks on Glen Eira City Council elections …
>
> I am surprised to hear a politician by the name of Noel Pullen accuses me of running in two different wards, which I assume is illegal.
>
> I am frustrated to hear the Hon. Noel Pullen, MLC, (an elected member of Parliament) who I assume is at the age of more wisdom, can jump to conclusions without getting his facts right. Neither Mr Pullen nor his office had the decency to even contact me to verify who I was.
>
> I am Paul Perlich, I was an Orrong ward candidate in the March 2003 Glen Eira City Council elections, and I am not Paul Peulich, the Machie ward candidate.
>
> I am not related in any way to Paul Peulich or his family. I am not the son of Inga Peulich …
>
> …
>
> I was hoping if you, Mr Strong, could please clear my name from the blemish that Mr Pullen has put upon me, Paul Peulich and his family.

Unfortunately Mr Pullen is not here, but I would hope he would apologise — —

The PRESIDENT — Order! The honourable member's time has expired.

Kingfisher Festival

Ms ROMANES (Melbourne) — The Centre for Education and Research in Environmental Strategies (CERES) community in Brunswick celebrated the 10th anniversary of the Kingfisher Festival on Saturday evening, 22 November. Hundreds of children and adults participated in the formal ceremony and the colourful pageant of dance music and storytelling on the banks of the Merri Creek. A key message of the pageant was the need to conserve and share finite water resources, an important priority area for the Bracks government.

This incredible spectacle has been an annual event since the blue kingfisher was first spotted in the Merri Creek environs around 10 years ago. The Kingfisher Festival celebrates the return of the kingfisher and many other birds to the Merri Creek area. This has been possible only due to more than 20 years of community activity dedicated to revegetating the Merri Creek and conserving remnant vegetation along the creek.

A major theme of the Kingfisher Festival is the hope for the future and the natural environment that is symbolised by the giant kingfisher in the form of a kingfisher puppet which returns each year to the Merri Creek as part of the festival. Congratulations must go to CERES, and in particular to Cathy Nixon for her creative direction of yet another festival. It has become an important part of the Moreland calendar.

International Day for the Elimination of Violence Against Women

Hon. W. A. LOVELL (North Eastern) — Today is the International Day for the Elimination of Violence Against Women, also known as White Ribbon Day. White Ribbon Day is marked on 25 November each year and is an opportunity for governments, businesses and community groups to focus on a problem that affects many people in Australia and throughout the world. Violent crimes against women and girls — like domestic violence, sexual assault and people trafficking — are committed every day. It affects everyone in the community, and the white ribbon campaign provides a time for us to pay particular attention to this very important issue.

As the Liberal Party spokesperson for women's affairs, I am proud to inform the house of a Liberal Party policy position released last weekend that will provide greater protection to women and children who are the victims of domestic violence. A Liberal government will provide for senior police officers, with the verbal authorisation of a magistrate or bail justice, to issue immediate interim intervention orders for up to 72 hours in circumstances where the victim of domestic violence would be at clear risk of harm were their abuser not removed from the scene.

This policy aims to give victims of domestic violence immediate protection by cutting through red tape. It will ensure the victim's safety and encourage more women to report violence. I am proud that the Liberal Party is leading the way in providing protection to women in crisis.

Rugby World Cup

Mr SMITH (Chelsea) — I rise to congratulate the International Rugby Board for organising and presenting a magnificent tournament in Australia —

that is, the Rugby World Cup. I also congratulate all participating countries that added to the colour and drama of the contest. Who will ever forget the All Blacks versus Tongan challenge? The tourist spectators and the Aussie spectators demonstrated that there is much goodwill in the world today. The Wallabies were magnificent in defeat, and the English proved to be both impregnable and unstoppable.

I also wish to thank the Prime Minister, who showed the nation what a sour little man he is and the ungracious loser that he is. This was a pathetic example of bad sportsmanship, and it should not be tolerated or ever repeated.

YAZZ business group

Hon. B. N. ATKINSON (Koonung) — I wish to commend the Monash council-backed young business group called YAZZ which won a number of categories at the recent Victorian young achievement awards. Supported by the Monash City Council's small business counselling service, the council's economic development unit and the Monash Enterprise Centre, YAZZ won the awards for the best business plan and the most innovative product at that event. The group was also runner-up in the best annual report and company of the year categories, a great effort considering there were 25 tertiary teams vying for only eight awards.

The group of 13 students from a variety of backgrounds at Monash and Swinburne universities received support and business mentoring throughout the program, particularly from the City of Monash, which has a very active program of business mentoring for both young people and small businesses. The YAZZ group also received recognition at the young Australian trade expo, where it was awarded second place in the merchandising category.

The success of YAZZ follows the success of another organisation in the City of Monash, and a Monash Enterprise Centre tenant, Benchmarking Sales and Marketing, which was named Incubator Tenant of the Year at the Australian and New Zealand Association of Business Incubators awards in Sydney recently. It is the second Monash Enterprise Centre company to win an award and certainly recognises the value of the City of Monash program.

BUSINESS OF THE HOUSE

Program

Mr LENDERS (Minister for Finance) — I move:

> That, pursuant to sessional order 16, the orders of the day, government business, relating to the following bills be considered and completed by 4.00 p.m. on Thursday, 27 November 2003:
>
> Health Legislation (Further Amendment) Bill
>
> Forests and National Parks Acts (Amendment) Bill
>
> Wrongs and Other Acts (Law of Negligence) Bill
>
> Partnership (Venture Capital Funds) Bill
>
> ANZAC Day (Amendment) Bill
>
> Professional Standards Bill
>
> Transport (Rights and Responsibilities) Bill
>
> Animals Legislation (Animal Welfare) Bill
>
> Local Government (Democratic Reform) Bill
>
> Fair Trading (Further Amendment) Bill.

I am moving this motion today because I think it is critical that we get through government business before the end of the sitting, which is the end of next week. The government has gone into this session with a plan that the legislation be reasonably spaced to allow both houses of Parliament adequate time to consider it. That has generally involved in the order of six to seven pieces of legislation a week. Many members have said we need a better plan so we do not have the clutter of legislation at the end and so that as a sign of respect to the house it can discuss these things over a period of time.

To facilitate the remaining 20 bills we need this business program. I make the observation that several weeks ago this house was under-utilised. Legislation was in the public ether, in that it had been second-read in the Legislative Assembly and in some cases the opposition spokespersons in this chamber had been to briefings and been to party room meetings. However, the Liberal opposition would not give leave for those bills to be considered when there was a lot of time for this house to consider them. On a Tuesday and a Wednesday we finished business in this house at dinner time and we missed a Thursday, which is time that could have been used.

The government has a program of 20 bills. We need them to be passed in the remaining two weeks. That is why we are putting this motion to the house. It will facilitate our passing 10 bills a week.

This is an important raft of legislation. There is nothing frivolous about it. We have some fairly fundamental legislation, whether it be the Wrongs and Other Acts (Law of Negligence) Bill or the Professional Standards

Bill, which deal with stabilising professional indemnity insurance in my portfolio areas, or whether it be the Partnership (Venture Capital Funds) Bill, which is about bringing jobs to Victoria, or whether it be in other ministers' portfolios. There are some fairly emotive pieces of legislation, such as that regarding Anzac Day, and of course we have to finalise the local government legislation. There is a lot on the agenda. It is a very impressive program.

We, as a government, have to date been reluctant to have business programs on the basis that things can be organised and expedited by agreement. We singularly did not succeed in that several weeks ago. I do not accept the argument that was put, that there needed to be community consultation, because the bill was going through the other house. There was a lot of time. I still do not understand why leave was not given in the other house. However, it is the prerogative of an individual member not to give leave, and the house did not have a business program at the time, so I will not reflect on that.

This program will enable us to have considered debate on 10 pieces of legislation this week. The ability to do this was envisaged when the sessional orders came into place, to stop people filibustering for the sake of filibustering.

This is a way to try to at least spread it out so in the end there is a conclusion. People can clearly filibuster within, and that is the prerogative of individual members. This is a way, and it is the government's response to being able to present a measured legislative program for the house to consider this week and the following week. I commend the program to the house.

Hon. PHILIP DAVIS (Gippsland) — In relation to the government's proposal for a business program this week, the opposition has consistently said in this place that business programs are unnecessary if the government can organise its legislative program more effectively.

Irrespective of whether or not a member gives or refuses leave for a particular bill has no bearing on the flow of legislation into this place from the Legislative Assembly. The reason we have 21 items of business to deal with in two sitting weeks is because the government has consistently been unable to manage its legislative program.

The reason we have a government business program is confirmation of that, because the government is indicating quite clearly that the only way it can get through the legislation it proposes to deal with this sitting is to have the threat of a guillotine hanging over the house.

I think it is shambolic how the government legislative program has worked. What happened last week in this place, when the government rammed through in two days significant changes to planning laws, was an outrageous abuse of parliamentary process. For that reason, I oppose the government business program.

Hon. P. R. HALL (Gippsland) — The Nationals have never been totally in favour of government business programs. We think this house works much better if there is a degree of flexibility and cooperation between all parties. From the National Party's point of view I can proudly say that we extend full cooperation with the government and opposition in getting the necessary business through this chamber without the need for a government business program.

We have not always been in favour of government business programs. On the other hand, it was 5.00 a.m. last Friday that I made the comment that the tasks we were asked to do at that hour of the day reflected poorly upon us as legislators and that we could not possibly consider ourselves to be responsible in the way the house sat and conducted business throughout the course of Thursday night and Friday morning. That reflects poorly on all of us as members of this house, and I am not about to open up the argument and apportion blame to any one individual on that issue now. I hope that at least having a government business program to work to this week will mean we never get into that situation again of where we are forced to deal with legislation through the early hours of the morning.

In respect of the comments by the Leader of the Government in moving this program, his argument about not giving leave was rather spurious. It is the responsibility of the government to set a program and conform with the normal practices of this house — that is, when bills are transposed from the lower house to the Legislative Council that there normally be a week's lay over period before they are dealt with. The reason for that is because we are a house of review, and surely there needs to be some breathing space between when a bill is dealt with in the Legislative Assembly to when it is debated here in the Legislative Council. There are benefits for the government, for the opposition and for the public in general to look at the arguments that have been cast in debate when the bill is in the lower house before it is debated again in the upper house. This house is about reviewing. There needs to be some time between the passage of bills between both houses so we can effectively undertake our role. It is a rather spurious argument, I would suggest, being put by the Leader of

the Government in respect of criticising individuals in this house for not giving leave.

Having made those two points, I appeal again for the house this week to work in a responsible manner and to have some considered debates on the legislation before us. The National Party is agreeing with this legislative program in the hope that we will have better debate in this chamber during the week.

Motion agreed to.

PETITIONS

Nillumbik: urban growth boundary

Mr SCHEFFER (Monash) presented petition from certain citizens of Victoria requesting that the Legislative Council not ratify the amendment to the urban growth boundary of amendment C27 of the Nillumbik planning scheme until further investigations of the planning scheme are conducted and their properties are equitably included within the urban growth boundary borders (3 signatures).

Laid on table.

Taxis: multipurpose program

Hon. P. R. HALL (Gippsland) presented petition from certain citizens of Victoria requesting that the Legislative Council not support the introduction of a financial cap to the multipurpose taxi program and that any proposed changes be delayed until full and proper consultation has been held with stakeholders, including the taxi industry, to consider other options for the efficient operation of the program so that the special circumstances and needs of the elderly and disabled in rural Victoria are fully considered (956 signatures).

Laid on table.

Clayton Road, Clayton: trucks

Hon. ANDREW BRIDESON (Waverley) presented petition from certain citizens of Victoria praying that the Victorian government take immediate action to direct all heavy vehicles, including semitrailers, tip trucks, B-doubles, tankers and vans using Clayton Road through the Clayton shopping centre to Westall Road, Clayton South (153 signatures).

Laid on table.

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Regulation review

Ms ARGONDIZZO (Templestowe) presented annual review 2002, together with appendices.

Laid on table.

Ordered to be printed.

PAPERS

Laid on table by Clerk:

Beaufort and Skipton Health Service —

Minister for Health's report of failure to submit 2002–03 report to her within the prescribed period and the reasons therefor.

Report, 2002–03.

Crown Land (Reserves) Act 1978 — Minister's Order of 23 October 2003 giving approval for the granting of a lease at Queens Park Reserve.

Dunmunkle Health Services —

Minister for Health's report of failure to submit 2002–03 report to her within the prescribed period and the reasons therefor.

Minister for Health's report of receipt of the 2002–03 report.

East Grampians Health Service —

Minister for Health's report of failure to submit 2002–03 report to her within the prescribed period and the reasons therefor.

Report, 2002–03.

Edenhope and District Memorial Hospital —

Minister for Health's report of failure to submit 2002–03 report to her within the prescribed period and the reasons therefor.

Report, 2002–03.

Falls Creek Alpine Resort Management Board — Report for the year ended 31 October 2002.

First Mildura Irrigation Trust — Minister for Water's report of failure to submit 2002–03 report to him within the prescribed period.

Footy Consortium Pty Ltd — Report, 2002–03.

Kerang District Health —

Minister for Health's report of failure to submit 2002–03 report to her within the prescribed period and the reasons therefor.

Report, 2002–03.

Latrobe Regional Hospital —

Minister for Health's report of failure to submit 2002–03 report to her within the prescribed period and the reasons therefor.

Report, 2002–03.

Pathology Services Accreditation Board — Minister for Health's report of receipt of the 2000–01 and 2001–02 reports.

Planning and Environment Act 1987—

Notices of Approval of the following amendments to planning schemes:

Ballarat Planning Scheme — Amendment C48.

Baw Baw Planning Scheme — Amendment C22.

Darebin Planning Scheme — Amendment C48.

Geelong — Greater Geelong Planning Scheme — Amendment C85.

Hobsons Bay Planning Scheme — Amendment C40.

Melton Planning Scheme — Amendment C48.

South Gippsland Planning Scheme — Amendment C16.

Wyndham Planning Scheme — Amendment C53.

Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan — Amendment No. 116.

South Gippsland Hospital —

Minister for Health's report of failure to submit 2002–03 report to her within the prescribed period and the reasons therefor.

Minister for Health's report of receipt of the 2002–03 report.

Stawell Regional Health —

Minister for Health's report of failure to submit 2002–03 report to her within the prescribed period and the reasons therefor.

Report, 2002–03 (two papers).

Tallangatta Health Service —

Minister for Health's report of failure to submit the 2002–03 report to her within the prescribed period and the reasons therefor.

Report, 2002–03 (two papers).

Tattersall's Club Keno Pty Ltd — Report, 2002–03.

Water Act 1989 — Diamond Creek Water Supply Protection Area Stream Flow Management Plan 2003.

Western District Health Service —

Minister for Health's report of failure to submit 2002–03 report to her within the prescribed period and the reasons therefor.

Report, 2002–03.

West Gippsland Healthcare Group —

Minister for Health's report of failure to submit 2002–03 report to her within the prescribed period and the reasons therefor.

Report, 2002–03.

Wimmera Health Care Group —

Minister for Health's report of failure to submit 2002–03 report to her within the prescribed period and the reasons therefor.

Report, 2002–03.

HEALTH LEGISLATION (FURTHER AMENDMENT) BILL

Second reading

For **Mr GAVIN JENNINGS** (Minister for Aged Care), Mr Lenders (Minister for Finance) — I move:

That the bill be now read a second time.

Second-reading speech as follows incorporated on motion of Mr LENDERS (Minister for Finance):

This bill contains a number of amendments to several acts in the health portfolio, namely:

The Chinese Medicine Registration Act 2000 and the schedules referring to other health registration acts;

the Health Services Act 1988; and

the Health Records Act 2001;

and it repeals the Pathology Services Accreditation Act 1984.

A key provision in this bill ensures that unnecessary dual regulation by state and commonwealth legislation is removed by repealing the Victorian Pathology Services Accreditation Act 1984. It also authorises conduct by Health Purchasing Victoria and public hospitals in relation to the Commonwealth Trade Practices Act 1974.

First, the bill makes an amendment to the Health Records Act 2001. The Health Records Act 2001 regulates the handling of health information in Victoria by state public sector organisations and also by private sector organisations. The principle of respect for the sovereignty of governments, which is particularly important in a federal system, requires that the law of Victoria would not ordinarily attempt to regulate the conduct of agencies of another government.

Consequently the Health Records Act was never intended to apply to the activities of commonwealth public sector

agencies, which have been regulated by the commonwealth's own Privacy Act since 1988. In the same way the commonwealth Privacy Act does not ordinarily apply to state public sector organisations.

However, the current form of the Health Records Act may not make this fact sufficiently clear. The act does not currently specifically exclude commonwealth agencies from its operation, and it is arguable that such agencies may be caught by the reference to 'body corporate' in section 11.

The proposed amendments will therefore put beyond doubt that commonwealth agencies are not caught by the act and confirm its intended operation.

This reflects the government's commitment to understandable and workable laws which reflect the spirit of cooperative federalism and which respect the application of commonwealth laws to commonwealth agencies.

Second, the bill also amends the Health Services Act 1988 in respect of Health Purchasing Victoria.

Parliament amended the Health Services Act in 2001 to establish Health Purchasing Victoria to undertake collective purchasing on behalf of public hospitals in Victoria. Health Purchasing Victoria is designed to improve the effectiveness of Victoria's hospital system by:

> facilitating the collaboration of public hospitals to achieve best value in their purchasing;
>
> reducing inefficient or inappropriate duplication of functions and, in particular, tendering activities; and,
>
> improving purchasing practices through the implementation of improvements in supply chain management and the development of purchasing policies and practices that ensure probity in purchasing.

It is vital to ensure that the Victorian health system operates in the most effective and efficient manner and continues to provide high-quality care. The establishment of Health Purchasing Victoria can provide a significant contribution towards that end.

The bill contains a provision which specifies that Health Purchasing Victoria, public hospitals and their officers are authorised to undertake collective purchasing under section 51 of the commonwealth Trade Practices Act 1974. That section in the Trade Practices Act provides that the prohibitions contained in part four of that act are to be disregarded if the action is specified in and authorised by an act passed by the Parliament of a state.

The new clause contained in this bill is intended to remove any doubt that the arrangements for collective purchasing by Health Purchasing Victoria, public hospitals and their officers have been authorised by the Parliament of Victoria and are, therefore, not in any breach of the Trade Practices Act.

I should add that at the time the Parliament agreed to the establishment of Health Purchasing Victoria the then Minister for Health stated:

> Changes to purchasing arrangements, particularly in rural and regional areas, have the potential to affect local employment opportunities. Recognising this, the bill explicitly requires Health Purchasing Victoria to have regard to local employment growth or retention in carrying out its functions and exercising its powers, as well as the impact of tendering and contracting activities on small and medium-size businesses. This will ensure that employment issues are factored into Health Purchasing Victoria's decision-making processes.

He added:

> The bill [as it then was] provides for an exception process to ensure that where the application of a particular purchasing policy is inappropriate for clinical or other reasons, such as the locality of the hospital, then Health Purchasing Victoria can exempt it from the application of the whole, or part, of that policy.

The new provision does not alter those requirements in any way. It merely ensures legal certainty for persons involved in collective purchasing.

Third, the bill will repeal the Pathology Services Accreditation Act 1984.

Honourable members may be aware that the overwhelming majority of Victorian pathology services are currently subject to dual accreditation requirements under Victorian and commonwealth legislation. Victoria is the only state to have its own legislative framework for pathology services.

It is currently an offence to carry out pathology testing without accreditation under the Victorian Pathology Services Accreditation Act 1984. Victoria's act is therefore a business-licensing scheme. Under the commonwealth Health Insurance Act 1973, commonwealth accreditation is required to attract Medicare payments for pathology tests.

Both Victoria's Pathology Services Accreditation Board and the Health Insurance Commission have contracted the National Association of Testing Authorities (NATA) to perform inspections of pathology services on their behalf. NATA reports its findings to both the Health Insurance Commission and the board, both of which act on NATA's advice.

An expert panel has reviewed the Victorian act and its regulations. The panel was chaired by Mr Don Nardella, member for Melton, and comprised Professor Stephen Cordner (director, Institute of Forensic Medicine), Dr Graham Rouch (associate professor of public health and former chief health officer), Dr Chee-Wah Cheah (a senior economist) and Ms Kay Currie, president of the Health Issues Centre. Dr Gordon Whyte provided expert technical advice to the review panel. I would like to take this opportunity to record the government's thanks to the panel for its diligent work.

The panel considered that, for the overwhelming majority of Victorian pathology services that are subject to dual accreditation requirements, the additional layer of state regulation provided no additional protection for public health. It considered that it was neither justifiable in terms of risks to public health, nor practicable in terms of cost, to maintain a business-licensing regime for the small number of Victorian pathology services that are not subject to commonwealth regulation.

The panel therefore recommended that the Victorian act be repealed. It also proposed more targeted forms of regulation, focusing on medical practitioners (who order pathology tests

on behalf of patients) and on pathology services that are not commonwealth accredited.

At the time the panel concluded its work, an independent review of the commonwealth's accreditation regime was under way. That review was completed in July 2002. It recommended changes to strengthen the commonwealth's accreditation regime, which have been implemented.

That review also recommended that the commonwealth should work with the states and territories to evaluate the need for, and potential costs and benefits of, any further legislation in all jurisdictions to complement the enhanced national accreditation arrangements.

The commonwealth has proposed that all jurisdictions should work together through the Australian Health Ministers Advisory Council (AHMAC) to ensure that sufficient protection exists throughout the nation for consumers of pathology services that are not covered by Medicare payments.

The government strongly supports this initiative. The pathology industry is essentially a national industry. Therefore a nationally consistent approach to the regulation of pathology services is clearly in the interests of both patients and medical practitioners. The government will ensure that AHMAC explores, in a national context, the suggestions of Victoria's review panel for targeted regulation of the pathology sector.

By providing for the repeal of the Pathology Services Accreditation Act, this bill will remove the duplication of commonwealth accreditation arrangements that exist only in Victoria. It will bring Victoria into line with the other states, and will therefore assist in paving the way for national agreement on appropriate controls for pathology services that are not commonwealth accredited.

Last but by no means least, the bill amends the Chinese Medicine Registration Act 2000. This act is an innovative piece of legislation and the first of its kind in Australia. It is expected to be a model for other jurisdictions to follow. I am pleased to advise that the Chinese Medicine Registration Board has been in operation since December 2000, and has already registered over 800 practitioners. The board has made significant progress with assessment and approval of undergraduate training courses in Chinese medicine, issuing of guidelines for safe practice of acupuncture and Chinese herbal medicine, and establishing processes for receiving and investigating complaints of unprofessional conduct by practitioners. All these measures provide protection for members of the Victorian community who use such services.

There are three areas where slight adjustment to the legislative scheme is indicated to ensure it works the way Parliament intended and that registration boards are able to discharge their statutory responsibilities properly.

First, the intention of the act was to establish a regulatory scheme where any practitioner who is granted registration by the Chinese Medicine Registration Board in either the division of acupuncturists or the division of Chinese herbal medicine practitioners would be eligible to use the reserved titles 'Chinese medicine practitioner' and 'oriental medicine practitioner' without committing an offence under the act.

There is an ambiguity in the current wording of section 61 of the act, which requires clarification to ensure that registered practitioners cannot be guilty of an offence under section 61(2) and section 61(3) if they use the titles 'Chinese medicine practitioner' or 'oriental medicine practitioner', without being registered in both divisions of acupuncturists and Chinese herbal medicine practitioners. This is contrary to the intention in drafting the legislation. The proposed amendment will clarify the operation of section 61 so that registered practitioners can continue using titles that many of them have had the right to use for many years.

Second, there is a need to clarify the powers held by other health practitioner registration boards to endorse the registration of their practitioners. The effect of this 'endorsement' or 'notation' was to grant the registrant the right to use one or a number of the reserved titles of the Chinese medicine profession without committing an offence under the Chinese Medicine Registration Act and without the need to apply directly to that board for registration. The intention was to ensure that any registered health practitioner who offers Chinese medicine or acupuncture services to the public is properly qualified and properly regulated.

Since the amendments came into effect on 1 January 2002, the eight registration boards with these powers have worked with the Chinese Medicine Registration Board to ensure consistency in the application of the powers. The proposed amendments are designed to:

> allow each registration board to require an applicant for endorsement/notation to sit an examination to demonstrate their competence prior to a grant of endorsement or notation; and
>
> require each registration board to give notice to and receive submissions from an applicant for endorsement or notation, prior to a decision to refuse an endorsement or notation.

These amendments clarify the powers of the boards in relation to the conduct of examinations and ensure that they follow due process where they propose to refuse an application for endorsement or notation.

The bill also narrows the scope of the endorsement powers of the respective registration boards. There are many registered health practitioners who have incorporated acupuncture as an adjunct to their primary practice, for example in chiropractic, osteopathy, nursing or medical practice. It is appropriate that the respective registration boards take responsibility for regulating their practice. However, there are very few of these practitioners who have trained in Chinese herbal medicine and less scope for this modality to be practised 'as an adjunct' without extensive training.

The bill therefore limits the powers of seven registration boards to allow them to note or endorse only the use of the title 'acupuncturist', but not the other titles of the Chinese medicine profession.

It also limits the scope of the endorsement powers of the pharmacy board to allow pharmacists to only use the title 'Chinese herbal dispenser' but not other titles reserved in the Chinese Medicine Registration Act 2000.

A registered nurse or medical practitioner, for example, who wishes to use professional titles such as 'Chinese medicine practitioner' or 'Chinese herbal medicine practitioner' would have to apply for registration directly with the Chinese Medicine Registration Board.

However, if they wish to use acupuncture within their practice and use the title 'acupuncturist' they can apply to the nurses board or the medical practitioners board for 'endorsement' or 'notation' of their registration. If they have sufficient qualifications and are considered safe to practice, then it is expected that their board would grant the application.

In addition, the bill contains consequential amendments to the Medical Practice Act 1994, including an amendment to section 93A of that act by changing 'complaint' to 'notification', in accordance with earlier amendments to the Medical Practice Act.

I commend the bill to the house.

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

Debate adjourned until next day.

FORESTS AND NATIONAL PARKS ACTS (AMENDMENT) BILL

Second reading

For **Ms BROAD** (Minister for Local Government), Mr Lenders (Minister for Finance) — I move:

That the bill be now read a second time.

Second-reading speech as follows incorporated on motion of Mr LENDERS (Minister for Finance):

The purpose of the bill is to amend the Forests Act 1958 in order to implement key government commitments in relation to sustainable yield and Vicforests and to make some minor improvements to the administration of the act. It also amends the National Parks Act 1975 and the Fisheries Act 1995 in relation to marine national parks.

Forest provisions

The bill will remove the current requirement to supply hardwood sawlogs within a permitted margin of plus or minus 2 per cent of the sustainable yield figures specified in the third schedule. This was a key commitment of the government's Forests and National Parks election policy. It also fulfils one of the recommendations of the national competition policy review of the Forests Act, by ensuring that the government is not required to supply sawlogs up to the sustainable yield level regardless of demand. This also means that the government will not have to sell timber regardless of the ability of the forest to supply certain species and grades.

The government's voluntary licence reduction program, which is now drawing to completion, has reduced hardwood sawlog volumes allocated on licence by 32 per cent across the state. This reduction was critical to ensure the future of the Victorian timber industry and that sustainable allocations are possible into the future.

The work of providing reliable and up-to-date timber resource information continues. The Bracks government has brought forward the completion of the statewide forest resource inventory. When completed, it will provide a comprehensive and consistent database for determining future timber resource availability.

The statewide forest resource inventory process will also assist in assessing the impact of last summer's north-east and Gippsland bushfires on future timber resource availability.

The government has decided not to change the third schedule at this time. New sustainable yield levels will be available following the completion of the voluntary licence reduction program and the statewide forest resource inventory. In the interim, licence levels will not exceed those set at 1 November 2003, apart from those areas subject to salvage operations as a result of bushfires, where some variations may be required.

The bill also contains provisions to enable powers to be delegated to Vicforests so that it can carry out its functions. By facilitating the operation of Vicforests, these provisions assist the government to meet another key national competition policy review recommendation.

There is also a new regulation-making power to apply, adopt or incorporate documents by reference, in line with modern legislation. This means, for example, that regulations which refer to Australian standards will not have to change each time the standard changes.

The provisions in this bill are small but vital steps towards full implementation of the government's new vision for sustainable forest management and a sustainable native timber industry.

There is much that the government has already done since last year, when it released *Our Forests, Our Future*, a landmark policy statement about the management of our forests. It committed $80 million towards industry adjustment, forest reforms and improved stewardship measures.

Central to the Our Forests, Our Future policy was the need to reduce over 247 000 cubic metres per annum of 'D' grade or better sawlogs. The reductions were necessary to address the question of sustainable logging in Victoria's publicly owned forests and to provide the basis for the future operation, development and investment in the Victorian industry.

The Our Forests, Our Future policy has led to the buyback of over 260 000 cubic metres of hardwood sawlogs per annum. A further 22 000 cubic metres per annum have been transferred from unsustainable areas by way of resource swaps. These reductions have been achieved well ahead of schedule. Following the voluntary licence surrenders, 30 mills have closed in an orderly manner with government assistance. Assistance to associated workers and contractors is being provided by the worker assistance program and the contractor assistance program.

As of 30 September 2003, about 450 people have been deemed eligible for the worker assistance and contractor assistance programs. Further, almost 80 per cent have either returned to the work force or are retraining for new positions. It is noted that only 9 per cent of these people are still actively seeking employment.

The government has also initiated a number of improved forest stewardship measures. I have already mentioned acceleration of the statewide forest resource inventory. Other actions under way include:

clear separation of ministerial responsibilities so that

the Minister for Environment will be responsible for broad land stewardship

the Treasurer and the Minister for Agriculture will be responsible for commercial timber operations through Vicforests;

development of a rigorous system to monitor and report on annual timber harvesting performance with a feedback link to future estimates of sawlog resource;

implementation of the Wombat community forest management trial;

the EPA having taken on responsibility for conducting independent audits of timber harvesting operations in public native forests; and

development of an environmental management system to ensure a constant striving for continual improvement in the delivery of sustainable forest management.

The government has funded initiatives to support regional communities, such as the Timber Towns Support program and the Timber Towns Investment Support program. The first program is providing funding of $8.74 million for 35 projects across 10 shires. The second program is expected to facilitate $71.8 million of investment over 32 regional businesses to stimulate growth and jobs in affected towns.

Additional government commitments in the November 2002 Forests and National Parks policy create a new Otways National Park and the phase-out of logging and woodchipping in the region by 2008.

The government has already announced the cessation of woodchipping in the Wombat Forest and, in consultation with local communities, we have been working to identify a new approach to harvesting sawlogs which is both sustainable into the future and sensitive to the local economic and environmental needs.

The government continues to assist the long-term development of the timber industry, having allocated $9 million over four years for a plantation incentive strategy, recognising the potential for jobs and growth in regional Victoria from this sector.

However, there is more that still needs to be done. The government is not resting on its laurels. We have a vision for ensuring a sustainable future for our state forests, based on:

recognising and protecting the multiple and important values of our forests including conservation and biodiversity, cultural heritage, tourism and recreation, water, carbon sequestration, grazing, apiculture, firewood and timber production;

ensuring that all uses of our forests are sustainable;

providing the right settings for a range of jobs and investment compatible with protecting our precious natural environment;

embracing community participation and allowing access for a broad range of community purposes;

enshrining transparency and accountability; and

protecting forest ecosystems from wildfire, disease, pests and weeds.

The government's new framework for sustainable forest management includes a commitment to a sustainable native timber industry.

The industry will continue to provide jobs and investment in Victoria, and should comprise participants with the capacity to:

develop to the scale required to support vital re-investments;

meet contemporary standards for environmental and occupational health and safety performance;

meet contemporary standards for economic and business performance;

increase the proportion of logs processed further than the green sawing stage; and

develop a cost competitive and viable harvest and haulage sector.

The industry will be based on timber sourced at a sustainable level from specified areas of state forests and from plantations on private land. Eastern Victoria will be the principal source of commercially harvested state forest timber. Plantations will provide long-term growth potential for future timber resources.

The primary purpose of state forest timber harvesting will be sawlog production. However, resource efficiency considerations should permit the full utilisation of residual logs, thinnings and sawmill residues for other purposes, such as paper production.

How are we going to achieve these twin visions?

The establishment of Vicforests as a state business corporation under the State Owned Enterprises Act, will assist in creating a clear separation between commercial timber operations and the government's broader land stewardship functions.

The proposed functions of Vicforests are to:

undertake the sale and supply of timber resources in Victorian state forests, and related management activities, as agreed by the Treasurer and the Minister for Agriculture, on a commercial basis;

develop and manage an open competitive sales system for timber resources; and

pursue other commercial activities as agreed by the Treasurer and the Minister for Agriculture.

The Department of Sustainability and Environment will retain responsibility for policy, regulatory and monitoring functions as they relate to state forests. It will remain the land manager, responsible for managing state forests sustainably, for the entire range of forest uses and values. This includes biodiversity, water, cultural heritage protection, recreation, fire, and pest and weed management.

The department is developing a new sustainable forest management framework based on:

clearly articulated sustainability principles;

a set of sustainability criteria and indicators which go beyond sawlog production;

transparent measuring and reporting processes;

transparent and participative planning processes and greater community engagement;

a stronger monitoring and compliance regime; and

independent auditing of timber harvesting operations.

Areas available for timber harvesting have been and will continue to be determined through transparent and participative public processes. At the strategic land use planning stage, the processes of the Victorian Environmental Assessment Council and its predecessor organisations have played a key role in determining the status of public land, whether as state forest or part of the parks and reserves system. Within state forests, the regional forest agreement processes have identified areas available for timber harvesting and have also set aside additional areas for conservation protection. Forest management plans and the Code of Forest Practices for Timber Production provide further parameters and prescriptions that are part of the planning framework in which timber harvesting must occur.

These or similar processes will continue to be used to determine areas available for timber production and enable Vicforests to plan its operations and commitments. It is anticipated that there be regular reviews of the plans to ensure that forest sustainability criteria are being met and to support the long-term sustainability of the industry and the resource.

Making forest areas available for harvesting involves direct costs which can be quantified and should be recovered. Vicforests will be required to develop a market-based pricing and selling system, which recovers costs and provides an appropriate return to government.

The government's vision that state forest timber harvesting be sustainable while also enabling the development of an innovative, sustainable and profitable industry will be a key guiding principle for Vicforests' sale of timber resources.

The charter given to Vicforests by government will include requirements that it operate commercially and that its activities conform with the government's vision for the timber industry and its broader forest environmental policies.

The government is mindful of the industry's position that longer term timber entitlements strengthen the incentives for investment in capital plant and equipment, innovative technologies, value adding and marketing.

The long-term allocation of timber resources to Vicforests, based on sustainability principles, will provide certainty for industry's forward planning.

Implementation of some of these measures will require legislative change. The government is looking forward to introducing new legislation next year.

Marine national park provisions

I now turn to the marine national park provisions of the bill.

The creation of 13 marine national parks and 11 marine sanctuaries last year was a major achievement for all concerned. The purpose of this bill is only to clarify or make minor corrections to the plans of four of the marine national parks, as follows:

the Cape Howe and Corner Inlet park plans are amended to remove any doubt over the location of three boundaries;

a typographical error in a boundary coordinate on the Point Addis park plan is corrected, which results in an excision; and

the remainder of Clifton Beach is excluded from the Twelve Apostles park, as intended, and the intertidal zone of the excised area reinstated as part of Port Campbell National Park.

The National Parks Advisory Council has been consulted over the two excisions and does not oppose them.

I commend the bill to the house.

Debate adjourned on motion of Hon. E. G. STONEY (Central Highlands).

Debate adjourned until later this day.

WRONGS AND OTHER ACTS (LAW OF NEGLIGENCE) BILL

Second reading

Mr LENDERS (Minister for Finance) — I move:

That the bill be now read a second time.

The reforms contained in this bill represent the third and final major tranche of the government's legislative response to the recent crisis in the affordability and availability of several key insurance products, including builders warranty, public liability, professional indemnity, and medical indemnity.

As honourable members will be aware, in October 2002 the Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002 came into operation. That act:

provided for caps on damages for non-economic loss and for loss of earnings;

protected volunteers, food donors and good Samaritans;

facilitated the use of structured settlements;

ensured that the common courtesies of expressing general apologies or regret after an incident could continue without fear that they would be taken as an admission of liability;

facilitated the use of waivers of liability for recreational activities;

required the courts to have regard to a claimant's intoxication or participation in illegal activities; and

required greater disclosure of relevant information by insurers.

In June this year Parliament passed the Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003. That act:

enacted proportionate liability for claims not relating to death or personal injury;

instituted a medical threshold for access to damages for non-economic loss; and

reduced the time period within which proceedings must be brought, subject to safeguards for children and other persons needing special provision.

These two pieces of legislation reflected a great deal of thought and consideration by many people both within and outside Australian governments on issues relating to the balance between the competing rights and interests of members of the community, both as injured parties making claims for compensation and as purchasers of insurance cover against liability for such compensation.

There is already some evidence that our reforms to date are having an impact in terms of the affordability and availability of insurance.

However, the reforms contained in this bill need to be enacted in order to consolidate the gains that have already been made.

Last year the commonwealth, states and territories agreed on the need for a principles-based examination of all issues relating to the law of negligence, which led to the appointment of Mr Justice Ipp and his committee and their subsequent report.

The Ipp report formed part of a much broader process of consideration of all aspects of liability and insurance, with much ongoing work still occurring in areas such as standardised data collection and consideration of issues surrounding long-term care of the catastrophically injured.

In the Premier's speech on the second reading of the bill for the Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003, he stated:

> We have announced that we will implement most of the Ipp report's recommendations, with the necessary legislation to be introduced in the spring 2003 parliamentary session.

The Wrongs and Other Acts (Law of Negligence) Bill 2003 represents the government's delivery on that commitment. It complements legislation by other states and territories and the commonwealth, either already in place or announced. This bill provides for:

certain legal principles relating to the law of negligence;

certain legal principles relating to mental harm;

clarification of the liability of public authorities, which has been of particular interest since the High Court decision in *Brodie v. Singleton Shire Council*;

amendments to current provisions relating to proportionate liability and medical panels procedures;

amendments to the Victorian Managed Insurance Authority Act 1996 to allow the provision of temporary insurance cover to non-government bodies, subject to strict conditions; and

amendments to the Building Act 1993 to preclude the issuing of builders warranty insurance by unapproved offshore insurers.

General principles

In relation to negligence and mental harm, the bill generally sets out in statute principles that already form the basis of the common law. The key aim of the bill is to achieve greater consistency in the application of the law, through providing improved clarity and guidance about common-law principles to the courts and to the general public.

The government's review of the law of negligence — which included but was certainly not limited to detailed consideration of the recommendations and reasoning of the Ipp report — has been principles-based, seeking to reach an appropriate balance in the rights of all parties before the courts, and recognising that the principles of the common law apply equally to all plaintiffs and defendants, whether well resourced or poorly resourced, whether in positions of power and influence or not, whether insured or uninsured.

Generally the proposed provisions in new parts X, XI and XII of the Wrongs Act apply to any claim for damages resulting from negligence, regardless of whether the claim is brought in tort, in contract, under statute or otherwise. In this context 'negligence' refers

to a failure to exercise reasonable care, which includes a failure to exercise reasonable skill. This reflects the approach proposed in recommendation 2 of the Ipp report. That report found that the reforms should operate in a way that is principled and effective, and different outcomes should not result simply because a claim is brought under one legal category rather than another.

The bill does not purport to establish in statute all principles relating to common-law claims. Indeed it has no impact on the common law, except to the extent that the provisions in the bill specifically restate or modify the common law. The bill complements legislation enacted in other Australian states and territories, but to the extent that it differs from legislation passed in other jurisdictions it is generally narrower, not broader, in its application.

Exclusion of claims made under certain statutes

The bill excludes from the impact of its provisions relating to negligence and mental harm claims to which the Accident Compensation Act 1985, the Workers Compensation Act 1958 and the Transport Accident Act 1986 apply.

The bill also excludes from the impact of these provisions claims related to injuries that would be eligible for statutory compensation under legislation that provides benefits to volunteers or other non-employees as though the Accident Compensation Act applied, such as the Victoria State Emergency Service Act 1987.

Concern has been raised that employment-related claims against third parties, by people such as employees of labour-hire companies and contract workers, would be affected by the new provisions. I can assure the house that the government has sought advice on this issue and has been informed that such claims are claims to which the Accident Compensation Act applies; that is, the law applying to those third-party claims is the same as that applying to a direct claim against the employer. The exclusion provision in the bill therefore means that the provisions of the bill that relate to negligence and mental harm will not apply to these third-party claims either.

Claims relating to injuries that are dust-related conditions or arise from smoking or other use of tobacco products are generally also excluded from the effects of the bill.

I turn to the specific provisions of the bill.

Duty of care, causation and contributory negligence

The bill establishes in statute general principles that generally already form part of the common law in determining whether a duty of care exists and the extent of that duty. It establishes in law what is already the case, that a duty of care is not an obligation to take infinite precautions against every conceivable risk, no matter how slight that risk and how costly and unpractical those precautions. The bill specifically replaces the current common-law principle that a person is not negligent in failing to take precautions against far-fetched or fanciful risks with a new principle that a person is not negligent in failing to take precautions against insignificant risks. This amendment will bring Victorian law into line with that of other Australian jurisdictions, including New South Wales and Queensland.

To remove risk altogether from human activities is impossible; to reduce risk to negligible proportions is often not practical without restricting those activities to such an extent that much of the natural enjoyment of them is destroyed. Most people accept these principles as commonsense; so does the common law, but it is of value to set them down clearly in statute for the guidance of the courts and the public.

The bill provides that the plaintiff bears the onus of proving any fact relevant to causation. This is no more nor less than a restatement of the existing common law. It is not an attempt, and cannot reasonably be construed as an attempt, to overturn the principle that the court can bridge evidentiary gaps. Instead, this principle is being clarified and maintained by the bill.

While the concept of an ‘obvious risk’ is certainly not new to the common law, the bill does create a presumption, where the defence of voluntary assumption of risk is pleaded, that the plaintiff is aware of a risk that is obvious. This is consistent with recent rulings by both the High Court and the Victorian Court of Appeal in relation to the need, or rather lack of need, to warn against an obvious risk. The bill does not change the fact that to defeat a claim, the defendant still needs to prove that the plaintiff fully comprehended the nature and extent of the risk, and that the plaintiff voluntarily accepted the whole risk.

The bill also introduces the concept of ‘peer professional opinion’ as a presumptive test, to be applied by the courts to determine the standard of care owed in a claim that involves an allegation of negligence in relation to the conduct of a professional. This is known as the ‘modified Bolam test’. The bill provides that a professional’s conduct will not amount

to negligence if he or she acted in a manner that, at the time the service was provided, was widely accepted in Australia by a significant number of respected practitioners in the field as competent professional practice, unless the court determines that such peer professional opinion is unreasonable, in the circumstances of the case before it.

This provision draws upon recommendation 3 of the Ipp report, but allows the court to reject peer professional opinion where it is satisfied that this opinion is 'unreasonable' rather than 'irrational'. The term 'irrational' is ambiguous; as its meanings include 'illogical' and 'absurd', as well as 'unreasonable'. The word 'unreasonable' is used in the bill for the sake of clarity, and because it better reflects the role of the courts in determining whether conduct is negligent. To ensure transparency of decision making, the provision also provides that if a judge determines that peer professional opinion is unreasonable, the reasons for that determination must be specified in writing.

The bill provides that non-delegable duty — the strict liability of someone who is legally responsible for the outcome of the activities of another person — is to be determined as though it was a vicarious liability. This provision will clarify the operation of the common law in an area that is readily acknowledged by legal authorities as currently unsatisfactorily unclear and inconsistent.

Mental harm

The bill also sets out in statute the principles that determine liability for mental harm, both for pure mental harm — that is, where there is no physical injury to the plaintiff, and consequential mental harm, where the mental harm to the plaintiff occurs as a consequence of another injury he or she has suffered. The bill introduces a new provision relating to recoverability of damages for consequential mental harm.

The bill's provisions in relation to pure mental harm arising from shock after another person (not the plaintiff) has been injured or killed are based on the common law as expressed in several recent court judgments, and limit recovery of damages in such cases to direct witnesses of the incident or close relatives of the person injured or killed.

Public authorities

The bill contains principles that apply to determine whether a public authority has a duty of care, or has breached a duty of care. It also includes a separate provision that applies exclusively to proceedings for damages based on a breach of statutory duty — that is, based on an alleged wrongful exercise or of a failure to exercise a function of a public authority. The effect of the provision is that in such proceedings, a public authority is not liable for breach of statutory duty unless the provisions and policy of the enactment are compatible with the existence of that liability.

In addition, in the case of a function of the authority that:

> is conferred on the body specifically in its capacity as a public authority; and
>
> does not impose an absolute duty on the public authority to do or not do a particular thing

proposed new section 84 of the Wrongs Act provides that there can be no breach of such a statutory duty in a claim for damages, unless the act or omission in question was in the circumstances so unreasonable that no authority having the functions of the authority could properly consider the act or omission to be a reasonable exercise of its functions.

This test is based upon the 'Wednesbury unreasonableness' test that is currently applied in an administrative law context. This test applies only to claims for damages based on breach of statutory duty, not to other causes of action such as the common-law tort of negligence, or breach of contract.

I make it clear to the house that the proposed new section 84 does not alter the law regarding the duties, or the potential liability in damages, of public authorities under acts of general application such as the Occupational Health and Safety Act 1985, as such acts do not establish standards specifically for public authorities but also apply to others in the community.

Gratuitous care

The bill precludes the awarding of damages for loss of gratuitous care provided by a deceased person to his or her dependants unless the court is satisfied that the care was being provided for a least 6 hours per week and had been provided for at least six consecutive months before the death, or the injury that caused the death, to which the damages relate. The section also allows for the awarding of these damages where there is a reasonable expectation that, but for the death, or the injury that caused the death, of the deceased, the gratuitous care to dependants would have been provided for at least this time.

This latter provision covers the case of, for example, a woman who dies in childbirth as a consequence of

medical negligence, but whose child survives. There would be a reasonable expectation (unless the facts of the case indicated otherwise) that the mother would have provided care to her child. The bill also includes a limitation on damages for the loss of the capacity of an injured person to provide gratuitous care to dependants.

The limitations established by the bill on the maximum amounts of damages that can be recovered in these circumstances parallel the limitations already placed, by the legislation passed in autumn this year, on the recovery of damages by an injured person for gratuitous care provided to him or her by other persons.

Proportionate liability

The bill includes some minor amendments to the proportionate liability provisions implemented in the autumn sitting, which have not yet been proclaimed. These amendments repeal the definition of 'economic loss' and clarify that proportionate liability extends to pure economic losses arising under statute.

Procedures relating to claims for damages for non-economic loss

The Wrongs and Limitations of Actions Acts (Insurance Reform) Act 2003 established a threshold level of impairment for access to damages for non-economic loss. That act also included some administrative procedures relating to how parties manage a claim and the time frames within which certain steps must occur. The act also set out the role of the medical panels in personal injury civil liability claims.

Since those provisions were passed, a number of lawyers, with experience in representing both plaintiffs and defendants, suggested that revised procedures would assist the administration of claims. These changes include:

steps to ensure that all parties have access to relevant information;

more realistic time lines to make required decisions; and

clarification of the operation of the medical panels.

Directions to medical panels

A concern has been raised that the Wrongs Act currently only permits the convenor of the medical panels and the Attorney-General to modify existing directions or guidelines issued under the Accident Compensation Act. This could significantly restrict their ability to issue guidelines or directions specific to the operation of the new civil liability role of the medical panels. This is important because some administrative procedures of the medical panels for civil liability matters are not relevant to Workcover matters.

To ensure that guidelines issued by the minister or directions issued by the convenor in relation to the procedures the panels are to follow are specifically appropriate for the purposes claims under the Wrongs Act, the bill provides specific powers for the issuing of such guidelines or directions that are not linked to the corresponding powers relating to Victorian Workcover Authority (VWA) scheme claims, other than that the Attorney-General must consult the Minister for Workcover before preparing guidelines. This will ensure that the guidelines are as consistent as possible in their approach, while allowing specific provision for differences between the types of claims to which the two acts relate.

Defining permanent impairment

A definition of 'impairment' has been inserted to clarify that it means 'permanent impairment'; that is, permanent impairment as determined in accordance with the Australian Medical Association guides and psychiatric guides that qualified medical practitioners must use in making assessments. The guides state that to be considered permanent, an impairment must be static or well stabilised, with or without medical treatment, and not likely to remit despite future medical treatment.

A specific provision has also been inserted to make it clear that an approved medical practitioner or a medical panel can certify that a claimant's impairment exceeds the threshold even if not all injuries have stabilized, provided that enough have to meet the criteria for a permanent impairment above the threshold level. This will save claimants from any challenge that a claim cannot proceed because not all injuries have stabilised.

Other new provisions also permit an approved medical practitioner or a medical panel to certify that although a claimant's injuries have not stabilized to the extent that the degree of impairment can be assessed, the medical practitioner or the medical panel is satisfied that the impairment resulting from the injuries will satisfy the threshold level when the injuries do stabilise.

Medical question

Concern had been expressed that the current wording of the 'medical question' under the act could still require the medical panel to consider issues of causation, that

is, to advise on whether particular injuries were caused by the alleged incident that gave rise to the claim. The medical question has been revised to make it clear that the panel's assessment is based on the injuries that the claimant has cited in his or her claim, and that issues relating to causation are therefore left to the parties or a court to determine. The re-wording of the medical question also ensures that the panel's certificate relates to the required 'above/below threshold' response and does not drift into other issues.

Determination of medical question

The medical panel is currently required to make its determination within 60 days of having a medical question referred to it. This may not always be practical, as for example the claimant may be unavailable for examination. The provision has therefore been revised to require the panel to notify the claimant within 30 days of referral whether it intends to examine him or her or request information, and then must make its determination within 30 days of the examination taking place or the information being received, whichever is the later.

The bill also amends these provisions of the Wrongs Act to provide that the panel may certify it is unable to make a determination, if it is unsatisfied at the time of making the assessment that the injury has stabilised.

If the panel is unable to make a determination in these circumstances, it must inform the claimant that it will make a further assessment at a future time, not later than one year after the first assessment. The subsequent assessment must be undertaken at the earliest time at which, in the panel's view, the injury is likely to have stabilised. If by one year after first assessing the claimant, the panel finds that it is still unable to make a determination, the injury is deemed to be 'significant injury' and the claimant has access to general damages, provided that his or her claim succeeds.

Response to medical assessment

There is general agreement that the current 30 days allowed for a respondent to determine whether or not to refer a claimant to the medical panel is too short. It is proposed to extend this period to 60 days. Also, provisions relating to identification of the proper respondent that currently apply to a request for waiver of the need for an assessment, will now also apply on the receipt of a medical assessment.

Regulations

There has been general agreement that it would assist the smooth processing of claims if some information requirements and/or forms were to be prescribed. For example, it would assist small businesses if certain information about the claim and how to process it (e.g. that they should pass it on to their insurer) accompanied a claim and/or a claimant's impairment assessment. A regulation-making power to enable this is therefore included.

Information prescribed by regulation may include (but is not limited to) information relating to: the identity of the claimant; the nature of the claim; the injury; the incident out of which the alleged injury arose; and contact details of any medical practitioner who has treated the injury.

In keeping with normal practice, the Attorney-General will issue such regulations after consultation with relevant stakeholders.

Recovery of costs by medical panels

The bill gives the convenor of medical panels the necessary authority to recover and account for costs to be paid by respondents, including: issuing invoices; establishing bank accounts; collecting fees; recovering debts; paying for services; and financial reporting.

Victorian Managed Insurance Authority

The bill also provides a capacity, under strictly limited conditions, for the Victorian Managed Insurance Authority to provide insurance to non-government entities. As honourable members will be aware, the VMIA is the government's internal 'captive' — to use the technical jargon — insurer of the property, public liability and other risks of the budget sector and some other government bodies.

VMIA does not provide insurance services to the general public, and there is no intention that it should usually do so. The new provisions of the bill enable VMIA, at the direction of the responsible minister, to provide insurance to a non-government body in respect of specified risks. Such insurance can only be provided for a period not to exceed 12 months, although a new direction in similar terms can subsequently be made.

Any direction of this nature issued by the minister must be published in the *Government Gazette*, so that it is transparent that assistance of this nature has been given. It is the government's intention that this power will only be used where it is clear that the non-government body is providing a desirable community service and is unable to obtain insurance through no fault of its own; that is, that it has not been refused insurance because of its own poor claims experience. VMIA will charge a premium for any such insurance, and that premium will

be, as far as can be estimated, set at a level equivalent to a commercial premium. The insurance cover will not be provided if the premium is not paid.

Builders warranty insurance — unapproved offshore insurers

Finally, the bill includes additional conditions for the provision of builders warranty insurance under the Building Act 1993. Honourable members will be well aware of the consequences of the failure of HIH, and the obligation on the state to assist homeowners with builders' warranty claims against HIH or FAI. The supervision of that insurer by APRA was found by the royal commission to be inadequate, and the supervisory requirements on insurers have since been strengthened.

However, APRA's power and responsibilities end at Australia's shores. The government has become concerned at the prospect of Victorian homeowners not being covered because their builder has taken out builders warranty insurance through an offshore insurer of doubtful financial stability or ethics. Where these insurers operate through local brokers, those brokers' activities are at least subject to some supervision, although this will be insufficient to protect homeowners against a failure by the offshore insurers to meet claims.

The government does not wish to prevent reputable, financially secure offshore insurers from entering the builders warranty market — indeed, we encourage such insurers to do so — but we do need to preclude more dubious entities. The bill therefore provides that builders warranty insurance must be provided by an insurer approved by APRA, or one gazetted by the Minister for Planning, after consultation with the minister administering the VMIA Act, that has an acceptable credit rating from a recognised international credit rating agency, such as Moody's, Standard & Poors or A.M. Best.

Statements under section 85 of the Constitution Act 1985

I wish to make the following statements under section 85(5) of the Constitution Act 1975 of the reasons why it is the intention of this bill to alter or vary that section.

Clause 3 of the bill proposes to insert new sections 48(2), 51(2), 51(3), 51(4), 58, 59(5) and 62 into the Wrongs Act 1958. Clause 3 of the bill proposes to insert new section 65 into the Wrongs Act 1958. Section 65 states that it is the intention of sections 48(2), 51(2), 51(3), 51(4), 58, 59(5) and 62 to alter or vary section 85 of the Constitution Act 1975.

New section 48 sets out general principles that apply in assessing the duty of care. A person will not be considered to be negligent in failing to take precautions against a risk unless the conditions specified in new section 48(1) are met. New section 48(2) sets out things that the court must take into account in determining whether a reasonable person would have taken precautions against a risk of harm.

The purposes of section 48(2) are to:

direct the court on how to assess the adequacy of precautions taken and thereby provide greater clarity;

ensure greater predictability in decision making by encouraging the consistent consideration of these factors in cases before the courts; and

restate the law as it relates to this aspect of duty of care to ensure that the law operates in a balanced way that is fair to both plaintiffs and defendants.

New section 51 sets out general principles that apply in respect of causation. New section 51(2) deals with claims where there is an evidentiary gap in factual causation. For example, an evidentiary gap exists in a case where a person has been exposed to a similar risk of harm by a number of different defendants and it is not possible to assign responsibility to any one of those defendants. New section 51(2) provides that in deciding whether to bridge an evidentiary gap in an appropriate case the court must consider, amongst other relevant things, and in accordance with established principles, whether or not and why responsibility for the harm should be imposed on a particular defendant.

New section 51(3) provides that if it is relevant to the determination of factual causation to determine what the injured person would have done if the negligent person not been negligent, the matter is to be determined subjectively in light of all the relevant circumstances.

New section 51(4) provides that in determining whether it is appropriate for the scope of the defendant's liability to extend to the harm caused to the injured person the court must consider whether or not and why responsibility for the harm should be imposed on the defendant.

The purposes of sections 51(2), (3) and (4) are to:

direct the court on how to apply relevant principles and thereby provide greater clarity;

ensure greater predictability in decision making by encouraging the consistent application of these principles in cases before the courts; and

restate the law as it relates to this aspect of causation to ensure that the law operates in a balanced way that is fair to both plaintiffs and defendants.

New section 58 directs the court on the standard of care to be expected of persons who hold themselves out as possessing particular skills. This is to be determined by reference to what could reasonably be expected of a person professing that level of skill (and not a greater level of skill). It is also to be determined not in hindsight, but by reference to the relevant circumstances as at the date of the alleged negligence. The purposes of section 58 are to:

direct the court on how to assess this aspect of the standard of care and thereby provide greater clarity;

ensure greater predictability in decision making by encouraging the consistent application of these principles in cases before the courts;

ensure that this aspect of standard of care is applied in a balanced way that is fair to both plaintiffs and defendants; and

restrict the further expansion of liability by the courts in respect of the standard of care of a person professing to have a certain skill.

New section 59 sets out the standard of care applicable to the conduct of a professional whenever a professional service is provided. In any case involving an allegation of negligence where a court is considering the conduct of a professional, the conduct will not amount to negligence if the professional acted in a manner that (at the time the service was provided) was widely accepted in Australia by a significant number of respected practitioners in the field ('peer professional opinion') as competent professional practice unless the court determines that such peer professional opinion is unreasonable. Where a court determines that peer professional opinion is unreasonable new section 59(5) requires the court to specify in writing the reasons for that determination. Section 59(6) provides that this requirement does not apply to a jury.

The purposes of new section 59(5) are to:

ensure that the court directs itself to the considerations set out in section 59; and

increase transparency in judicial decisions in cases involving the standard of care applicable to the conduct of a professional whenever a professional service is provided.

New section 62 sets out the principles that the court must apply in determining whether a person who has suffered harm has been contributorily negligent.

The purposes of new section 62 are to:

direct the court on how to apply relevant principles and thereby provide greater clarity;

ensure greater predictability in decision making by encouraging the consistent application of these principles in cases before the courts; and

modify the law as it relates to this aspect of contributory negligence to ensure that the law operates in a balanced way that is fair to both plaintiffs and defendants. The policy underlying this approach is that persons should not only take reasonable care of others but also of themselves.

Clause 3 of the bill also proposes to insert new sections 73, 74 and 75 into the Wrongs Act 1958. Clause 3 of the bill proposes to insert new section 77 into the Wrongs Act 1958. Section 77 states that it is the intention of sections 73, 74 and 75 to alter or vary section 85 of the Constitution Act 1975.

New section 73 places limits on the recovery of damages for pure mental harm. New section 74 places limits on the recovery of damages for consequential mental harm. New section 75 also prevents the court from making an award of damages for economic loss for mental harm resulting from negligence unless the harm consists of a recognised psychiatric illness.

The purposes of new sections 73, 74 and 75 are to:

modify certain aspects of the law relating to liability for mental harm in claims for damages resulting from negligence to ensure that the law operates in a balanced way that is fair to both plaintiffs and defendants; and

restrict the further expansion of liability and damages by the courts in relation to mental harm, to the extent that sections 73, 74 and 75 affect aspects of the common law.

Clause 3 of the bill also proposes to insert new section 83 into the Wrongs Act 1958. Section 86 states that it is the intention of section 83 to alter or vary section 85 of the Constitution Act 1975.

New section 83 sets out the principles that a court is to consider when determining whether a public authority

has a duty of care or has breached a duty of care. It is important to note that this provision does not confer immunity on public authorities. It describes factors that a court must consider, for instance by specifying that the functions required to be exercised by a public authority are limited by the financial and other resources that are reasonably available to the authority. The purposes of new section 83 are to:

direct the courts on how to apply relevant principles regarding the liability of public authorities and thereby provide greater clarity;

ensure greater predictability in decision making by encouraging the consistent application of these principles in cases brought before the courts;

ensure that the law operates in a balanced and fair way. Public authorities are required to take reasonable care of others and are accountable for their actions in court. However, in exercising all of their functions public authorities are also subject to the Parliament and the executive. A public authority will also necessarily be limited in the financial and other resources available to exercise the functions conferred upon it and in some instances will be implementing policy decisions for which the executive may be politically accountable. Priorities accorded by a public body may change over time, based on policy, financial and statutory considerations. The provisions in this part are therefore designed to ensure that the unique nature of public bodies and their activities is taken into account so that the public interest is not impaired and the provision of publicly funded services to the community in the future is not threatened by the risk of inappropriate civil liability; and

restrict the further expansion of liability of public authorities by the courts, to the extent that section 83 affects aspects of the common law.

Clause 4 of the bill proposes to insert new sections 19A and 19B into the Wrongs Act 1958. Clause 5 of the bill proposes to insert new section 23AB into the Wrongs Act 1958. Section 23AB states that it is the intention of sections 19A and 19B to alter or vary section 85 of the Constitution Act 1975.

New section 19A limits the circumstances in which damages may be awarded to dependants for loss of gratuitous care in claims brought under part III of the Wrongs Act 1958. New section 19B sets out the limits for the award of damages in those circumstances. The purpose of limiting the circumstances in which an award of damages may be made is to limit the number of claims for loss of gratuitous care. The purpose of limiting the level of damages that may be awarded is to prevent excessive awards of damages for these types of claims.

Clause 11 of this bill proposes to insert new section 28J(3) into the Wrongs Act 1958. Section 28J(3) states that it is the intention of section 28D (as affected by the amendments made to part VB by clause 10 of this bill) to alter or vary section 85 of the Constitution Act 1975. Section 28D provides that a court cannot award damages to a claimant contrary to part VB.

Clause 10 of this bill proposes to insert new sections 28ID and 28IE into part VB (personal injury damages) of the Wrongs Act 1958. New section 28ID limits the circumstances in which damages may be awarded to a claimant for loss of capacity to provide care for others. New section 28IE sets out the limits on an award of damages in these circumstances. The purpose of limiting the circumstances in which an award of damages may be made is to limit the number of claims for loss of capacity to provide care for others. The purpose of limiting the level of damages that may be awarded is to prevent excessive awards of damages for these types of claims.

I commend the bill to the house.

Debate adjourned on motion of Hon. C. A. STRONG (Higinbotham).

Debate adjourned until next day.

PARTNERSHIP (VENTURE CAPITAL FUNDS) BILL

Second reading

Mr LENDERS (Minister for Finance) — I move:

That the bill be now read a second time.

Second-reading speech as follows incorporated on motion of Mr LENDERS (Minister for Finance):

The bill amends the Partnership Act 1958 to insert a new part 5 to provide for a new form of partnership, an incorporated limited partnership, for the purposes of enabling venture capital funds, particularly overseas funds, to establish themselves in Victoria in their preferred form.

The bill seeks to complement recent commonwealth changes in the tax treatment of venture capital funds, aimed at encouraging high-risk investment in key areas of economic activity in Australia, particularly from overseas sources. The commonwealth's taxation benefits are available to venture capital partnerships.

However, the internationally preferred vehicle for venture capital investment is an incorporated limited partnership, a form of partnership in which the partnership is a separate legal entity from its partners. This form of partnership is not currently recognised in any Australian jurisdiction.

Victoria will be the first jurisdiction in Australia to provide for incorporated limited partnerships and the bill represents the government's commitment to attracting venture capital.

Venture capital is the sort of high-risk investment in 'cutting edge' industries that can be difficult to source locally, but which is vital in encouraging local initiatives in new industries, retaining that expertise in Victoria and ensuring employment for Victorians in those new industries.

An incorporated limited partnership under part 5 of the act, unlike an ordinary limited partnership under part 3 of the act, will be a separate legal entity, distinct from its partners. Like a limited partnership under part 3 of the act, an incorporated limited partnership will have general partners, who manage the business, and limited partners, who contribute investment capital to, but do not take part in the management of the business.

The commonwealth Venture Capital Act 2002 established a registration and reporting process for bodies engaged in venture capital projects in Australia. Under the commonwealth Taxation Laws Amendment (Venture Capital) Act 2002, registered bodies are entitled to flow-through taxation treatment and capital gains tax exemption.

For venture capital partnerships to qualify for registration with the commonwealth, they must be partnerships established under Australian law or, if foreign partnerships, the law in force in their respective jurisdictions. They must also remain in existence for 5 to 15 years and have committed capital of at least $20 million.

The bill provides that venture capital funds that are or intend to register with the commonwealth may register as incorporated limited partnerships in Victoria.

The special features of venture capital partnerships are related to the high-risk, long-term nature of the investments made by the limited partners in the partnership and by the partnership in investee companies. The bill recognises this by making available to the parties involved in such investments the structure of the incorporated limited partnership.

This structure recognises that the limited partners should have enhanced protection against involuntary entanglement in legal actions against the partnership or in which they are only indirectly concerned. It also recognises that the limited partners often have an active role in overseeing the investments of the partnerships and in advising and assisting the investee companies and that these activities should not of themselves be taken as constituting participation in the management of the partnership, which would expose them to liability for the partnership's debts and other liabilities.

The bill further recognises that the general partners of venture capital partnerships, who manage the business, typically are professional venture capital management bodies that manage several funds at the same time.

To these ends, the bill provides for bodies that are registered or that intend to register with the commonwealth for the taxation benefits, or are management bodies that act or intend to act as general partners of such bodies, to register as incorporated limited partnerships with consequential provision for:

the partnership to be the primary party to any suit;

the general partners to be liable only for the debts of the partnership that the partnership is unable to satisfy;

expanded activities that can be engaged in by limited partners which by themselves do not constitute taking part in the management of the business, particularly when advising investee companies and when participating in committees that consider proposals for changes in the nature or valuation of the partnership's investments and in the authority of the general partners, proposals regarding conflicts of interest and proposals for changes in the general partners;

a limited partner who has taken part in the management of the business to be liable only for debts incurred as a direct result of the limited partner's conduct and where the third party reasonably believed that the limited partner was a general partner; and

restriction on the ability of the partnership or a general partner to act as the agent of a limited partner.

The special benefits of incorporated limited partnerships are justified in order to attract overseas investors who are accustomed to such regimes overseas, and because those involved in and with venture capital funds are typically large institutional investors, and investee companies that understand the contingent basis on which the venture capital is invested.

The bill provides for safeguards against abuse of the system by allowing the director of Consumer Affairs Victoria to issue show cause notices to incorporated limited partnerships that the director considers have ceased to carry on business or who have not been registered by the commonwealth within the required time or whose registration has been cancelled, as to why they should not be wound up.

I commend the bill to the house.

Debate adjourned on motion of Hon. A. P. OLEXANDER (Silvan).

Debate adjourned until later this day.

ANZAC DAY (AMENDMENT) BILL

Second reading

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

That the bill be now read a second time.

Second-reading speech as follows incorporated on motion of Hon. M. R. THOMSON (Minister for Small Business).

This bill meets the government's commitment as outlined in its response to the review of Anzac Day laws by the Scrutiny of Acts and Regulations Committee of Parliament (SARC).

The SARC review was initiated in November 2001 with the aim of further enhancing the significance of Anzac Day as a national day of commemoration, within Victoria.

The government's response to the SARC report was tabled in Parliament in May 2003 and indicated that the implementation of the response would be undertaken prior to Anzac Day 2004.

A number of other recommendations of the SARC review which relate to pieces of legislation other than the Anzac Day Act 1958 are currently being investigated with a view to possible legislative amendments.

The government agreed with the broad principles outlined in the report, in particular the report's emphasis on recognition of the great significance of Anzac Day and the need to protect and enhance the significance of the day.

Our response followed a long period of consultation and took into account the views of all stakeholders — both government and non-government.

There is a clear and overwhelming support for Anzac Day as a day of national commemoration, as evidenced by the growing number of Australians making pilgrimages to Gallipoli and the attendances at Anzac Day services.

It is essential that Anzac Day be supported by appropriate legislation, which reflects the community's view of the importance of the day.

Accordingly, we are now recognising the significance of Anzac Day through this bill.

The bill:

> provides that references to 'Anzac' in legislation will be made in upper case encryption to reflect the origin of the word as a combination of the Australian and New Zealand forces that served at Gallipoli;
>
> expands the existing reference to commemorating participation in the Great War to include reference to participation in subsequent conflicts, including peacekeeping activities; and
>
> increases the penalty for breaches relating to the cinema and entertainment provisions of the act, with the level of penalty to be up to 100 penalty units.

Further, to enable clearer understanding of all legislation which impacts on Anzac Day, the bill will include a note listing all laws applicable to Anzac Day.

It is important that on Anzac Day we recognise the sacrifices made by all Australians who have served their country in conflicts and peacekeeping activities and this is achieved through the expanded reference to commemoration.

The increase in penalty levels for breaches relating to the cinema and entertainment provisions of the act will provide for greater consistency between acts and provide a more appropriate deterrent to restrict activities on Anzac Day to allow for the observance of the day as a significant occasion.

Through this bill, we aim to strengthen our commitment to the observance of Anzac Day as a day of national commemoration.

We want to ensure the continued observance of Anzac Day by providing the right balance between the observance of the solemnity of the occasion and the need to maintain some essential commercial activities.

The bill delivers the government's commitment arising from the review of Anzac Day laws and will further protect and enhance the significance of Anzac Day as a day of commemoration.

I commend this bill to the house.

Debate adjourned on motion of Hon. B. N. ATKINSON (Koonung).

Debate adjourned until later this day.

FISHERIES (FURTHER AMENDMENT) BILL

Second reading

For **Hon. T. C. THEOPHANOUS** (Minister for Energy Industries), Hon. M. R. Thomson (Minister for Small Business) — I move:

> That the bill be now read a second time.

The Bracks government is committed to the sustainable development of Victoria's fishing and aquaculture industries. This needs to be undertaken in a way that protects the environment for future generations but also fosters jobs and innovative, thriving industries.

The Fisheries (Further Amendment) bill will support the sustainable development and management of Victoria's fishing and aquaculture industries in line with these commitments. The bill will also implement important election commitments to facilitate the development of aquaculture zones and to get tougher on illegal fishing activity.

Many of the proposed amendments to the Fisheries Act 1995 reflect the government's response to the recommendations of a number of public review and consultation processes. These include the national competition policy (NCP) review of the Fisheries Act 1995, the Environment and Natural Resources Committee's 2002 *Report on Fisheries Management*, the National Parks (Marine National Parks and Marine Sanctuaries) Act 2002 and the Environment Conservation Council's *Marine, Coastal and Estuarine Investigation 2000*.

This bill actively implements the reforms that the Bracks government has previously committed to.

I will now turn to the particulars of the bill.

As outlined in part 1 of the bill, its purpose is to amend the Fisheries Act 1995 to create various offences in relation to trafficking in, taking and possessing abalone and rock lobster. The enforcement powers of authorised officers will be increased. The bill also establishes mechanisms to facilitate aquaculture activities. The operation of compensation provisions under the Fisheries Act 1995 will also be modified and clarified. A number of other amendments are included in the bill to improve the operation of the Fisheries Act 1995.

Part 2 of the bill sets out a range of enforcement provisions to ensure that the government has the capacity to effectively address the unique operational challenges presented by the illegal take of Victoria's valuable fisheries resources and its linkages to organised crime. The emerging scale, complexity, and high costs to the community of this activity requires a strong response and concerted effort.

The illegal take of fish resources, or theft of a public resource, is the biggest known threat to the sustainable use of Victoria's most valuable fishery resources, the 'priority species' of abalone and rock lobster. Not only does this illegal take of resources threaten the sustainability or survival of the fishery but it also threatens the jobs of people in the industry. Broader implications for the wider community include the unfair competition with legitimately sourced product in the marketplace, compromising of food safety, and also revenue loss for the government, and therefore the community as a whole.

Countries around the world have seen the collapse of their fisheries due to high levels of illegal take. As a result of these collapsed abalone fisheries, Victoria and Tasmania are now in the unique position of providing approximately half the world's supply of wild-catch abalone. Along with the benefit of premium prices for wild-catch abalone, comes the detriment of an increased vulnerability to being targeted by opportunistic and organised crime.

Illegal fishing activity has parallels with the illegal drug trade, and at times intersects with it. Organised crime uses increasingly sophisticated measures to harvest and launder profits from illegal fishing trade. For instance, an Australian Institute of Criminology report suggests that illegally taken abalone, or its proceeds, have been used to fund drug imports. Further, the common transit networks operated by organised crime syndicates have been identified as being utilised to traffick a range of illicit goods, including priority fish species.

This bill will provide increased penalties and improved enforcement powers, which are essential in addressing the nature of the offences. The penalties must also reflect the extremely lucrative nature of the illegal trade if they are to provide an effective deterrence. Penalties must be comparable to those applying to other forms of theft and also take account of the high black market value of the resource. Fines alone are not considered to be an adequate deterrent in a lucrative environment where black marketeers are able to factor in substantial fines as simply 'the cost of doing business'. As such, imprisonment will be included in the penalties made available for addressing such crimes.

The government has been clear in its intentions for the Victorian abalone industry to implement measures to reduce the estimated levels of illegal take of abalone. The proposed measures are consistent with this direction. The all-party Environment and Natural Resources Committee *Report on Fisheries Management* in June 2002 contained a number of recommendations to significantly improve powers for fisheries enforcement activities. The measures in this bill reflect the government's response to the recommendations of the report.

The insertion of indictable offences for illegal theft and trafficking of priority species will enable the provision of assistance by other agencies, such as the Australian Crime Commission, which provides enhanced intelligence, surveillance and operational capabilities. This will allow enhanced cooperation between national and interstate agencies, and the differentiation between higher levels of illegal operations and minor offences.

Improved arrest and search powers are also important in addressing the nature and scale of these illegal activities. Given that the need to apprehend suspected offenders arises in remote areas, or areas not proximate to police assistance, it is necessary to confer increased powers of search and arrest on authorised fisheries officers. Apart from the primary benefit of facilitating more effective enforcement, this measure will also reduce the burden on police resources. Most of the proposed enforcement and penalty measures have similar provisions in force in other states, or in commonwealth legislation.

The role of the Ombudsman will be clarified to ensure accountability in the use of personal defensive equipment, including the use of capsicum sprays, by authorised fisheries officers. As such the secretary of the department will be required to report specified incidents involving authorised officers to the Ombudsman.

Part 3 of the bill includes a range of other amendments to the Fisheries Act 1995, which are described as follows.

The amendments in relation to aquaculture will assist government to facilitate aquaculture development in Victoria and enable the implementation of management plans prepared for marine aquaculture fisheries reserves. The government response to the Environment Conservation Council's recommendations for marine aquaculture in the final report of the marine, coastal and estuarine investigation 2000 endorsed the development of 12 marine aquaculture zones, including two land-based zones. The development of these sites is hoped to provide a valuable boost to the Victorian economy through the creation of up to 500 new jobs.

The development of management plans flows from the declaration of the zones as fisheries reserves for aquaculture purposes. The ability to declare fisheries reserves in respect of land provides for the development of management plans for the two land-based marine aquaculture zones, allowing for consistent management of marine aquaculture throughout the state. Management plans prepared for fisheries reserves will also outline recovery of attributable costs, consistent with the government's approach to cost recovery.

Amendments to the issuing of fisheries notices without consultation in certain circumstances will assist preventative measures to be implemented where delays in the issuing of a notice may result in a greater impact to such things as a fishery, species or habitat. In emergency circumstances the minister will be able to issue a fisheries notice without consulting relevant bodies where the minister is of the opinion that consultation would result in a delay that would significantly reduce the effectiveness of the notice. In such circumstances the minister will be required to notify relevant bodies as soon as practicable after issuing the notice and also provide a statement of reasons for not consulting prior to issuing the notice.

The government has a commitment to the application of the principles of cost recovery for commercial fisheries and aquaculture to ensure that the community receives a fair return for the commercial use of its resources. This was reflected in the government's 2001 response to the findings of that national competition policy review of the Fisheries Act 1995.

The all-party Environment and Natural Resources Committee of Parliament has also recommended the implementation of cost recovery for fisheries management in Victoria in its inquiry into fisheries management second report in 2002. This was also set out in the section 151 review tabled in Parliament earlier this spring session.

Cost recovery is also an objective in the Victorian abalone fishery management plan, such that 'the main beneficiaries, industry and government, will share the costs of enforcement in accordance with the attributable cost policy to be developed by government'. This is consistent with the government no longer shouldering the primary costs of management and enforcement in circumstances, which involve substantial profits to industry. The repeal of section 159 will have the effect of removing a cap placed on the aggregation of fees, levies and charges in the abalone fishery based on the formula used in earlier legislation (Fisheries Act 1968). This will enable fees, levies, charges and royalties to be consistently set by the cost-recovery program and ensure transparency in charging.

As the government has previously indicated, the costs of implementation of Victoria's system of marine parks, including enforcement will not be charged to industry, as this is a public function. Cost recovery will be on the basis of industry-related costs.

The measures in relation to compensation clarify the scope of compensation which may be claimed as a result of the cancellation of licences under section 61 of the Fisheries Act to apply to specific categories of loss. The current compensation provisions, taken directly from the Land Acquisition and Compensation Act 1968, were never designed to apply to commercial fishing licences accessing a publicly owned resource. They differ from fisheries legislation applying elsewhere for similar claims. The revised provisions apply a much more appropriate and consistent approach to compensation for loss of entitlement.

Section 63(2) will be amended to clarify compensation entitlements for licences cancelled under section 61.

The proposed amendments to the act to validate decisions regarding licence cancellation in relation to Mallacoota and Lake Tyers remove any doubt as to the validity of the decisions taken earlier this year. As members may recall, the fisheries have been closed by the secretary giving effect to a ministerial direction under section 61 of the act.

Compensation claims have been lodged by all the affected licence-holders within the time set by the secretary. These claims are currently being progressed. However, one licence-holder has also issued a writ challenging the decision to cancel the licences.

This calls into question whether the compensation would be paid prior to the hearing and determination of

the Supreme Court proceedings. If the Supreme Court proceeding were to be successful, and compensation has been paid, a question regarding the compensation that was paid would be raised by implication. This would create difficulties for the holders of the fishing licences who have received compensation in the interim, and want certainty.

The amendment affirms that commercial fishing has been closed in Mallacoota and Lake Tyers. However it does not affect the compensation claims that have been made by all the former commercial licence-holders which are currently being progressed.

Statement under section 85(5) of the Constitution Act

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

Clause 47 of the bill proposes to insert a new section 214 into the Fisheries Act 1995. The proposed section 214 states that it is the intention of sections 202(1), 209 and 210(2) of the Fisheries Act to alter or vary section 85 of the Constitution Act 1975.

The existing section 63(6) of the Fisheries Act 1995 provides that certain provisions of the Land Acquisition and Compensation Act 1986, with any necessary modifications, apply to the determination of compensation under the section as if the claim were a claim under section 37 of the Land Acquisition and Compensation Act.

Clause 34(2) of the bill repeals section 63(6), and clause 47 of the bill effectively imports the provisions of the Land Acquisition and Compensation Act 1986 that were previously applied by section 63(6) into the Fisheries Act 1995 and makes some modifications to those provisions to better reflect their placement in that act. Several of the imported provisions, namely proposed sections 202(1), 209 and 210(2), limit the jurisdiction of the Supreme Court.

The proposed section 202(1) provides that compensation disputes in which the amount in dispute is $50 000 or less must be determined by the Victorian Civil and Administrative Tribunal, unless an issue of unusual difficulty or of general importance is involved. Proposed section 209 requires the Supreme Court to ratify settlement agreements, and provides that those agreements, on ratification, are to take effect as if they were a determination of the court. The proposed section 210(2) limits appeals to the Court of Appeal to questions of law.

The reason for limiting the jurisdiction of the Supreme Court in the way just described is to attempt to ensure that compensation disputes can be dealt with in an expeditious and a cost-effective manner that provides certainty to the parties involved in the dispute. It would largely defeat the purpose of establishing a compensation dispute resolution process if a dispute concerning a relatively small amount of money on an issue of no general importance could be required to be taken to the Supreme Court, or if a settlement agreement could be revisited, or if a decision of the Supreme Court on a matter involving more money could be re-litigated on the merits before the Court of Appeal.

It should be mentioned that proposed sections 202(1), 209 and 210(2) are simply replications of sections 81(1), 88 and 89(2), respectively, of the Land Acquisition and Compensation Act 1986. As previously mentioned, that act applies to compensation disputes under section 63 of the Fisheries Act 1995 at present — therefore, proposed sections 202(1), 209 and 210(2) do not effect any change to the law that applies to compensation disputes.

Other measures

Measures have also been taken to close off the potential for claims to be made for changes to a Total Allowable Catch in a quota-managed fishery, where catch levels have to be changed for sustainability reasons.

The amendment to one objective of the act is also considered appropriate in relation to ongoing structural adjustment of the commercial fishing industry.

Amendments to the confidentiality provisions will facilitate the ability of peak bodies to more effectively represent their members. The amendment is broadly consistent with the section 151(9) review, which has been tabled in Parliament in this session.

The proposed amendments to the Fisheries Act 1995 are consistent with the government's objectives outlined in Growing Victoria Together (GVT). The amendments are important to ensure that Victoria maintains a sustainable fishery resource that can be managed and developed for the benefit of the Victorian community.

I commend the bill to the house.

Debate adjourned on motion of Hon. PHILIP DAVIS (Gippsland).

Debate adjourned until next day.

PROFESSIONAL STANDARDS BILL

Second reading

Debate resumed from 19 November; motion of Mr LENDERS (Minister for Finance).

Hon. C. A. STRONG (Higinbotham) — The Professional Standards Bill 2003 creates a scheme to limit the civil liability of professionals and members of occupational associations and like groups. I would put on record at this point that the opposition will not be opposing this bill.

For the professions in our economy, this is an important piece of legislation. Everybody would know that professionals play an enormously important role in providing advice and designs and so on to almost every walk of life, whether that be professional advice in the law, professional advice in accounting, engineering, architecture et cetera. If it were not for the work that professionals do, then the society we have today would be quite different.

As well as dealing with the professions and professional associations this bill also deals with other associations such as associations of trades, or any other group that provides services to the community. The basic reason for this piece of legislation is the enormous problem that these groups, particularly the professions, have had in obtaining professional indemnity (PI) insurance. Their failure to be able to obtain professional indemnity insurance and/or to obtain professional indemnity insurance under reasonable conditions of price, exclusions, access to their claims et cetera has been a major impediment to their functions and work over the last few years. This professional indemnity crisis has been particularly real for the professions.

To give the house some idea of the scale of the crisis, I will quote from some research that was done in late 2002 and early 2003 by the Institution of Engineers Australia which conducted a survey over all their members on the whole question of public indemnity insurance. Although the survey was done nearly 10 months ago it can be said that the situation has not improved since then. If anything, it has continued to deteriorate as the anecdotal advice I have had suggests. Nevertheless this put into some frame the scale of the problem. This research reveals that while the amount of PI insurance cover being taken out by the profession had not changed significantly over the last three years, premiums have tripled, gone up more than 210 per cent while the excess that the professionals were required to stump up in the case of a claim had gone up by 166 per cent.

They are staggering increases. Also staggering in the scale of the problem is that the survey found that 49 per cent of engineers said they had been refused cover in the last 12 months or had some conditions or restrictions imposed upon them. The survey also unfortunately found there was very little correlation between the size of the firm, the risk management strategies they had in place, their claims record and all the things you would think would normally impact on an insurance cover. These factors were found to have little effect on the fact that so many people who fulfilled all these conditions had cover refused or had very significant conditions put on them.

The survey found that those areas that had restricted conditions and had cover refused were particularly concentrated in the project management and in the environmental engineering area. I think anybody who understands the industry would know those are two very important areas. For example, people undertaking asbestos removal and so on found it extremely difficult to get any insurance cover at all.

That gives some idea of the scope of the problems. Although this survey was done on behalf of engineers by the Institution of Engineers Australia, the advice I have had, particularly from accountants and other professions, is that in their particular areas the situation is just as desperate.

The engineers survey also found some other interesting data. It found that the largest increases in premiums over the last three years had occurred among the following groups: Victorian firms had increased on average 320 per cent, and they were the highest of the groups the survey looked at. Victorian firms were more adversely affected than any other firms. Next were firms with turnovers of $5 million plus, which had increases of 265 per cent; down to firms with 10 to 49 staff, which had increases of 257 per cent. Victorian firms were very badly affected.

Interestingly, for this bill and in general, the survey also found that firms using risk management strategies had higher premiums and had experienced larger rises — 203 per cent — than those that do not use them — 151 per cent increases. The survey went on to find that there appears to be no relationship between the proportion of government work done and the premium increases.

On excesses payable, a huge impost, the survey found excesses had nearly tripled over the last three years with the average increase being from $8270 in 2000 to $21 970 in 2003, a 166 per cent increase. The reasons for such increases are many and varied, but I think they

go to some certain facts. The insurance industry has claimed that it has been losing money on professional indemnity claims in the past and, not surprisingly, it has said it does not want to continue losing money on these claims.

We all know that the insurance industry has been going through some stress over the last two or three years as a result of investment reserves dramatically increasing, because obviously insurance companies must provide reserves against future claims and risk. What they do is invest those reserves, and if the investment climate is positive and there is various growth in those reserves then that is something that can, to a certain extent, mitigate against premium rises. But if there is a significant reduction in the size of those reserves, which has certainly been the case in the last few years, that puts some stress on the insurance companies through premiums to make sure those reserves are maintained.

It is also fair to say that after the HIH collapse the Australian Prudential Regulation Authority (APRA) and the various organisations that look at prudential requirements and prudential risk have been looking a lot harder at insurance companies and requiring standards to be met fully and carefully. I am informed that the latest report by APRA shows that for every $1 premium income received the total cost of claims was in the order of $1.46, and this includes professional liability and medical professional liability. One can see that on professional indemnity insurance there is considerable stress, and that stress has meant that many of our professions and similar bodies, as the statistics show, have been unable to get insurance, have insurance with impossible conditions or are otherwise facing huge increases in premiums.

The bill seeks to help the professions in meeting this very significant challenge of the professional liability crisis that they have been facing. It seeks to do this by putting in place a regime that will reward professions which can establish that they are carrying out their professions in a competent and responsible way. It seeks to say that if any group of professionals or the like can clearly demonstrate that they are a lesser risk than other professionals who do not go through various standards of accreditation, training and so on, they should not face the same level of insurance premium or insurance risk.

Essentially, that is the foundation for the Professional Standards Bill. The bill establishes a Professional Standards Council to supervise the preparation and approval of schemes which will improve the occupational standards of the people in those professions and, as a consequence, provide a greater level of consumer protection. If the professionals are more competent then that in itself is a level of consumer protection. Such schemes would seek to have a better informed, better trained, better skilled profession, with appropriate quality control standards in the operation of that profession.

The trade-off as a consequence of having all those things in place — it is referred to as a scheme — will be the ability to limit the civil liability of those professions and members of the occupational association who are members of those schemes. There is also a significant element of self-regulation, in that the professional groups will prepare and administer the schemes, although the schemes will have to be approved by the Professional Standards Council.

Similar legislation has already been introduced in New South Wales and Western Australia. Other states and territories are in the process of introducing similar legislation. The commonwealth government has in train amendments to the Trade Practices Act that will support a nationally consistent professional standards approach. In a nutshell, those are the issues to be followed.

There are some significant risks. As with many of the challenges we are facing with insurance, there is inevitably a trade-off to minimise the risk of the insurer and to encourage the insurer back into the marketplace at reasonable premium levels. The insurer quite clearly wants the risk he faces to be reduced and an improvement in the predictability of the style and scope of the claims he is likely to be faced with. That has a flip side of personal rights and liberties and the ability of people who make a claim to be appropriately compensated.

There is also another element in this legislation — and I will take the house quickly through some of the key clauses in the bill — and that is the extent to which a professional body that develops a professional standards scheme and has it approved will be responsible for seeing that all its members who are part of that scheme conform to significantly high standards. That will give the professional body considerable power over its members. We are able to see this in other professional and trade bodies — for instance, we see it with certified practising accountants. CPAs have an arrangement with an insurer, as it were, to become an insurance agent, and I am sure revenue flows from that. Certainly we see it in the builders warranty area, where the Housing Industry Association is basically an agent for Royal and Sun Alliance Insurance Australia and gains a significant amount of its revenue from the insurance agent functions it carries out.

The bill will give the professional bodies significant power. They will be able to basically mandate that their members will be insured, and that will be something they will demand of their members if they want to continue to be members. If they do not want to be insured, they will not be able to be members of that association. They are saying, 'You must be insured, and you must be insured through an insurer that we believe is providing the appropriate cover. It just so happens that we are the agent for one of the insurers whom we are crediting with that authority'.

There are certain risks for the professions in using this as a fundraising exercise and there are certain risks for individuals within the professions to the extent that there is a freedom of association issue. These issues will have to be worked through with great care.

I will touch on some of the key issues of the bill. The scheme for limiting liability covers only economic loss, so this capping of insurance by virtue of being part of a professional standards scheme only applies to economic loss; it does not apply to any claims of a personal nature. It only deals with claims that have a minimum threshold of $500 000. So although such a scheme might have been useful for various trade organisations, to a certain extent their ability to be involved in the scheme is reduced by the fact that there will be a minimum threshold where claims must be over $500 000.

The bill provides that the scheme will cap the liability of members of the scheme, and it will compel members to insure against that occupational liability. It obliges the occupational associations to develop and adhere to risk management strategies and to also establish an appropriate complaints and disciplinary system.

The Professional Standards Council that will be set up under this legislation will comprise 11 persons who will be appointed by the minister. This involves a clever and appropriate arrangement. There are professional standards councils in New South Wales and Western Australia, and other states are introducing similar legislation with professional standards councils. If you look at most professions — whether they be accountants, lawyers, doctors or engineers — you see that most of them practise across Australia. Therefore it would be a bit messy if there were separate standards councils in each state requiring separate standards and approving different types of schemes.

To deal with that there is an agreement between all the states that the 11 persons who will be appointed to the Professional Standards Council will be the same 11 people in each state. While each state will have a council, the 11 people who make up that council will be the same people across Australia. Using that device enables the individual states to legislate, but there will be a standards council that is the same across Australia — and I think that will be positive.

The new Professional Standards Council will be fully funded by fees payable to the council by the occupational associations. These fees will consist — and this is set out under the legislation — of an application fee of $50 000 and an annual fee of $35 a member, although there is the opportunity to charge a lower fee than that.

Then there is the whole set of procedures as to how a scheme is put together. Basically it is put together by a fairly open and transparent procedure. The particular professional body or trade association will develop the scheme for its members. It will consider the consumer protection advantages they are offering in the scheme, the training and quality control mechanisms, the level of caps for insurance they are looking at and so on. The scheme will go to the Professional Standards Council for approval.

The role of the council in that is fairly open and transparent. The scheme will be open for public comment for the taking of submissions by the public and interested bodies as to its appropriateness or not, so there will be a whole procedure to see that there is an appropriate hearing of all those issues.

The Professional Standards Council, after due consideration, will recommend the approval of the scheme or some amended version of it. The scheme will go to the minister for approval and gazettal. It will go through the same Subordinate Legislation Act procedures under which many schemes and regulations have come through this house, with the opportunity for them to be dealt with by this house in the normal way that statutory rules can come here and be disallowed by the Parliament.

Following the publication of the scheme in the *Victoria Government Gazette* a two-month interim period will apply before the scheme commences, and this will allow any person who is reasonably likely to be affected by the scheme to challenge its validity in the Supreme Court before the scheme commences.

Schemes have an operational period of five years, after which the Professional Standards Council can take submissions to introduce, amend or update them. The council also has the overriding discretion of revoking a scheme if the council feels it is not appropriate or not being carried out properly.

The other side to this is that once a scheme is approved for a professional group, if members of the scheme want to take advantage of the insurance covers that come under the scheme, they must be insured. On their letterhead and in all their correspondence they must declare that they are a member of that scheme, because in many cases that scheme may well limit the extent of insurance that a client is able to get.

For instance, a client may be looking for insurance cover of $50 million on a particular project but the consultant who is carrying out their work on that scheme may be a member of the scheme whose liability is capped at $25 million. There is a requirement that all the professionals and trade organisations — all their members who are beneficiaries of that scheme — declare that on their correspondence, so there is no question that their clients are not aware. If they do not do that, then their cover under the scheme is voided.

As I touched on before, under the scheme there are also various disciplinary and appeal processes that allow for any member of a scheme that is seen to be not abiding by the appropriate standards to be brought before the professional association on various disciplinary mechanisms, as well as being able to ultimately come before the Professional Standards Council itself. That is the basic sequence of how the bill will operate.

I need to touch on some important exclusions set out in clause 5. The bill does not apply to liability for damages arising from any of the following: the death of, or personal injury to, a person — it is only economic damage; any negligence or other fault of a legal practitioner in acting for a client in a personal injury claim; any breach of trust or fiduciary duty; or fraud or dishonesty. The bill does not apply to liability that may be the subject of proceedings under section 110 of the Transfer of Land Act, where we find such things as title defects, things to do with the titles office, and so on.

There are significant limitations. Essentially the scheme will have very little use or carriage for the legal profession. Certainly significant parts of the legal profession — those that deal with issues like conveyancing and so on — will not be covered, nor will those dealing with cases of fraud or dishonesty. They are important exclusions.

As I said before, the bill not only covers professions but also other trade and occupational organisations, the main issue being the $500 000 cap. The bill also puts in place a series of procedures by which there might be a cap on claims. Individuals or professions may have significant assets, and rather than insure up to the full level of the cap they may seek to insure to a lesser level and use their assets to make up the difference to the cap. That is allowed for in the bill, and there are procedures on how that will take place.

It would be fair to say that all the professional associations with which I have been involved on this issue now for some 18 months are keenly waiting in anticipation for the legislation and are supportive of it. Some have the odd problem with the detail, but they clearly support it.

For instance, the Australian Council of Building Design Professions includes such august groups as the Australian Institute of Landscape Architects, the Institution of Engineers Australia, the Royal Australian Planning Institute, the Association of Consulting Engineers Australia, the Australian Institute of Quantity Surveyors, the Association of Consulting Architects Australia, and the Royal Australian Institute of Architects. The Australian Council of Building Design Professions has certainly been working for some time to bring this bill about.

Greg Larsen, chief executive officer of CPA Australia, is supportive of the bill, and said, amongst other things in correspondence to me:

> May I take this opportunity on behalf of CPA Australia to recognise your efforts and input to the acceptance of professional standards legislation in Victoria.

I have the same type of comments from the Institution of Engineers Australia and many other groups. There is a great deal of support from the professions.

I have also spoken at length to the Insurance Council of Australia. Although it is very supportive of the bill it is hedging its bets by not saying that the bill will be the solution to world hunger, as it were, but that it will have to see how it works out. It is nevertheless a step in the right direction from the council's point of view.

There are issues of freedom of association and how it will work with various members of the professions and other organisations. By way of example, my own professional organisation is the Institution of Engineers Australia. The bill envisages that if one is a member of a professional association and it becomes a sponsor of a scheme or has a scheme in place, then members of that association must take out insurance. There are no ifs, buts or maybes — end of story. If I wish to remain a member of the Institution of Engineers Australia — like Minister Madden, who is probably a member of an architects association — if that organisation takes out a scheme, I will be forced to take out insurance. That raises significant issues for many professions, because many members are not practising for various reasons

and therefore do not want to have insurance. Some innovative arrangements that have been arrived at are worth putting before the house. For instance at a recent conference some weeks ago my association presented a paper that highlighted how that particular body intended to deal with the issue. It intends creating a new professional organisation which will then go forward and create a scheme. Practising members of the engineering profession will join the new body that will have a scheme. It is a lot more complicated than that, but the essence of the process is that it will set up a new professional association as a scheme holder and those members of the profession who want to partake of the scheme will have to join that other professional association as well as being members of the Institution of Engineers Australia.

Those who do not want to avail themselves of insurance will simply remain members of the Institution of Engineers Australia but not the other scheme. That is a good way around the dilemma of non-practising professionals who do not want to avail themselves of insurance, which comes at considerable cost. However, it will create some confusion in the marketplace in that there will end up being two engineering associations, probably two architectural associations and so on. There are already various legal associations, but there will be more, as well as more accounting organisations and so on.

Hon. W. R. Baxter — Does that mean if you decide to practise and join this new organisation they will expel you from the institution?

The ACTING PRESIDENT (Ms Hadden) — Order! Mr Strong is in the middle of a speech.

Hon. C. A. STRONG — I think what it means — I retreat to the example of the Institution of Engineers Australia, because that is what I know about — one will still be able to remain a member of the Institution of Engineers because that will not partake of a scheme. But one will not be able to be a member of the associated engineers Australia, or whatever they are going to call it, unless one does carry insurance.

We are going to see a proliferation of new professional bodies. We are going to see something quite interesting as well. For instance, the scheme that the engineers are trying to get off the ground will be a scheme that will not just simply cover members of the Institution of Engineers Australia but will also be available to members of APESMA, which is the association of draftsman and technical people and so on. They are also hoping to make it available to members of the association of consulting engineers and a broader range of people, so we may see a number of new professional bodies set up which are more global in their reach of professions. It may be that you can still have your own associations for architects, engineers, chartered accountants and other professions, but they may have one central accounting body set up of which interested people can be members to take advantage of the scheme.

So there will be changes in the way the professions and associations organise themselves as a result of this bill. I think that may take quite some working through with regard to how this will play out in the long term. What can be said is that the professions look forward to the passage of this bill; they look forward to this being able to help them in the whole area of professional indemnity, and they look forward to this bill being a stepping stone in the revitalising of professions throughout Australia and Victoria. With those few comments I commend the bill to the house.

Hon. W. R. BAXTER (North Eastern) — Mr Strong has given the house a very interesting dissertation on this bill, and I thank him for so doing, because as a member of the Institution of Engineers Australia he probably brings to the debate a degree of understanding that perhaps one or two of us might well be lacking.

I do not intend to spend too much time on the legislation because the National Party supports the bill. As Mr Strong has said, it has been long awaited. The community has obviously run into quite a problem with this public liability insurance issue on a number of fronts over the last three to four years. We have had a whole suite of legislation come before the Parliament in terms of the medical practitioners, adventure tourism and the like to try to come to grips with what are community expectations — that is, the reasonable capacity of someone who can mount a case and who is aggrieved to actually be compensated as against providing some sort of security for those people who in good faith in the professions or whatever activity might find themselves in a degree of litigation.

I think that the provisions of this bill are clever, and I do not use the word ‘clever’ in any pejorative sense; I think they have been well thought through. Whoever — and I do not suggest for one moment it has only been a single individual who has done this — has turned their minds to a way around this problem in terms of the professions I think has done extremely well. I might be premature in saying that as obviously the proof of the pudding is going to be in the eating, and we will have to see how it goes.

It does seem to me that this bill is likely to achieve not only its primary objective of providing a degree of safety and coverage and security in terms of insurance liability for the professions, but at the same time it is likely to lift the standards in the professions in any event. The community can only benefit if that is the case. I think it is also going to mean that those people who want to be cowboys and who do not want to be involved in professional associations and the peer pressure that brings upon people to conduct themselves in a proper manner and deliver the highest possible quality of service are going to find themselves out in the cold. If they do not join an association and do not become part of a scheme they are going to be practising uninsured, and that would be a danger not only to themselves but to the community. Some of them may well, if they do not have many assets, be prepared to run that risk, but it is going to mean that the community will be able to make an assessment whether they are prepared to deal with a person, organisation or firm not covered by these new insurance arrangements.

The bill provides that the stationery of firms will need to indicate whether they are members of the scheme and to what extent liability is addressed in the coverage that they have got. It will therefore be incumbent on clients who are seeking someone to deal with to make their own judgment before they engage a particular professional as to whether the level of insurance is such that they feel comfortable with it. I do not think that many people who get professional advice actually contemplate that something might go wrong, but regrettably on occasions it has. We have seen previously some sad stories in newspapers and cases before the courts where, through negligence and poor advice, people have been put to extraordinary economic loss. There has to be a system that addresses that.

I also want to emphasise, as Mr Strong did, that this bill does not apply to claims for personal injuries, negligence or other conduct by a solicitor in the conduct of personal injury claims, breach of trust or fiduciary duty, fraud or dishonesty. It needs to be emphasised that this bill is not in some way trying to circumvent the provisions or to provide some sort of hiding place for professionals in those particular examples. It certainly does not do that, nor should it. There are other statutes that deal with those particular groups.

As Mr Strong very clearly explained, the bill also provides a cap which is based on a number of parameters — perhaps the size of the business, the business assets and the like. I find it a little difficult to get to grips with how that cap will work, but I am assured by those I have sought advice from that this is a feasible way of doing things and I accept it. Again I say the proof of the pudding will be in the eating.

The Professional Standards Council of 11 members will be drawn from nationwide, which again is a good initiative. However, I have to say I am somewhat intrigued by the provisions that go to the members being under ministerial direction. Are they to have many masters? Is the Victorian minister able to give direction only to those who are appointed from this jurisdiction? What say does he have over the council as a whole? The bill seems unclear on that, not that I expect that a council of this nature should be in need of ministerial direction.

If it is undertaking the duties that are given to it under this bill it is hard to contemplate a circumstance where it might need to be under ministerial direction in any case; but I suppose we as a Parliament ought to be legislating for all possibilities, not the most likely possibilities. I suppose at some time a circumstance will arise where ministers will want to give some directions. I am not clear whether they have to do it in unison or whether an individual minister can do so, and the minister at the table might like to clarify that point later on.

One of the professional groups that I have a concern with, and I hope this bill goes some way to protecting the public from some of the poor advice it gives, is made up of financial planners. They have become the flavour of the month over the last decade. I listen to them on ABC radio, I read what they say in the *Australian Financial Review* and in the money sections of the daily newspapers, and I certainly think that the advice the planners give or that which is printed in the papers is capable of misinterpretation by their listeners and their readers.

I would hate to think that people actually take decisions on what they hear on ABC radio on Saturday mornings. When someone rings in and asks a question I am just appalled, not that what is said by way of answer is wrong, but that it is capable of misinterpretation by listeners who do not have a very good understanding of the stock market or financial investments and so on.

The financial planning industry might well look at the way it conducts itself in that area because it will have done itself no service over the years if it comes to be criticised because people have acted on what they read in newspapers or hear on such radio programs.

I also want to emphasise that the insurance companies not only in this piece of legislation but in the other tranches of legislation the Parliament has passed in the

last 12 months and the amendment to the Wrongs Act which is on today's notice paper should come to the party and pass on their savings to their clients — to the persons who are insuring. At this stage we have no guarantee of that whatsoever; we have not even had insurance companies undertaking to do that. They have hedged and said, 'Oh, yes, we have to get the experience of what our claims will be in the future', and so on.

For example, I note that over the last month or so — the annual reporting season — most insurance companies have been reporting much increased profits. I will not name any, but members have only to go to the financial pages of the *Herald Sun* or the *Age* and they will see that profits have increased over the last year or so. If the insurance companies are returning to making profits, which they clearly are, the community at large will demand to see some benefit from all this legislation — this restricting of the rights of individuals or this capping of damages payouts.

There has to be a benefit for the community, it cannot just be a benefit for the insurance companies. I will be interested to see the trend in public liability insurance premiums over the next 12 months or so. If they do not trend downwards, governments might have to see if they can take action.

I am not one for regulating private industry, but there is a feeling that the community's rights have been corralled to varying degrees, depending on which particular aspect of liability insurance you look at. Therefore some corresponding and compensating benefit has to come out of all of that in terms of lower insurance premiums.

I have listened to Mr Strong's comments about freedom of association, and I am sorry that I interjected with a rather lengthy question, but I have concerns about the solution put by the Institute of Engineers to get across this issue of how to deal with people who want to remain as members of a professional body but not still practise. I understand why people would want to do that, but at first blush I have some concerns about the idea of setting up a separate body of which those who want insurance are going to become a member as well as being a member of the institution proper. It seems to me that that will introduce a whole heap of duplication, extra paper work, extra costs and so on.

Off the top of my head, I suggest they might well look at our own CPA — not certified practising accountants but the Commonwealth Parliamentary Association — where members who cease to be members of Parliament and who want to maintain an association with the CPA become associate members. I cannot see why you could not be an associate member of the Institution of Engineers and have all the rights that members have except you do not get caught up with the requirement to hold insurance and incur the premiums that entails because you are not practising.

As I say, I am no expert but I am just putting that on the table as a preferable way of doing this rather than establishing a whole series of extra bodies. As Mr Strong pointed out to the house, there are absolutely dozens of these professional associations around the nation, and rightly so. I want to encourage them and to encourage professionals to join their associations, the same way as I encourage farmers to join the Victorian Farmers Federation for somewhat different reasons.

However, we need to have our professionals in organisations where there is some capacity for peer pressure to keep the standards high, to make sure everyone is doing the right thing. It is much easier to do that if people are not working in isolation up in some country town with no contact at all with others in that profession either by telephone, person, mail or whatever.

I am a great believer in encouraging people to join professional associations, and if this bill perhaps by coincidence has the effect of encouraging people to be members of the association of their profession, that is to be welcomed.

On behalf of the National Party, I indicate that the party believes this legislation has a lot of merit. We hope it has been well thought through; it appears to have been, and it is groundbreaking. It may not work entirely well in the first instance. If it needs some amendments and some finetuning, so be it. We are prepared to give it a go, and we are very glad it is template legislation being introduced nationwide.

Hon. J. G. HILTON (Western Port) — I am especially grateful to Mr Strong for his contribution. It was a most erudite and comprehensive review of the bill. I am particularly interested in his comments about non-practising members. As a non-practising chartered accountant and psychologist, I would be up for a significant line-up of fees, so I am sure the professional bodies will cope with that in their own unique way.

I do not intend to take up too much of the time of the house, given the fact that the bill is unopposed. I would like to make a few comments. Obviously the genesis of this bill was the increasing cost of professional indemnity insurance and its reduced availability, and we have all heard examples of that in recent times.

The prime purpose of this bill is to address those issues, essentially by introducing limited liability whilst at the same time protecting consumers who may avail themselves of the services provided by these associations or professional bodies, and as a corollary of that to introduce more effective risk management standards.

The objectives of the bill are essentially threefold: to facilitate the development of schemes which limit the civil liability of professionals; to improve the standards of such professionals; and at the same time to protect consumers who use those professional services. This is all done under the auspices of a professional standards board, which will supervise and approve the preparation of these schemes and assist in the improvement of occupational and professional standards.

As I think Mr Strong said, generally when we think of liability we think of the accounting, legal or engineering professions, but there is absolutely no reason why other professions — and I cite my own of psychology — cannot also develop appropriate schemes.

There are several clauses in this bill, which again Mr Strong has been quite comprehensive about in his contribution, covering such issues as capping, risk management, the Professional Standards Council and the role of that council, scheme membership, funding and penalties. As has been mentioned, the legislation is modelled on legislation that is already in place in New South Wales and Western Australia, and indeed the commonwealth government has agreed on the importance of consistent standards and will amend the Trade Practices Act.

The prime purpose of the bill is to enable a professional association to develop a scheme which can limit the amount of professional liability damages. I know from my previous career with Price Waterhouse that professional liability insurance was a major cost to the firm — in fact, after wages and salaries it was the second-biggest cost. This was because when other companies went broke they tended to sue the auditors, usually because it was only the auditors who had any money, which obviously made great demands on the auditors' liability.

In this scheme I believe there will be a minimum liability of $500 000, but the cap can be several million dollars, depending on the profession. It is also proposed in this bill that consumers have full knowledge of the insurance liability caps which apply to the companies or associations they are dealing with. The regulation of these schemes will be the responsibility of the Professional Standards Council, which will have appropriate powers and responsibility to approve and maintain the schemes.

To answer a question Mr Baxter had, Victoria is I understand appointing the same people to the professional council in this state as have already been appointed in Western Australia and New South Wales. I think this is another good example of interstate cooperation. All the proposed schemes will be subject to rigorous examination to ensure that the consumers are adequately protected.

In summary, I believe this is an excellent piece of, as has been said, groundbreaking legislation. We obviously have major problems with professional indemnity insurance. This is one of a series of bills to address those problems. It may not be the final answer, but at least it is a start. I am very pleased to commend its passage to the house.

Hon. B. N. ATKINSON (Koonung) — One of the good initiatives of the Minister for Small Business was to establish a review of export opportunities for professionals and for organisations involved in providing a range of consulting and professional services. There is no doubt that there are significant export opportunities for these people who have quite a diverse range of skills that they have developed here in Victoria on everything from environmental consulting, building design, engineering and architectural practice right through to marketing consultancy, public relations and so forth. Certainly the minister has referred to the IT industry on a number of occasions.

What has been recognised as part of that review — and I think it is important, and I certainly concur with the government's position on this — is that in the past many of those people have perhaps been seen as being in a class of their own, as simply professionals, rather than as small businesses in their own right. The reality is that they are small businesses. Therefore it is of concern to me that the export opportunities these small businesses might well have available to them because of the skills they have may be reduced simply because of limitations on their practices and operations here in Australia. That would come about because of concerns about their ability to obtain suitable insurance coverage to undertake project work here and to go about their business in their various fields of consulting or professional expertise. This legislation is very important.

It does not, however, apply to the medical profession. Interestingly enough, the federal government was required to establish a rescue package for the medical

profession when public liability and professional indemnity insurance were in difficulty. I notice that the main supplier of insurance coverage in that area of professional indemnity has recently sought to recommence operations. It has been restructured. Proposals that have been established by the federal government in concert with the states — because the discussions on this whole insurance issue have involved all of the states and territories as well as the federal government — have enabled that company to look at re-entering the market for providing medical insurance, and that is a good thing.

It is interesting to me that I have been advised that in Holland they actually have capping on claims that can be made in the medical areas of litigation. Perhaps that is something we also need to think about down the track as we look to ensure that there is a balance between people's legitimate claims and rights and ensuring that we do not have this Tattslotto mentality in terms of payments to people. Certainly what precipitated this crisis in the insurance industry in Australia has been a period of very high claims and a significant increase in the range of incidents for which insurers have been forced to pay.

There has been a particular problem with the Australian market, probably following the American market, being one of the most litigious markets in the world. People are running off to the courts and seeking to take legal action over all manner of claims, as I said probably as much as anything else because a bit of a Tattslotto mentality is adopted in some legal areas these days. It is something that ought to be revisited. Governments are going to have to revisit this area, because we simply cannot afford as a community to have some people unfairly benefit and improperly profit from legal claims and in fact reduce the opportunities of other people to pursue claims that are legitimate and genuine and much fairer.

In a very good and informed presentation on this legislation the Honourable Chris Strong remarked on the problem of the fall in equity markets around the world and the returns to insurers. Indeed most insurers in all forms of insurance very seldom make money out of their underwriting — that is, out of the writing of or the issue of their policies.

Most of their returns and their ability to meet their obligations on payouts on policies come from their investments. In recent years with investment markets being in a degree of retreat, particularly in the major world markets, they have had real difficulty maintaining their returns and therefore in balancing the costs of their underwriting losses against investment income. So all those sorts of problems have hit us at once.

We have seen a significant problem arise for small firms and professions which are having difficulty finding any insurance coverage at all. The number of insurance companies offering cover in the market has been reduced. There are fewer insurance products available, and those products in some cases are extremely reduced in terms of the coverage they provide. That coverage has certainly been very expensive.

It is a national problem; and it has occurred in some other countries as well. It is obviously not a problem only in Victoria. The approach to fixing this has clearly been a national one, with both federal and state governments being involved. As the Honourable Chris Strong mentioned, the New South Wales and Western Australian governments already have legislated along these lines.

One of the problems in Australia has been an exacerbation of the whole area of litigation. Many companies have taken a 'last man standing' or 'deepest pockets' approach to legal action. In other words, a whole range of people who bear very little responsibility are enjoined in a legal action: there is disproportionate responsibility in terms of the legal action that is taken. That tends to line up a lot more people in liability and risk terms for an insurance company, and it has certainly caused significant problems. There has always been a real problem with the potential liability on many companies being disproportionate to their actual responsibility in any matter that is taken before the courts.

This bill has been introduced to deal with the public liability and professional indemnity crisis. Any bill of this nature needs to strike a balance between the legal rights of individuals, companies and even government agencies to pursue legitimate claims and the maintenance of a viable marketplace, and the bill is based on a reasonable premise that should establish such a balance. It provides a limitation on civil liability to professional and occupational association members provided they are prepared to be involved in a regulatory scheme and be members of an association. In taking out that membership they will be required to conduct their business activities in accordance with established industry standards.

The legislation establishes the Professional Standards Council to supervise schemes developed by professional associations. Eleven people will be appointed to that council and, as the Honourable Bill

Baxter said, it will have a national membership. The council will have the authority to authorise, supervise and in some cases to vary schemes. In future the membership of an association will be a far more critical factor than in the past because, as has been mentioned by the two previous speakers, if you are not a member of an association you are likely to find it very difficult to get insurance cover. I have a slight problem with that. I understand the issue and note that the federal government has to amend the Trade Practices Act in regard to this matter. I accept that as a position, but I hope this matter is monitored by the Australian Competition and Consumer Commission and indeed by the state government. One of the concerns I sometimes have about these industry associations is that they are a very good vehicle for keeping new competitors out of the marketplace.

At one stage I was involved with the Public Relations Institute of Australia. It started to develop some very noble business regimes and qualifications for people to become members of that association. While I thought that many things were relevant and took the industry forward in terms of its professional standards, I could not help but think that some standards were being developed by the very large consultancy companies with the very clear aim of keeping out new, small practitioners from the market as their competitors who would chip away at their client base. I am concerned that this legislation is not used by associations in a way that would seek to unfairly restrict competition.

The schemes developed under this legislation can impose a cap of $500 000 on the level of professional liability damages for pure economic loss. There is no cap on death or personal injury claims, and it will not apply to any breach of trust, fraud or dishonesty claims. The council established by the bill will be fully funded by a $5000 application fee for an association and a cost of $35 a member, and I think that is reasonable.

The bill provides a process for the establishment and public notification of schemes developed under this legislation. It provides for annual reports to the council, and it sunsets schemes after five years. Schemes can only run for up to five years, but the council has a discretion to extend, revoke or amend an existing scheme. The bill requires a professional to disclose any limitation of professional liability to clients, and that is a reasonable provision in terms of the interests of the consumer.

The bill has the support of professional associations and overall it is appropriate legislation. Hopefully, it will ensure the viability of many small businesses so that, as I indicated at the outset of my contribution, they will be able to go out and contest the export market opportunities that the government aspires to, and certainly the opposition shares that vision.

Parliament must defend legal rights to legitimate and reasonable claims at all times. But it must also ensure business and public confidence and the viability of small business in our marketplace. It must ensure that that confidence and the operation and viability of businesses are not undermined by Tattslotto-style awards by courts — awards that too often appear disproportionate to the responsibility of an individual or a firm. No doubt there will be more legislation to come in this insurance area but at this stage this legislation is a worthwhile step in the right direction.

Hon. D. McL. DAVIS (East Yarra) — It is my pleasure to make a contribution to debate on the Professional Standards Bill 2003. In doing so it is not my intention to make a lengthy contribution.

An honourable member interjected.

Hon. D. McL. DAVIS — 'Good', I notice the minister says — I think she gets worried if I make a lengthy contribution.

The Honourable Chris Strong has covered most of the points that the opposition believes are appropriate with this. In summary, the bill establishes a Professional Standards Council to, according to the explanatory memorandum:

> … supervise the preparation and approval of schemes and to assist in the improvement of occupational standards and —

to improve the —

> protection of consumers.

The civil liability of professionals and members of organisations and groups which are members of such schemes will be limited. The legislation also aims to promote the self-regulation regarding these issues by occupations, trades and professions. It imposes a set of rights and obligations and accountabilities. This applies not just to the traditional professions, as the Scrutiny of Acts and Regulations Committee report notes; it applies broadly to all occupational associations.

I concur with some of the comments made by the Honourable Bruce Atkinson about the role of associations. This is an opportunity for associations to demonstrate significant leadership to provide a scheme that will benefit not only their members but the broader community by establishing a set of arrangements which will clarify and strengthen the understanding both by

professionals and the community of the aspects of this bill and its aims to provide a better system.

I note that there has been significant consultation on this bill by the opposition. The Honourable Chris Strong has talked of many groups in his presentation, whether they be engineers or other groups. I have been involved with him in talking to a number of the health and medical groups. Whilst this bill has been delayed compared to what happened in other states, it is a step forward. and to that extent it is supported by the opposition. We do not oppose this bill in any manner.

The situation with professional standards is interesting at the moment. In Australia a great deal can be done in this area; it is necessary to get a clearer and more functional system. As we have seen with other areas of compensation, whether they be transport accident compensation schemes, workers compensation schemes, including our own Workcover system, or common-law claims for personal injury, it is always a problem with compensation schemes to get the right outcome, which is to assist those who truly suffer some detriment through the actions of another.

The aim of such schemes or arrangements, including common law, is to compensate fairly and appropriately. Clearly that is a matter of fact and individual situations. Each individual situation will be different from the other. We need a system that differentiates between those situations where a true and reasonable liability exists to compensate for issues that arise through the actions — in the case of this bill — of a professional person, and those injuries, illnesses or liabilities that arise through unforeseeable or unpreventable issues.

It is important to be able to winnow the claims and to make sure that people are compensated properly and appropriately and that unreasonable costs are not generated by those processes. One of the large problems in schemes of whatever nature is the transaction cost. The costs generated in coming to those decisions are too great. We have seen that with the common-law system. I am not advocating broad or sweeping change at all; I am just reflecting on the fact that our legal system is a very costly one and that making decisions on liability takes time, cost and energy. That can be a factor in governing outcomes as much as the rights or wrongs of a particular case. We know that these decision-making processes are transaction costs of a significant type. This bill, to the extent that it clarifies some of those responsibilities of professionals, will make that a simpler situation and lower costs associated with establishing fair and reasonable liability.

If a professional can take steps to cover themselves and put in place practices and arrangements that limit the likelihood of untoward events that may harm others — those they have professional responsibility for — that should be done. If associations and other groups within professions can facilitate that, the bill will go a long way towards achieving that. To that extent I am pleased to speak in response to the bill.

I note that at the federal level significant steps are being taken by the federal health minister to develop a better system or plan for indemnity, and I will make some comments on that. I compliment the Minister for Health, Tony Abbott, for the steps that his recent elevation has allowed in getting working groups to form a working party that will enable him and others to come up with good solutions for the health care community and their patients.

The deadline of 10 December is good. It is encouraging that he is prepared to act swiftly and decisively to come up with a good solution. The contrast with the slowness of the Victorian government to respond, the lethargy we have seen here and the slowness of the Minister for Finance who has overall responsibility for this area is a great contrast and one that most Victorians do not support.

Part of the problem we have with the medical indemnity crisis in Victoria is that the state government was so slow to respond and we did lost significant sections of the medical work force through that delay, lethargy and tardiness by the state government. The contrast with the federal situation cannot be greater.

I know the response to me by professional groups on this bill has been interesting. I think it is fair to say there is reasonable support for it, and I do not diminish that. I note that the support is broad across the community. There are still problems in this indemnity area, and I look forward to further steps being taken to find solutions to it. I do not see that the government has on its horizons the taking of further steps. I note the Premier said on the radio recently that the government had done all it was going to do in this area, and I accept that is what he thinks, but he was also very slow to respond to matters at an earlier point. I do not necessarily take the Premier's comments on radio to be the last word on this issue, because he has been dragged kicking and screaming to many things, and it may be that further steps in this area are required.

I note also the further use of a section 85 statement in this bill. I do not necessarily reflect on its use here, but I make the point again, as I often do with these bills, that the government promised it would cease the use of

unjustified section 85 statements. I know that during the last Parliament I made the point strongly in this chamber that there was a big gap between its rhetoric from 1999 and its actions since it came to government in terms of section 85 statements. I know that the Premier at a meeting with the Law Institute of Victoria prior to 1999 said he would remove the section 85 statements from 200 pieces of legislation.

We have seen no sign of that, but we have seen the opposite — that there is an increase in section 85 statements by the government, and it is prepared to use them in a cavalier and unsatisfactory way. Given that a section 85 statement is from time to time appropriate, it needs to be remembered that we are reducing the rights of Victorian citizens to appeal to the Supreme Court. I make this short comment to again place on record the concerns I have about the government's increasing and continuing use of section 85 statements.

In conclusion I say again that the opposition does not oppose the bill; it supports its aims. The bill will take some steps towards erecting a suitable process for the proper practices in each individual industry to be recognised and for the medical or other professional groups that are practising within the scope of those established parameters to be given greater security and clarity in their practice.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

In so doing I thank all honourable members for their contributions.

The ACTING PRESIDENT (Hon. Andrew Brideson) — Order! I am of the opinion that the third reading of the bill is required to be passed by an absolute majority. As there is not an absolute majority of the members of the house present, I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

The ACTING PRESIDENT (Hon. Andrew Brideson) — Order! So that I may ascertain whether the required majority has been obtained I ask those members 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.

TRANSPORT (RIGHTS AND RESPONSIBILITIES) BILL

Second reading

Debate resumed from 19 November; motion of Ms BROAD (Minister for Local Government).

Hon. D. KOCH (Western) — It gives me great pleasure to make a contribution to debate on the Transport (Rights and Responsibilities) Bill. In so doing I mention that the Council debated the Road Safety (Amendment) Bill last week and will soon debate the Road Safety (Drug Driving) Bill — both significant transport bills.

Mr Baxter's counsel of last Thursday evening, or more probably last Friday morning, certainly rings in my ears from the point of view that these bills have been running for a long time and are intermittently tidied up, whereas in actual fact it is probably high time the Transport Act went back into the mill and was looked at and redrafted, bringing a lot of the amendments that have taken place over the years into line in one formal act.

Next week the Gambling Regulation Bill will come into this house — it is being debated in the other place this week — and 14 pieces of legislation that have been condensed down to 8 will be provided for under the one act. It would be marvellous as time goes on if the government took the opportunity to consolidate many of these bills into a proper format without all these amendments having to be studied and worked through.

The Transport (Rights and Responsibilities) Bill amends the Transport Act 1983 and sets out six purposes, which I will bring to the attention of the house. They are detailed in the explanatory memorandum as follows:

to enable the Secretary to the Department of Infrastructure to conduct inquiries in relation to any accident or incident involving any rail infrastructure or rolling stock for purposes relating to public safety …

That is found in clause 3, which inserts proposed section 129UA into the Transport Act. The next point is:

> to further regulate the transfer and assignment of taxi licences …

That is found in clause 4, which inserts proposed section 143D into the principal act. The amendments will also:

> … enable the payment of administrative costs to passenger transport and bus companies in relation to specific ticket infringements …

That is found in clause 10, which inserts proposed section 213A into the Transport Act. Further the bill will:

> … enable the imposition of graduated penalties for transport and ticket infringements …

That is found in clause 12, which inserts proposed section 215(2) into the act. The bill also enables:

> … authorised officers to inspect tickets and evidence of ticket concession entitlements after a public transport journey has been completed …

This is found in clause 13, which introduces proposed section 221AA into the act. It will also:

> … streamline provisions dealing with authorised officers.

That is in clause 15, which inserts a definition of authorised officer as a person authorised under section 221A or 221AB of the principal act.

The bill also amends the Road Safety Act 1986 to enable authorised officers under the Transport Act 1983 to take action in relation to certain parking infringements in respect of vehicles in any railway car parks. That is found in clauses 24 and 25.

I propose to go quickly through all those points as picked up in the explanatory memorandum, the first being the greater powers conferred on departmental secretaries. In part 2 of the bill clause 3 inserts proposed section 129UA, which will delegate greater powers to the Secretary of the Department of Infrastructure to conduct inquiries into rail accidents or adverse trends in the industry. Members will appreciate that delegations of this type carry both positives and, on some occasions, negatives. The positives include the interim findings about accidents being made much earlier than if that responsibility is passed over.

I have a few examples. The Broadmeadows ghost train accident took place in February 2003, and although a draft report was released and received in August this year and the final report was presented in October, the minister still has not released the final report. It concerns me, and I am sure it concerns many, that he may well be waiting until the house rises after the spring sittings to lessen the impact of that report.

The investigations into the recent Ballan derailing may also be made public in a shorter time frame once this amendment is in place. We appreciate that many members of the public are interested, especially in western Victoria and in Western Province, and would like to know what the situation is. Some people who live in my province were travelling on that train. Fortunately their lives were not lost, but they were heavily bruised. Aged people who use this very good service to Melbourne instead of driving their own motor vehicles to Melbourne, and their families, will be interested to know what took place. This amendment will certainly support an earlier outcome than would otherwise be available.

The bill also gives the secretary of the department the opportunity to keep the public informed of trends. These may be good trends, bad trends or otherwise. It will give the public the opportunity to learn what the trends are, not only in passenger transport but also in freight movements statewide. The only negative I can really see, and I am sure everyone is aware of this, is that it probably gives an opportunity for the minister to hide behind bureaucracy. That in many ways should be seen as a serious issue. I have little doubt that the minister may well hide. That is the only negative I can pull out of the provisions in front of us.

I refer to the transfer and assignment of taxi licences. As part of the national competition policy on reform of the taxi industry, licence selling and assignment trading must be accredited by an established securities exchange or an accredited broker. For the first time I think everyone would support that argument. In the past there has been concern about the way licences have moved among operators and how they have been transferred and assigned. As a country person one of the things I appreciate in this is the government's recognition of infrastructure and opportunity in regional Victoria. The Bendigo Stock Exchange, a well-known and reliable exchange over many years, has been chosen to carry out that role.

The release of a further 600 licences into the industry at the rate of 25 a quarter — 100 per annum — should be of concern, especially to those who currently hold licences and rely on them not only for a livelihood but as an opportunity at a later date when they want to transfer or sell them to other people.

The industry has indicated that there are sufficient licences currently and that granting further licences may well only erode the value of existing licences. We can all appreciate that. The more we put on the market, the less valuable they will be. It will make the industry and the directorate work that much harder to maintain the status they currently enjoy.

As I said earlier, the livelihoods of taxi owners and drivers could easily be further threatened by this impost. Clause 4 inserts proposed section 143D, which provides that these new licences may be conditional on non-transfer or permanent assignment to another party. That is a major concern for many in the industry who may be attracted to purchase single licences or further licences because it makes succession planning in the industry, especially among family members, difficult.

Regrettably the Bracks government hates free market forces determining the value of commodities, and that should give us all a little concern. This was again reinforced in the long debate we had on Thursday night when the Honourable Theo Theophanous indicated that possible speculation in real estate was one of the driving forces in relation to the amendments to the green wedge boundaries.

We see another opportunity here for taking speculation out of an industry that the free-market forces would certainly look after and not letting any of these opportunities get beyond the bounds of affordability for those who are interested in and looking for a return.

The other concern I and especially those living in regional Victoria have regarding the taxi industry is the capping of the multipurpose taxi scheme and the availability of taxis under the existing licences and arrangements. We see this as a nasty ploy. It disadvantages our aged, infirm and disabled by capping the use of services that they can currently enjoy. The service allows them to get out of their homes for some time; it gives them the opportunity for social outlet, shopping, settling accounts and moving around their community in a way that would otherwise be impossible for them, especially if their family or friends are not close by.

The disabled have indicated their concern about what cutting this program will do to their enjoyment of life, especially in their later years when they have not got all their faculties or do not have the use of a motor car or access to other public transport. Major concerns are outlined in an article in the *Age* of 10 November headed 'Disabled fight cuts to taxi scheme':

> The state government, with its new restrictions on taxi subsidies, is discriminating against the disabled by confining them to their homes, social welfare groups say.
>
> In a letter to Premier Steve Bracks today about 50 welfare and charity organisations and individuals accuse the government of discriminating against the disabled.
>
> 'Physically confining people with disabilities in their homes and removing their power to live their life on their own terms are serious concerns in their own right,' the welfare groups say.
>
> 'The changes … represent an abandonment by the Victorian government and the ALP of human rights principles and of the principle of equal participation by people with disabilities.'
>
> The welfare sector is striking back at recent government changes to its multipurpose taxi program, which provides subsidised taxis to disabled people. The government now pays half the metered fare, up to a maximum subsidy of $25 a trip.
>
> Last month the government announced that from next year it would impose a $550 yearly cap on fares. Some disabled people would be means tested.
>
> Signatories to the letter include the Victorian Council of Social Service, Guide Dogs Victoria, Headway Victoria, Council on the Ageing (Vic.), Carers Victoria, Uniting Church's Victorian synod and the Yooralla Society of Victoria. The Disability Network is organising a series of protests outside Parliament starting on 19 November.
>
> In the letter, welfare groups attack Mr Bracks over:
>
> > Not consulting before announcing the changes, contrary to undertakings in the state's disability plan.
> >
> > An 'offensive, inappropriate and discriminatory' exemption system, where the handicapped must apply to a government review board to have their trip limit lifted.
> >
> > A $16.50 charge for new and replacement cards.

The Liberal Party appreciates that that is a huge cost to people who, in many cases for no specific reason, mislay or lose cards. A further $16.50 impost to replace those lost cards is recognised as beyond many people. The article continues:

> The letter calls on Mr Bracks to explain how the disabled would get to work and gain access to social services if they were excluded from the taxi program.
>
> Transport minister, Peter Batchelor, said last month that the program costs had risen from $36 million in 2000 to $42.6 million last year.
>
> State opposition transport spokesman, Terry Mulder, said yesterday the government had known for years the system was being undermined by rorting.
>
> The *Age* has seen a list of suspect fare transactions, which show the account number of disabled cardholders being charged twice — minutes apart — with similar but not

> identical $20-plus fares, virtually doubling the return to the taxi driver and the cost to the government.
>
> The taxi industry source said the regulator, the Victorian Taxi Directorate, had been provided with a copy of the list too. The driver has not been questioned about the suspect fares and is still driving taxis, the source said.
>
> …
>
> A spokeswoman for Mr Bracks said he was happy to meet the groups for talks.

As a concerned citizen I would have believed that the Premier may have been on the front foot and actually gone out and further consulted with many of these people who find themselves disadvantaged. I would have thought that that sort of initiative would have made the position a lot clearer to those who now find themselves going back to bureaucracy to substantiate their claims when in actual fact they have been through that process once already. I believe and maintain that they have a right to continue to access an uncapped multipurpose taxi program, which ultimately I am sure will be the case for many after they have gone through the process.

Clause 10 relates to the payment of an administrative cost to recoup infringements on our public transport system. This clause inserts section 213A into the Transport Act and allows an amount to be paid to private companies to recoup infringement penalties. It is anticipated that something in the order of $10 to $20 will be made available from the penalty charges collected to allow for that penalty recovery.

I and the opposition believe that is a reasonable request. We know that in excess of $50 million is lost through fare evasion annually, which is an unfair burden to be carried by the private transport systems. The bill provides an opportunity to regain some of that through the imposition of a $10 to a maximum of $20 infringement notice, and we support that measure, but our concern is that it does not put another bonus system into place which may make enforcement officers more overzealous, as has been reported in relation to the speed camera industry where a premium is being offered if they can better the quota.

The Liberal Party supports graduated penalties for repeat fare evasion, as would anybody. I do not think anyone likes or supports fare evaders. The introduction of fines for second and subsequent offences but which were retired after specified periods, as suggested, would be supported by the Liberal Party.

Of concern is the provision whereby tickets are inspected after a journey has been completed on public transport. Clause 13, which inserts proposed section 221AA, gives authorised officers the opportunity to serve infringement notices after someone has 'just left' a carriage, land or premises. These are broad parameters to work within. The 'just left' a carriage, land or premises should be further defined.

We appreciate the difficulties experienced by enforcement officers in handling fare evasion. This is not a position that gets much community sympathy, which we appreciate, but leaving grey areas in the legislation makes it hard on those who are trying their best to build some confidence in the system.

Further clarification of the term 'just left' is critical, as 'just left' the premises could mean on the footpath, crossing the road, entering a business house, or in some cases entering a person's private home. This is particularly relevant to tram passengers. Another longstanding concern of the Liberal Party is supporting amendments such as the 'just left' one for making those who have left public transport responsible whereas they may have group or family tickets, and points of exit from the public transport system may vary for the actual ticket holder.

This has always been a major concern. What rights will such people have if, after being on a group or family outing, they step off at various places on the way home and are accosted by authorised officers and have nothing in their hand, pocket or wallet to identify that they were part of a group ticket because the authorised ticket holder is on the public transport system further down the line? That provision should be further defined in the bill because, regrettably, otherwise it will be left to the courts to decide, and could become expensive for the passenger affected. It should be tidied up before the bill is passed.

The Liberal Party is supportive of the naming of 'authorised officer' because of the confusion between authorised officer and authorised person. The Liberal Party is supportive of the deletion of 'authorised person'.

I turn to parking officers. I appreciate that parking officers will now be able to issue parking infringement notices to offenders in public car parks under the control of the public transport sector. There has long been usage by patrons of parking facilities on Crown land and railway stations. In the past parking has always been the responsibility of local government, but on this occasion there is a requirement for authorised officers to assist in the management of parking at such places, which the Liberal Party supports.

The only concern is that there could be too many authorised officers, and at some stage there must be a

definition of what authorised officer does what. One day an authorised officer could be on parking duty, the next day on ticket sales, and the next day could be dealing with the unauthorised use of public transport and fare evasion. From the officer's and community's point of view, there should be some clarification in relation to the position of authorised officer throughout the public transport system. With those few words, the opposition does not oppose the bill.

Hon. P. R. HALL (Gippsland) — In the absence of the National Party spokesperson on transport, the Honourable Barry Bishop, it is my task to report the views of the National Party on the Transport (Rights and Responsibilities) Bill. Mr Bishop has returned to his electorate tonight for an important public meeting about toxic waste containment in areas around Ouyen.

Hon. M. R. Thomson — How come?

Hon. P. R. HALL — The minister has asked for an explanation. Mr Bishop has rightfully taken up that task of talking to his electorate on that important issue, and it is my task to report on the transport bill on behalf of the National Party.

Mr Bishop in his capacity as the spokesperson in this area has consulted widely. He has spoken to the National Express Group (Australia); the Transport Workers Union; the Public Transport Users Association; the Australian South Railroad; the West Coast Railway; the Royal Automobile Club of Victoria; the Victorian Employers Chamber of Commerce and Industry; Connex Trains; Yarra Trams; and the National Express Group.

He has spoken to all those groups and received feedback from them, and on an analysis of that feedback the National Party has decided that it will not oppose the bill. Like the Honourable David Koch has said, the National Party has some concerns about and comments to make on some of the particular provisions in the bill.

Firstly, this bill contains a wide range of amendments to the Transport Act, and covers such areas as fare evasion, enforcement of fare evasion, administrative arrangements relating to the collection of fines, the arrest of fare evaders; enforcement of parking regulations at railway station car parks; investigation of incidents, and it also makes amendments to provisions concerning limited taxi licences. That is a diverse range of issues.

When I go back and read the title of this bill — the Transport (Rights and Responsibilities) Bill — I am not sure why 'rights and responsibilities' is an appropriate description of all the types of amendments contained in the bill.

The next thing I want to say about the bill is that I wonder how it relates to the report referred to on the front page of the *Age* this morning in an article headed 'Rail bus and tram fares set to leap'. As this bill is about fares, particularly fare evasion, I wonder if there is any relationship between the report and the bill. I note with interest one of the aspects of the report:

> It also proposes a radical plan to deal with fare evasion — giving travellers without a ticket the chance to buy a $20 ticket on the spot to avoid a fine.

If we are amending the Transport Act in respect of matters relating to fare evasion, the enforcement of fare evasion provisions and graduated penalties for fare evasion, then I would like to know from the government whether the report referred to in the paper today has any credibility. I would like to know whether the government is considering these measures, because if it is, I would say we are premature in debating this bill.

If the government is seriously considering a range of issues in relation to fare evasion, then perhaps those matters should have been left for a later time and debated fully in a bill, because I hate to think that the Parliament will be back here again in the early part of 2004 debating further changes in respect of fare evasion when we could have dealt with them succinctly in a single piece of legislation. Perhaps in replying on the third-reading motion the minister would do us the courtesy of giving us an indication of the status of the report referred to in today's *Age* and whether the government is thinking of adopting measures additional to those proposed in this bill in respect of fare evasion.

Having made those couple of remarks I want to comment on some of the particular clauses and pose some queries. I will deal with them in the order in which they are presented in the bill.

The first one is the issue contained in clause 3, which inserts into the Transport Act a new section 129UA. It says the secretary may conduct inquiries, and the rest of this clause sets out the circumstances under which the secretary may conduct inquiries. I would have thought it would be a fairly reasonable proposition that, as well as the minister, the secretary of the department can undertake an inquiry, but in neither the second-reading speech nor the notes provided to the Honourable Barry Bishop, our spokesperson at this briefing, is there an adequate explanation as to why this change has been brought about. One is left to postulate as to why it is

now deemed necessary for the secretary to initiate an inquiry or an investigation.

Serious matters arise with public transport, and very unfortunately there was a serious incident just recently on the Ballarat line which warranted some very strong investigations. I think the government has a responsibility to explain why the scope for initiating inquiries is being broadened to include the secretary. I am still not quite sure why this provision is in the bill. I can only guess that it is for reasons of efficiency, and for that reason the National Party is prepared to support it.

The next issue, contained in clauses 4 to 7 of the bill, relates to taxis. As the Honourable David Koch mentioned in his second-reading contribution, the real issue about taxis at the moment is the proposed changes to the multipurpose taxi program. I agree wholeheartedly with his comments about the cap it is suggested will be imposed on this program — $550. I know that in itself is going to cause some really serious financial and social difficulties for people living in country Victoria.

It is no coincidence that this very day I tabled a petition signed by 956 people in my electorate who, in the space of two weeks, signed the petition to register their protest about the proposed changes to the multipurpose taxi program. I can assure the house that that issue will be coming in loud and strong from my other colleagues as well. We will be pleased to report to the Parliament that people in country Victoria, who do not always have access to the same public transport system as people who live in the major cities, particularly Melbourne, must sometimes rely on taxis as their only form of public transport to get around between the towns. In many towns we do not even have an adequate bus service to get people around, so in many cases they rely on taxis as their only form of transport.

The changes proposed to the multipurpose taxi program — both the cap of $550 and the changes to the conditions upon which people can participate in that program — will impact most severely on aged and disabled people in country Victoria. We say, as was said by way of petition today, that it is an important issue that this government needs to go back and rethink, because a great number of people are being disfranchised, particularly people who are aged or who have disabilities.

With respect to the provisions relating to the 600 peak taxi licences the government has said it is going to issue, I think 100 of them have already been issued with 25 new licences being issued every quarter. There are some amendments to the act that impose some requirements on the exchange or transfer of those licences to other people and limit the ability to exchange or transfer them. We have looked at this and agreed that these are fairly sensible provisions.

We also note that approval for the sale or exchange of taxi licences can now only be undertaken through an approved exchange, and further note with interest and pleasure that the Bendigo Stock Exchange has been approved as a broker for the exchange of taxicab licences. We are pleased that the government has recognised the Bendigo Stock Exchange in this matter.

Clauses 10 to 22 of the bill relate to enforcement powers and procedures. They also relate to authorised officers, and I want to make a couple of comments about that.

I will talk firstly about clauses 10 and 11, which relate to the ability of a public transport provider to recoup a proportion of any fine for administrative costs. We all know that fines collected for both public transport fare evasion and fines on roads generally go into consolidated revenue. However, Victoria's current arrangements are such that private companies are in the main operating our public transport. I might add that to some degree they always have — for example, bus services have always been privately run in this state. The private provision of public transport has been around in this state for a long time.

However, because of the increased number of privately owned public transport providers and also because authorised officers are being utilised by those companies to enforce fare evasion techniques, it is only fair and reasonable that the administrative costs of their doing that is recoverable by those private companies. So the provisions in clauses 10 and 11 are perfectly reasonable: it is only fair that the operators of the public transport system should be reimbursed for the cost of collecting fare evasion fines.

Clause 12 of the bill facilitates a set of graduated fines for fare evaders so that repeat fare evaders rightfully pay an increased penalty. Fare evasion on country public transport services, particularly country trains, is not such a great issue, given that conductors walk up and down the trains and check people's tickets. They provide a great service: not only do they check fares but they also provide information to passengers and assist them with the storage of luggage and disembarking with their luggage. I have always found the people in those positions to be most courteous and helpful, and they are responsible in the way they check tickets. There is no doubt that the issue of fare evasion on

country trains is not as big as it might be on trams and trains in the city.

The whole issue about a graduated payment for fare evasion is appropriate. Repeat offenders should be dealt with more harshly, and we are pleased to support the provision in clause 12 which will facilitate that.

Clause 13 is interesting. I note that the Liberal opposition had some concerns and questions about this clause. The National Party shares those concerns; we wonder how they will be practically implemented. Under clause 13 ticket inspection may take place after the completion of the journey. The exact clause in the bill states:

> (1) A member of the police force or an authorised officer may ask a person who has just left a carriage, or land or a premises for entry to which a ticket is required —

to produce that ticket for inspection. As Mr Koch just asked, what is meant by the words 'a person who has just left a carriage, or land'? Is it, for example, a person who is still on the platform in the case of a train? If they have gone through the platform gate and are still on railway land, does that constitute just having alighted from that public transport vehicle? In the case of a tram, if somebody is still standing in the centre of a road, perhaps at a tram stop, or has moved to the pavement or 50 yards away from the pavement, does that constitute having just left a carriage or land owned by a public transport provider? I am not too sure. How this is tested will be an interesting issue.

Mr Koch rightly said that perhaps it will be tested through courts of law, because that seems to be the only reasonable way to determine how this legislation might be interpreted. There are some challenges for the government in that provision.

Finally, clauses 24 and 25 enable authorised officers to become parking officers in railway station car parks or on land owned by a tram company, for example, where cars may be parked. I note that when this was introduced a couple of years ago it was expected that the tram and train operators would come to an arrangement with local councils for their bylaws officers to undertake the surveillance of parking and breaches of parking regulations. It seems that those negotiations have not come to fruition, so now this bill gives power to people engaged by transport companies to undertake that policing of parking arrangements in railway car parks.

It will be interesting to see how people respond once they get a parking ticket from a railway or tram company. I hope that the train and tram companies ensure that their travelling public are made aware that the company's employees are officers authorised to undertake this function.

Based on the times I have travelled on trains and trams in Melbourne, generally speaking these companies are good at disseminating information. I often pick up the brochures contained behind the tram drivers cubicle, and they set out a range of information about rights and responsibilities with respect to tram travel. I rarely travel on the suburban trains, but the trams certainly have that information, and I know it is also readily conveyed by train conductors on our country trains.

Information about enforcement of parking restrictions in tram and train parks needs to be conveyed by the respective companies so that people do not get caught out on this issue.

In conclusion, we have consulted widely on this bill. Some interesting issues will unfold in respect of the amendments to the act. However, the National Party is certainly prepared to see how they go and does not oppose the bill.

Ms ROMANES (Melbourne) — The Transport (Rights and Responsibilities) Bill incorporates a range of measures as part of the Bracks Labor government's reform package to further address public safety and issues relating to fare evasion, which continues to be a major problem on Victoria's public transport system.

The bill seeks to strike a balance between the right of travellers to be treated fairly when using public transport and their responsibility to travel with a valid ticket.

Other speakers have mentioned some important provisions in the bill, and I will summarise those. There is the regulation-making power for the accreditation of those trading in assigning taxicab licences and conditions of licences.

There is the provision to allow the Secretary of the Department of Infrastructure to hold an inquiry into an accident or incident involving any rail infrastructure or rolling stock for purposes relating to public safety and also to hold an inquiry in a trend of concern. In other words it is not just incidents that may trigger such investigations and inquiries but also systemic issues that require further consideration and investigation.

There is a range of measures to address enforcement and ticket-collecting issues. They include improved training for ticket inspectors, the establishing of a new code of conduct for ticket inspectors, and the establishing of a broader focus through the code of

conduct for ticket inspectors so that there is a change of attitude to customer assistance, travel advice and passenger safety. In the major reform package there is an increase of fines for repeat offences to target hard-core fare evaders. As part of this package there will be an increase in the basic fare-evasion fine from $100 to $150.

The regulations are clarified to allow ticket inspectors to check tickets immediately — that is, as passengers have just left a tram, train, bus or railway station — and that needs clarification because of a recent court case. I note that other speakers this afternoon have expressed some concerns about how difficult it will be to implement this particular provision in the bill before the house. I make the comment that the term 'just left' refers both to time and to space. It will refer to tram stops and to railway stations before the ticket gate. The expression of that area will be incorporated into the guidelines for ticketing inspectors through their code of conduct and through their training. I note further that Mr Koch expressed a concern that it would be difficult.

Sitting suspended 6.30 p.m. until 8.02 p.m.

Ms ROMANES — Before the dinner break I was making a point that the bill allows ticket inspectors to check tickets immediately after a passenger has left a tram, train, bus or railway station. Mr David Koch raised some doubts about whether that could be effectively implemented. I assure him in relation to his point on group tickets and his concern that someone who is on a group ticket might end up being separated from others in the group and fined under this provision that it is a condition of being on a group ticket that the group enters and exits at the same point.

Alongside those measures we should remember work is happening at a government level to prepare for the introduction of a public transport industry ombudsman to deal with commuter complaints about services, ticketing and other matters within the privatised system.

As I mentioned earlier, the key thrust of this bill is related to public safety and fare evasion. I have had the opportunity to travel over the last few years and to visit public transport bodies in over a dozen countries in the Western World — in Europe and the United States. I can assure the house that every other transport agency is grappling with these same issues, but the magnitude and the detail differ, and the responses will differ according to needs in different cities, and according to the design of their public transport systems.

As a city, Melbourne has among the highest levels of fare evasion in the world, so it is very important that the government takes action to address the problem. It is made even more difficult by the legacy we inherited from the previous Kennett coalition government. A lot of work has gone into addressing the flaws in the One Link ticketing system which has cost the government $65 million in contract variations to fix up, including the problem with fragmentation of the system under the franchisee privatisation. I remind members that the previous government got the sums and projections for patronage badly wrong when it let the contracts out to franchisees.

One year ago National Express — one of the franchisees, which operated three-fifths of the network — walked away because it could not make it stack up financially. At that point the government was required to inject a further $100 million plus back into the system, and it has been required to commit an extra subsidy of $200 million per annum over the next five years to shore up the viability and the stability of the public transport system.

The government is committed to a good public transport system; one that helps address issues of congestion, provides a good service for the people of this state and increasingly delivers more frequent and quality services. However, because of the extra commitment of funding, the government is in the process of negotiating new franchise agreements with the private operators to put the system on a sustainable footing and to establish one tram and one train operator with better coordinated central planning to help deliver on our objectives of a good quality public transport system.

As part of those negotiations, a fare increase over and above the annual consumer price index increase is necessary to keep the system operating without cuts to services or the closing of lines. Today the Minister for Transport released the details of the restructure in terms of ticketing and pricing which will deliver future financial stability, improve safety and provide a simplified range of ticketing options.

As I said previously in regard to financial stability, it is necessary to put the public transport system on a sustainable financial footing after the failure of the Kennett government's privatisation of the system. All revenue raised by the new fare structure will be reinvested in public transport.

Hon. B. N. Atkinson — Does that include extra rolling stock?

Ms ROMANES — There is already lots of investment going into extra rolling stock, Mr Atkinson.

Part of the $28 million that will be raised by the extra fare increases will go into an important initiative to improve safety and security, which we all know is a vital part of engendering the confidence to bring increasing numbers of people back to the public transport system. Today the minister announced that 100 extra front-line staff will be employed on the train network and on every train on Melbourne's metropolitan system from 9.00 p.m. until the last train.

Hon. W. R. Baxter — Is that 100 on each train?

Ms ROMANES — Mr Baxter, that will be two safety officers on every train after 9.00 p.m. to assist in giving the community confidence that their safety and security is being addressed.

Overall the new ticketing arrangements will increase fares by an average of 9.8 per cent from 1 January 2004. One of the very important elements of the new ticketing system is that it is aimed at simplifying the current complex range of tickets. It is important to provide for a simplified ticketing system so that some of the confusion and uncertainty that faces people, particularly when they first start to use the public transport system. That becomes a barrier to them deciding to leave the car at home and trying other forms of transport.

The new ticketing arrangements include the City Saver to replace the short trip and the Rail+2 in the city. The short trip will be replaced because it is a source of confusion amongst many people; they do not know where it starts and finishes, and it has resulted in inadvertent fare evasion across the system. The Daily 5 pack for people who use public transport regularly — perhaps 2, 3 or 4 days a week — but who do not use it enough to buy a weekly ticket is aimed at encouraging them to use the system more economically and to get some discount for being fairly regular users. I imagine that the Daily 5 pack will serve something like the function that the very popular daily travel cards perform in London, where they have become such a regular and important feature of the transport system that 70 per cent of people use them in London. We have a long way to go to get to that point from the 18 per cent who currently use our daily tickets, but hopefully this will provide some incentive to do so. The 60+ tickets have a minimal increase from $2.60 to $2.80.

No daily ticket will increase by more than 90 cents and some will be limited to a 10 cent increase. The government will continue its commitment to addressing a lot of the problems inherited from the previous government and to keep improving and rebuilding the public transport system in a way which is connected, coordinated and which encourages people to move across modes and to move out of their cars.

In doing so, in the next budget the government will spend $1.4 billion on public transport. In so doing, it will be acting consistently with the objectives of Melbourne 2030.

Hon. S. M. NGUYEN (Melbourne West) — I rise to speak on the Transport (Rights and Responsibilities) Bill before the house. The reason for this bill is to improve services to the community, and we want to make sure that consumers as well as the service providers are aware of their rights and responsibilities.

In Victoria we have a good public transport system. We encourage the public to use it more and more. Compared to other countries, Victoria's small population has a good public transport. I have spoken to many overseas tourists to Melbourne who have appreciated being able to use Melbourne's public transport. Public transport is big news for Victoria. Many people use public transport to go to work, school, shopping and many other things, especially big events every weekend. A lot of people use public transport to see sporting events such as tennis, football, rugby and you name it — —

Hon. J. M. McQuilten — Even golf!

Hon. S. M. NGUYEN — Even golf. Our public transport meets the demands of the community. It has connections to all the major events, the major shopping centres and places where there is population growth. Also the government is committed to extending the country railway line services to make the trains more accessible and faster. Use of our public transport makes the roads safer as traffic is not so heavy. It is a good alternative for our community.

The bill before the house is to close in the loopholes, which are always there, but the government is making sure the loopholes do not open again. A major aim is to improve services and establish a new code of conduct for ticket inspectors, to make sure they perform their duty nicely so that customers are not unhappy when the inspectors stop them and challenge them for their tickets.

The government decided to run the recruitment and training for the inspectors. It is also talking about increasing the fine for fare evasion from $100 to $150 and trying to increase the fine for repeat offences to target the hard-core fare evaders. Some people cannot afford it. We have to work out the best way to help them pay the fines. We do not want them to have a

more difficult life through not being able to afford the fines, thereby having the fines increase.

Also there is a regulation to allow ticket inspectors to check tickets immediately after a passenger has left the train, tram or bus station. The government will establish a public transport industry ombudsman to hear commuters' complaints about services, tickets and other matters.

These are all important points. The Bracks government is committed to providing public transport to Victoria. I support the bill before the house.

Motion agreed to.

Read second time.

Third reading

Ms BROAD (Minister for Local Government) — By leave, I move:

That the bill be now read a third time.

In doing so, I thank the honourable members for their contributions to the debate.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

PARTNERSHIP (VENTURE CAPITAL FUNDS) BILL

Second reading

Debate resumed from earlier this day; motion of Mr LENDERS (Minister for Finance).

Hon. A. P. OLEXANDER (Silvan) — In the interests of expediting a very full government business program I rise to make a relatively brief contribution to this bill. But I want to make it clear that we on the opposition side have some very specific concerns with this legislation, and I intend to outline those to the chamber for the benefit of the minister. Having said that I want to make it clear that we are not opposing the legislation as it stands.

In the other place we urged the government to clarify some aspects of the bill which, as I understand it, have yet to be clarified. Perhaps government members who will be active in this debate can elucidate those points in the course of their contributions. I certainly hope they can.

This bill amends the Partnership Act 1958 and inserts a new part 5 to facilitate a new form of partnership, an incorporated limited partnership. The purpose of establishing the incorporated limited partnership model is to enable venture capital funds, particularly funds emanating from overseas sources, to establish themselves in Victoria in what is their preferred form, the incorporated limited partnership model.

The new model of incorporated limited partnership has elements of both companies and traditional limited partnerships. These elements broadly relate to the liability of general partners or executive partners versus limited or non-executive partners. The bill allows incorporated limited partnerships to sue or be sued as an incorporated entity — something that is not currently the case with either of the two partnership models that operate now under Victorian law.

Once an incorporated limited partnership is formed under this legislation it may then be registered under the commonwealth Venture Capital Act 2002. That will enable the incorporated limited partnership to be exempt from capital gains tax — an important tax benefit — and it also may receive favourable tax treatment from the Australian Taxation Office, known as 'flow-through' tax treatment. I will elaborate on that later in my contribution.

If the partnership is not registered under the commonwealth act within two years of the partnerships incorporation in Victoria, the director of Consumer Affairs Victoria is given the power by this bill to wind up the partnership. The legislation facilitates the creation of a new form of partnership in Victoria for the specific purpose of attracting predominantly overseas venture capital funds for registration with the commonwealth for favourable tax treatment.

The opposition does not oppose the legislation but urges the government to clarify some important points which as yet have not been made clear. I hope the minister or government speakers to the bill will do so during the course of this debate. A key point which needs to be clarified by the government is the acceptability of the partnership model which the bill introduces for registration under complementary federal legislation, the commonwealth Venture Capital Act 2002. Are the definition and the attributes outlined in the bill consistent with the criteria outlined in the Venture Capital Act? Is the definition of a partnership completely compatible with the legislative model? The opposition would like some elaboration on that. It

understands there are certain doubts about it and there are moves at both levels of government to clarify the issue.

Ms Mikakos — Who has the doubts?

Hon. A. P. OLEXANDER — Many people in the industry have doubts. Registration of a venture capital funds partnership with the commonwealth is not automatic. It relies on a couple of different tests. The tests are that there is an investment of $20 million or more; that there is some risk in the new area of industry; that it is a new area and is building new infrastructure, something that is innovative and that perhaps does not exist here or adds another benefit to the business in question; and, of course, the third test for registration is that the duration of the investment must be 5 to 15 years.

Has the minister received advice from the federal Minister for Revenue and Assistant Treasurer, Helen Coonan, on the complementarity of the new Victorian partnership model? Is there any advice from the federal government as to whether this model will be deemed completely acceptable for registration at the national level? Another key question is whether the minister has received legal advice from the Victorian Government Solicitor's Office or the Department of Premier and Cabinet or elsewhere as to the acceptability of the new partnership model at the federal level. These are key questions that need to be clarified, given that one of the key benefits of this legislation in the first place is the favourable tax treatment that partnerships constituted as incorporated limited partnerships might receive at the federal level.

The opposition has also asked the government to make available that advice so that it can understand whether complementarity and acceptability exists between the two jurisdictions. The opposition asked for this information to be provided when the bill was being debated in the other place, but unfortunately it has not been provided as yet, so that issue is not able to be discussed in great detail in this debate. Has any work at that level been done to date?

I will make some general comments about the importance of venture capital investment in Victoria and Australia generally. It is a very significant and important source of funds that would not otherwise be available to business in this state and in this nation. In 2002 about $722 million was invested as venture capital across Australia. This was a fall from the $1.5 billion invested in the year before. The trend is not positive at this time. Venture capital is vital to the ongoing viability of Australian and Victorian businesses and industry. Companies such as Tower Technology, a business data capture and storage software creator, Datacraft Australia Pty Ltd in my electorate and Resmed have benefited enormously from significant inflows of venture capital predominantly from overseas. As corporate entities they are now going from strength to strength, not just in the domestic market but overseas.

Venture capital investment is not limited to the examples I have cited. It is not limited to the health sciences, biotechnology or information and communications technology industries. In 2002 these sectors received about $141 million of the total of $722 million invested in Australia. Other sectors that benefit from venture capital investment are business services, tourism and manufacturing, which attracted $350 million of the $722 million invested last year.

Members can see that this is a very important bill that we are debating, because it is facilitating further investment of this type in Victoria. In all cases venture capital promotes innovation and further development of products and services. Some of the innovations that have been developed and pioneered in Australia are significant and have been extremely profitable at a global level across a range of sectors. Venture capital provides for the expansion of Australian business and product overseas and gives a very important global impetus to some brilliant ideas that are undercapitalised. This is an extremely important benefit for Australia and its export income.

It can also lead, and often does, to greater market access for those businesses. The greater market access is often more important than the dollars received as part of the investment from the overseas investor. It is obviously in the interests of an overseas investor to network the Australian entity with their networks overseas once they have their money invested in the business. Often it is not the amount of dollars that is invested in the business, but the business networks and markets that are opened up for the business overseas which allow it to penetrate markets which would otherwise be closed and to establish market share in places where beforehand Australian products and services had no market share.

This is extremely significant. Unfortunately in Victoria we are falling behind in terms of this type of investment. In 2002 Victoria attracted only about $287 million of this type of venture capital. That was one of the lowest actual investment levels for venture capital in Victoria for years. This is of great concern to the opposition.

Victoria, for example, received 98 individual investments — that is, 98 entities received venture capital of some type from overseas — while New South Wales won about 160 separate venture capital investments, and that is a significant difference between the two jurisdictions. New South Wales is clearly doing a great deal better than Victoria in this field.

Hon. J. M. McQuilten — It might have something to do with the Olympics.

Hon. A. P. OLEXANDER — That is something that has to be corrected, Mr McQuilten.

The Bracks government needs to do more to attract venture capital to specific Victorian enterprises across a range of business and industry sectors. It needs to do better, particularly against New South Wales which is our main competition. It is incumbent on the Bracks government to prove its mettle in this area. It needs to prove it is Victorian first and Labor second, and it needs to stop acquiescing and rolling over for its Labor colleagues in New South Wales. It has to start fighting for more of this share of valuable investment dollars of which unfortunately New South Wales is taking the lion's share at the moment.

Government members opposite can laugh and scoff at that, but the facts speak for themselves. Over the last few years Victoria has fallen further and further behind in these investments and our rate of investment last year was the lowest for at least five years. That needs to be corrected. Mr Bracks needs to stand up to the New South Wales Premier, Mr Carr, and say, 'Listen, mate, we are going for our fair share. We are not rolling over any more'.

Of course the primary purpose of this bill is to create a new form of partnership. I will now turn to the incorporated limited partnership model. Currently there are two models of partnership that operate in Victoria under the Partnership Act 1958. The first is a common-law partnership and the second is what is known as a limited partnership.

Common-law partnerships are interesting in that each partner is personally liable and responsible for every single debt incurred by the business. The partnership itself is not a legal entity. It cannot be liable, and it cannot be sued or sue. The entity itself is not tax liable, but because all the profits go to the individual partners they are tax liable through their personal income tax returns each year. That model is probably the oldest. It is the traditional model and it is the longest existing model in Victoria. It is the individual partners who may be sued for outstanding debts, and they are personally liable to the tax office and for those debts.

In a limited partnership there are two general categories of partners. One is called a general partner. These are executive partners who have day-to-day responsibility for decision making within the business, and they play an active role in that business. Limited partners also exist within that model, and they are non-executive or silent — often known as silent partners. They do not play any active role in the running of the business. They are clearly restricted under the legislation as to what roles they can play. These are extraordinarily limited partners and they do not have decision-making power. Consequently only general partners can be sued, and they alone are debt liable. Limited partners are not. They provide the money and they sit quietly by while others make the decisions of the partnership and the business.

In this new incorporated limited partnership model there are aspects of both limited partnerships and companies. The incorporated limited partnership can be sued as an entity on its own for the debts of the business, and if there are any outstanding debts after the incorporated body is sued, then and only then can general partners be sued, but limited partners are still exempt. They have a safe harbour from any liability for the debts of the business.

Hon. J. M. McQuilten — I would not mention 'harbour'; it sounds like bottom of the harbour.

Hon. A. P. OLEXANDER — They have a safe harbour. It is common terminology in the act, Mr McQuilten, and they are not liable for any of the debts of the business.

In addition to this, within the incorporated limited partnership model limited partners are given greater flexibility for decision-making power. So there are certain things they are empowered to do under the legislation, which still provides them with a safe harbour. They would still not be considered to be taking an active role in the running of the business and they would still not be liable for debts of the business. They could not be sued for those debts.

On the recommendation of the general partners, limited partners make decisions in committee related to investments, if those investments are not part of the partnership deed. So they can make investment decisions or advise the general partners on investment decisions.

Limited partners can also in the same way provide advice and make decisions on the basis of perceived

conflict of interest situations which may arise from time to time with the general partners, and they may make the decision that in reality there is no conflict of interest situation and the general partner may continue with a particular investment or in their decision-making role. Limited partners are allowed to do that under this legislation and still not be considered to be playing an active role in the running of the business. Therefore, they are not tax liable or liable for any debts of the business. There is also some limited role in the appointment of the general directors.

I refer to the opposition's briefing on this bill — and I thank the department for supplying a response to some questions that we posed which could not be answered at the time. I refer to a status report from the department to us related to our briefing. It is headed 'Opposition briefing — 14 November 2003':

> Mr Kotsiras (Bulleen) and Mr Olexander (Silvan Province) attended.
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> No concerns were raised with the bill although Mr Kotsiras wanted to know if the 'safe harbours' under proposed section 98(3) in the bill included the ability for limited partners to participate in a limited partners committee that considered proposals from the general partners for changes in their salaries or fees —

so, with remunerative issues, are they allowed to make those sorts of decisions —

> and if not whether such an activity would be regarded as participation in management (thereby making the limited partners liable for the debts of the partnership).

The answer to that question from the department — and we thank it — is:

> No, although the limited partners committee referred to in section 98(3)(i) can consider proposals from general partners regarding appointments of senior executives to a general partner (section 98(3)(i)(vii)) or the appointment or removal of general partners (section 98(3)(j)).

The department notes in its answer that:

> … the fact such a matter is not expressly included as a 'safe harbour' says nothing about whether it is or is not participation in management, which will depend on the particular facts.

The opposition takes it from that that the answer to Mr Kotsiras's question is maybe — that is, maybe they are liable and maybe they are not liable. This still has not been clarified by the government, and we would like some clarification on whether they are or are not. If particular facts need to be brought to bear on the question of the partners' liability, could we understand something of the nature of the particular circumstances or facts which would need to be present for them to be liable?

I will read further from the department's briefing note:

> Mr Olexander wanted to know what 'flow-through' tax treatment was (this is one of the tax incentives granted by the commonwealth to venture capital funds).
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> The answer:
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> It means that instead of the profits and losses being regarded as owned by the incorporated limited partnership and thus taxed in Australia, they are regarded as owned by the incorporated limited partners and are allowed to 'flow through' to the limited partners, with the result that they are taxed according to the laws of the partners' respective countries. This is the international practice in venture capital partnership taxation and is highly valued by the limited partners because the profits/losses are taxed under their own familiar tax regimes.

I can understand why the department would advise us that this is an extremely attractive prospect for overseas venture capital funds, because depending on the jurisdiction from which they originate their tax treatment could be enormously different. There are some jurisdictions from which these sorts of funds can originate where the tax is incredibly low — so low as to be negligible — and virtually everything that is invested and all profits that are made are negligibly taxed.

The Liberal Party has no argument with that. We understand that if Australia and Victoria are to attract the significant sums that they are seeking to attract to reverse the decline that has occurred in venture capital investment, significant incentives have to be provided. That is why I raised at the outset of my presentation the questions that we pose to the government: what work has been done to cooperate with the federal authorities as to the acceptability of this new model — a partnership — to them and the commonwealth Venture Capital Act 2002? Structured as Victorian partnerships are under the provisions of this legislation, is there going to be a problem with registering them at the commonwealth level? If there is a problem it will become very quickly obvious, because the federal minister will not be approving any new registrations from Victoria.

If that occurs we have wasted our time here; this bill will not achieve its intended purpose. We do not want to see that happen. We want to see more venture capital funds coming into Victoria; we want more investment, more innovation, more jobs — not less. We pose the questions not to be smart, not to try to frustrate the government, but to ask it to investigate and clarify this issue further. It is a fundamental issue which should

have been clarified before the bill was drafted. Unfortunately it was not, and answers to these questions still have not been provided, although we thank the department for the answers it has provided.

Victoria has a long and proud history of industry innovation, of taking products and services out of its domestic context and putting them into the global context. Many Victorian companies are world beaters in that regard, and the opposition — the Liberal Party — wants to see that continue and wants to see that grow. We want the economic benefits and jobs that accrue as a result of that, particularly in rural and regional Victoria, where certain types of jobs have been particularly difficult to attract and maintain. If it takes overseas venture capital funds to do it, then that is what it takes. We want this model to work, but we encourage the government to clarify certain questions around this so that we can be sure that that will occur.

We understand that for the Australian Labor Party in Victoria and throughout Australia generally economic management has not been a strong suit.

Honourable members interjecting.

Hon. A. P. OLEXANDER — I am trying to be kind. I could degenerate, and I might, but I am trying to be kind. Economic management has not been traditionally the Labor Party's strong suit, and the party has form in this area.

Hon. J. M. McQuilten interjected.

Hon. A. P. OLEXANDER — We do not want history to repeat itself; we do not want to see another Victorian Economic Development Corporation, Mr McQuilten. We do not want to see another Tricontinental. Members of the Liberal Party want to see valid legislation attracting viable investments into Victoria, and we will cooperate with the government on legislation of this type, which is designed to do that. We will raise our concerns and encourage the government to clarify vague and ambiguous issues. We will not stand in the way of this type of legislation until the government proves to us — this would be the only circumstance in which we would stand up against anything like this — that it is repeating the mistakes of the past.

We cannot detect that that is the case here, but we encourage the Bracks government to do more in attracting investment to Victoria. The facts show clearly that we are declining as a venture capital investment destination. New South Wales is beating us hands down, particularly since the advent of the Bracks government. We encourage the Victorian government to stand up to its Labor colleagues in New South Wales and get Victoria's fair share of investment for Victorians. That is the Bracks government's first responsibility. If it does that, we will support the government.

We do not have a problem with the bill in general, and although there are issues that need to be clarified, we will not oppose the bill. I wish it a speedy passage.

Hon. D. K. DRUM (North Western) — I am happy to rise on behalf of the Nationals to contribute to the debate on the Partnership (Venture Capital Funds) Bill. I also will not be standing up here for a long time — and I hope to be truer to my word than the previous speaker.

The bill amends the Partnership Act 1958 and allows new forms of business partnerships to enable venture capital funds, especially from overseas, to be set up in Victoria. It also encourages high-risk investment in key areas of economic activity. This investment may not be able to be sourced in Victoria, even Australia, therefore the bill is aimed squarely at the overseas market.

It is hard to find industry types who can realistically relate to this sort of investment, but I have found a few in the mining and steel manufacturing industries. While the steel manufacturing industry may not be high risk and eligible for venture capital and flow-through taxation benefits, its representatives were able to relate to me some of the benefits associated with attracting this type of money and some of the issues and challenges companies face when trying to start a new project and attract the funds necessary to get the venture off the ground with significant backing.

The National Party will not oppose the legislation because it believes it to be extremely important for Victoria as a whole. There are positives to be derived from the legislation with the creation of new industries and the ensuing jobs that will flow from them. We believe the legislation will bring Victoria into line with numerous overseas countries and the commonwealth taxation rules that have been put in place with the Commonwealth Venture Capital Act 2002.

The Honourable Andrew Olexander said that the discussions between the state government and the federal government on this legislation fitting in neatly with the commonwealth taxation laws have not been locked away. That was certainly the understanding I received at my briefing with the department, and I hope the fears the Honourable Andrew Olexander has are unfounded. It was certainly not relayed to me that there was any trepidation in the relationship. It was suggested

that the legislation will marry neatly and specifically with the commonwealth taxation laws.

Hon. A. P. Olexander — I hope that that is the case too, Mr Drum.

Hon. D. K. DRUM — Thank you, Mr Olexander.

The new form of partnership under the legislation will be known as an incorporated limited partnership, which will have its own legal identity. This is an internationally preferred vehicle for venture capital investment, and the companies that are likely to be procuring the funds to back these high-risk ventures prefer to use the incorporated limited partnership. It gives limited partners extra protection against any entanglement in legal action against the partnership, and the general partners will be liable for the debts of the partnership if the partnership is unable to meet any liabilities.

The recent changes in commonwealth law should mean that investors will receive tax benefits under this system. To qualify and obtain the benefit, venture capital partnerships must be set up under the law of the country from which the funds originate, or Australia, remain in existence for 5 years to 15 years and have $20 million in capital. We are specifically looking forward to the potential growth in high-risk, cutting-edge industry and the jobs that may follow.

Turning to the type of protection given to individuals within an incorporated limited partnership, clause 98(2) of the bill talks about the relationship between a general partner and a limited partner. As has been said earlier, general partners will be the managerial-type people associated with the day-to-day operations of the business and the limited partners will be those simply supplying the funds. They would not have any role to play in the day-to-day running of the business. Clause 98(2)(a) states:

> the acts of the limited partner bind the partnership in circumstances where —
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> (i) they would be binding on the partnership if they were the acts of a general partner in the partnership; and
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> (ii) the person to whom the liability was incurred reasonably believed, having regard to the limited partner's conduct at the time the liability was incurred, that the limited partner was a general partner in the partnership.

In relation to who is liable in the wash-up of any legal claim against the partnership, it applies if a limited partner wants to become involved in the day-to-day running of the business and detrimental effects can be attributed to his or her actions and when the person to whom the liability was incurred at the time was of the belief that the limited partner was a general partner. It is clear that a limited partner must abstain from involvement to prevent any liability, but if they get involved with the third party then they must not convince him or her that they are general partners involved in the day-to-day running of the business. The legislation provides that damages can only be commensurate with the amount of liability actually caused by the actions.

While this may sound a concoction, it revolves around the basic activities of the day-to-day running of the business and therefore is relatively clear as to the roles and responsibilities of the partners, both general and limited. The legislation is standard in other countries. While Victoria has seen a decline in venture capital investment over the last few years, it is the first state in Australia to push for this type of legislation, hoping to close the gap on states such as New South Wales.

Hon. A. P. Olexander — They have been beating us.

Hon. D. K. DRUM — That is right, they have been beating us. During the briefing I was also told that the other states are heading towards this type of legislation, which will mean they will be on an even footing, and Victoria will have to work hard, as it is, to entice fund managers to invest in the state.

The general partners, again the professional investment managers, will not necessarily be the investors. They generally will not be the investors. The limited partners are going to be the ones putting the money up; they are going to be the investors and will not usually be involved in the day-to-day running of the venture.

As partnership law is a state issue and the commonwealth is responsible for the taxation benefits, the commonwealth will be responsible for determining what is a high-risk industry and what is not and therefore what is available as tax benefits for these incorporated limited partnerships. We have a state partnership law taking advantage of a commonwealth tax law. Together these will encourage investment — hopefully predominantly overseas investment — in Victoria.

With incorporated partnerships, which is the preferred vehicle of all of these high-risk investors, we hope that the lure of flow-through taxation will prove attractive. As has been explained by Mr Olexander, it enables the investors to take advantage of taxation benefits in their home countries and will enable the limited partners to take the profits and be taxed at their individual status so they will not be taxed on the profit or loss of the actual

venture. It will be taken back through to the individuals, and they will be treated to the tax status that they have as individuals in their own countries.

Should the entity at any stage need to be wound up — and as we are talking about high-risk companies it would also be fair to think that quite a few of these ventures will not get through to the profit mark — the entities which will be responsible for the assets of the company will obviously need to be liquidated. Should these assets not cover the liabilities and there are still more claims against the entity, then the general partners will be held liable. As I said, the limited partners will only be held liable in situations where either they have got themselves involved in day-to-day operations or the claimant believed the limited partner was a general partner, and claims can only be for the prescribed amount of damage incurred as a result of the limited partners' actions. There is an ultimate responsibility on the director of Consumer Affairs Victoria to police the proceedings of the incorporated limited partnerships and to maintain vigilance over the viability of these partnerships in relation to their ability to trade.

We in the National Party believe this bill is an initiative born out of the venture capital funds industry. It is a bill that has been pushed forward towards the government by the industry in the hope that it can create some change, and we hope this change has the required effect of leading to the creation of development and jobs throughout the state of Victoria.

Ms MIKAKOS (Jika Jika) — The Bracks government is on about jobs, jobs, jobs. For that reason I unashamedly support the Partnership (Venture Capital Funds) Bill, because it will lead to more investment and more jobs in this state.

The 2001–02 Australian Bureau of Statistics (ABS) venture capital survey found that as at 30 June 2002, $6.9 billion had been committed to venture capital investment in Australia. While a decrease from previous years reflects the global economic downturn, the United States experienced a bigger percentage fall in investment than Australia.

The Victorian government's commitment to supporting emerging enterprises is reflected in this bill. It will allow the creation of incorporated limited partnerships to give venture capital investors in new enterprises an appropriate level of protection against liabilities and enhance the attractiveness of Australian ventures for overseas investors.

Venture capital is a means of investing money into new or emerging commercial enterprises. In my previous occupation as a commercial lawyer I had the pleasure of working with many of these new and emerging enterprises, and I can tell the house that they are all driven by highly enthusiastic individuals and are in many cases supported by venture capitalists in this country. I think it is now timely and important that we seek to bring in investment from overseas to support these fantastic new enterprises.

The venture capitalist provides funds for the business in return for equity or shares which hopefully will one day be worth enough to provide a return on the initial investment. This equity finance might be used as seed funding for research and development of a new idea or to facilitate the start of a commercial operation, growth or expansion of an existing business. The advantage to the business is that, as it is equity funding, the money is provided free of interest charges. Venture capitalists benefit from a long-term investment with potentially high returns which are offset by the high risks of failure that are involved.

The 2001–02 Australian Bureau of Statistics figures indicate that 162 venture capital investment funds and companies invested in 839 young or innovative companies during that financial year. In order of share of investment the most popular industries were manufacturing and transport followed by information technology, media, electronics, and communication-related activities. I point out that many of the newly emerging companies I mentioned and which I had worked with in my previous occupation were in the information technology sector. They are very popular and continue to be popular despite the dot-com bust.

Investors in venture capital tend to be professional investment funds themselves. A significant number are superannuation or pension funds, which dedicate a proportion of their investments to the high-risk, potentially high-return world of venture capital.

I will give a few examples of some highly successful Australian companies that would not have succeeded without the availability of venture capital. One is Resmed, a major world player in medical technology that is listed on the New York stock exchange. It received its venture capital backing in 1993. Resmed's products treat obstructive sleep apnoea. Another example in the medical arena is Panbio, which was established 13 years ago to develop, manufacture and market blood tests for infectious diseases. It is now a global leader, having commercialised over 40 products in the last five years, and is exporting to more than 55 countries. The final example is Austal Ships Ltd, which began over 10 years ago with one product

line — a 40-metre fast ferry. Austal now employs 1100 people to build a range of ferries, customs patrol vessels and other boats as required. The company now earns over $20 million a year.

The venture capital industry has argued strongly that to attract international investment in new and emerging businesses the opportunity for venture capital limited partnerships to register as incorporated limited partnerships in Australia is essential. Having looked long and hard at this argument and consulted with the industry, the Bracks government agrees.

Recent legislation at the federal level — which I should add passed with bipartisan support — has given venture capital funds the opportunity to register as venture capital limited partnerships. This entitles them to certain taxation benefits — for example, venture capital limited partnerships registered under the commonwealth legislation are given flow-through tax treatment. This means that instead of the profits and losses being regarded as owned by the incorporated limited partnership and thus taxed in Australia, they are regarded as being owned by the limited partners and are able to flow through to the limited partners with the result that they are taxed according to the laws of the partners' respective countries. This is international practice in venture partnership taxation and is highly valued by the limited partners, because the profits and losses are taxed under their own familiar regimes. I should point out that despite Mr Olexander's suggestions, the regime does not include tax havens; the federal legislation seeks to encourage such investment from respectable counterpart countries.

So the scheme encourages high-risk investment, particularly foreign investment in key areas of economic activity. Investors in these venture capital funds, which comprise the limited partners in venture capital limited partnerships, are typically from overseas jurisdictions, particularly the United States of America, where the preferred vehicle for investment is the incorporated partnership. The Australian Venture Capital Association has advised the government that overseas venture capital investors will not invest in small countries like Australia unless they can be assured of a familiar liability regime. Additionally, while investors are prepared to risk their capital, they seek some assurance that they will not be liable for the debts of the partnership unless they are directly responsible.

While the proposals in the bill are complementary to the more fundamental taxation measures introduced by the commonwealth, the two measures together are expected to stimulate venture capital investment in Victoria with consequent positive effects on growth and employment in new industries.

I will now turn briefly to the key provisions in the legislation. An existing partnership or the proposed partners of a proposed incorporated partnership will be able to register as a separate legal entity in Victoria. Incorporated limited partnerships are the preferred form for venture capital funds to manage investment in new or emerging commercial enterprises. They do not engage in these projects themselves; they are the source of capital. Incorporated limited partnerships are similar to companies in that there is a legal separation between the partnership, which like a company owns the assets and is primarily liable for the debts of the business; the general partners, who equate to the directors of a company; and the limited partners, who equate to the shareholders of a company. It is the general partners who will manage the investment business and limited partners who will provide the investment capital.

Eligibility to register is dependent on the partnership being registered or intending to be registered for beneficial tax treatment as a venture capital limited partnership or Australian fund or funds within the meaning of the commonwealth Venture Capital Act 2002 or the partnership being or intending to be a venture capital management partnership within the meaning of the Income Tax Assessment Act 1936.

I want to briefly address a point the Honourable Andrew Olexander made in his contribution, suggesting that there was some ambiguity as to the eligibility of such entities under the federal legislation. Firstly, I note that it is not the customary practice of the government of the day to make legal advice available on such matters. I am not aware of any legal advice, but just as a general principle it is not customary to make such advice available. However, I want to specifically address Mr Olexander's query, which suggested ambiguity between the federal tax legislation and this bill.

I advise the house that the Minister for Consumer Affairs wrote to Senator Helen Coonan in a letter dated 5 November 2003 specifically addressing possible ambiguities, an issue that has been raised by the Australian Venture Capital Association. As yet there has been no response to this correspondence, but the letter essentially seeks clarification as to whether the federal government would be prepared to announce its intention to amend the commonwealth government's legislation.

Hon. A. P. Olexander interjected.

Ms MIKAKOS — There is no difficulty associated with the bill before the house; the difficulty in the ambiguity that exists relates to the federal government's legislation. The ambiguity can be very easily addressed. The only thing that is required is for Senator Helen Coonan to announce after the passage of this legislation that the federal government intends to amend its legislation, because, as I indicated, the eligibility for registration under the Victorian legislative framework is an intention to register for beneficial tax treatment under the federal tax legislation. So if Senator Coonan were to announce that the federal government intended to clarify this ambiguity, then a venture capitalist would be able to commence operation in Victoria as soon as royal assent occurs. I can assure Mr Olexander that we have a number of venture capitalists who are ready to go and waiting for royal assent in this state.

Hon. A. P. Olexander — The place to be!

Ms MIKAKOS — It is the place to be, and the ball is in Senator Coonan's court. It is perhaps unfortunate that Mr Olexander had not spoken to Senator Coonan or her office about this matter before getting up here and making a big issue of this ambiguity, because the ambiguity exists in the federal legislation. I point out that we are seeking to introduce legislation that is complementary to the federal legislation to facilitate further investment in this state and in this country.

The federal legislation contains its own eligibility criteria, which include that the partnerships must be established in one of a range of countries, including Australia, the partnership is to remain in existence for not less than 5 years and not more than 15, the partnership must have committed capital of at least $20 million, and the activities of the partnership must be related to making eligible venture capital investments. Eligible venture capital investments are further defined in taxation legislation. They must, amongst other things, relate to the acquisition of shares or options to purchase shares in a company that is predominantly Australian and not be investments in a range of prescribed essentially low-risk activities such as property investment or insurance.

The bill contains other provisions. Very briefly, an incorporated limited partnership must have at least one general partner but not more than 20. The limit of 20 general partners is the same as for existing limited partnerships and is intended to ensure the partnership does not become too unwieldy or become a body that should be more appropriately formed as a body corporate under the Corporations Act. There is no limit on the number of limited partners, because they equate to shareholders in a company. General partners are jointly liable with an incorporated limited partnership for its liabilities. That liability is, however, limited to that which the assets of the partnership cannot satisfy. This assures an essential feature of an incorporated limited partnership — that is, that the partnership is primarily liable for the debts of the business, with the general partners only liable for the debts that the assets cannot satisfy.

Limited partners will not be responsible for the liabilities of the incorporated limited partnership except where they take part in the management of the business. If a limited partner does take a part in management they are treated as a general partner, and their acts will bind the incorporated limited partnership as if they were the acts of an official general partner where certain conditions are met. I note that Mr Olexander referred to some written advice given by Consumer Affairs Victoria which addressed these issues. I believe the explanation given more than adequately addresses the point.

Hon. A. P. Olexander — It was a major issue.

Ms MIKAKOS — I did not read it in those terms, Mr Olexander. Unfortunately at law there are not always categorical yes and no answers to things. There are sometimes clarifications or further elaborations on matters, but I believe the answer given adequately addressed the question that was posed.

In conclusion, with the passage of this bill Victoria will be the first state to pass legislation of this type. We have a number of venture capitalists who are ready to go. I commend the bill to the house.

Hon. B. N. ATKINSON (Koonung) — This legislation is a step forward, and it certainly sets up a framework in which venture capital might well be attracted to Victoria. However, I think the salutary lesson for the government is that this is not the answer. You simply do not attract venture capital into a state and into business enterprises on the basis of a form of corporate structure. This government has a habit of trying to quarantine its decisions — of not seeing that decisions it makes in one area have an impact or implications for decisions that it wants to make in other areas.

One of the key things that I suggest detracts from our opportunities in Victoria to attract venture capital is decisions that are made and the government's reluctance to become involved in industrial relations matters. The Saizeriya situation that occurred in Victoria was very serious for the future of Victoria in terms of attracting international investment. That

company was looking at eight production plants and will now stop at one. Now it may withdraw that plant from this state. More importantly Japanese company directors and financial institutions that might well have directed investment funds towards Victorian enterprises will now take a very dim view of investing in Victoria because of the Saizeriya experience. They will look at that and say, 'Why would we risk our capital and get burnt in similar circumstances?'.

This government does not understand that no decision it makes and no problem it creates or fails to resolve is quarantined when it comes to looking at the broader picture of trying to make this state attractive for investment. There is no doubt that much of the investment that has been anticipated by this legislation is global investment. It does not have to come to Victoria or indeed to Australia. Plenty of opportunities are available for the sort of investment that is envisaged being attracted to our state by this legislation and the corporate structures it puts in place. That investment could well go to any number of emerging companies or markets that offer similar risks and similar opportunities.

One of my concerns about the venture capital industry is that it is largely centred outside Victoria. I have met with the Australian Venture Capital Association. Only one of the companies on its executive is a Victorian-based company — they are nearly all based in Sydney. That is a serious situation for Victoria, because it may affect the association's investment decisions. Most guardian-angel or venture capital funds tend to invest fairly closely in their own geography, because they are able to manage those funds. In many cases venture capital providers today are not simply looking at a hands-off investment where they invest funds and step back and wait for the money to come in. They are expert companies that specialise in particular industries. They like to bring their own expertise and knowledge to their investments and to participate in a more active sense in the future of those businesses. They do not simply see their funds as a passive investment.

Therefore those businesses are in many cases looking also at the geography of their investments. The fact that Australia has a fairly limited venture capital market and that Victoria has a very small share of active players in that market is a matter of serious concern for this state. This legislation is a step in the right direction in addressing that problem, but by itself it will not achieve what the government anticipates. I suggest the government needs to look at a whole range of its policies. The government needs to look in particular at its industrial relations policies, because those policies and practices and its economic management, as was touched on by the Honourable Andrew Olexander, affect the opinion of venture capital suppliers as they look to invest money.

Ms Mikakos mentioned that she had been involved in the venture capital markets as a legal adviser and that much of the money was being directed to new and emerging enterprises. Interestingly enough, many of the venture capital funds are interested in fairly staid and established companies. There is a range of investment parameters within the venture capital market. It is not all at the pointy end of high-tech, high-risk industry. In fact Victoria is well placed to attract funds from venture capital interests, because of its available infrastructure assets. However, the government chops and changes its policy on infrastructure assets and sends mixed messages about its attitude. On the one hand the government talks about public-private sector partnerships and on the other side of the ledger criticises private sector partnerships and investment in infrastructure. Whilst the government fails to get its philosophy together and its policies all focused in one direction, the mixed signals it sends reduce the amount of private sector investment and venture capital that might well be attracted to Victoria.

More importantly a lot of venture capital funds are interested in established businesses — highly stable but not necessarily innovative companies with high cash flows that can be geared more strongly on debt returns. In some cases that is in the interests of venture capitalists' strategies.

Victoria certainly needs to become a lot more involved in this. At the moment most of the venture capital activity in Victoria is to do with mergers and acquisitions or management buy-outs. Victoria needs more funds for start-ups and for funding changes in ownership of many businesses in the next 5 to 10 years. One of the by-products — and there are many by-products or implications with our ageing population — is that many small and medium long-established business enterprises that have been in particular ownership for many years will in the next 5 to 10 years very likely to be looking at a change of ownership.

In some cases other members of a family might be taking over that business, it might be a management buy-out or it might be somebody buying from outside that business, but whatever the circumstances of that ownership change, it will need to be funded. A lot of the people who are looking to fund ownership change are going to look to venture capital sources because

debt funding for some of those changes is simply not appropriate.

In many cases the changed ownership is also going to be looking for the other string to the venture capital bow, and that is that venture capital does not only bring money, it also brings expertise, a knowledge of industries and a preparedness to become more actively involved in mentoring, supporting or directing the strategies of a business to ensure that it capitalises on its potential, particularly for businesses that are looking to overseas markets.

This is a very serious issue for Victoria, and while Ms Mikakos has said that it is all about jobs, jobs and jobs and that the bill will automatically bring them, one does not necessarily follow the other. This is reasonable legislation; it is a step forward, and it provides a framework within which we might anticipate more participation by venture capital companies in Victoria. But it is only one aspect of a strategy the government ought to embark upon if we are serious about trying to attract venture capital funds to Victoria — and we need them to modernise some of our manufacturing sector. I strongly believe our manufacturing sector can continue to do well in a world economy. We have the innovation and quality required in the products we produce, both in design terms and in the functionality and integrity of those products. I believe we can continue to participate in the manufacturing sector and participate successfully in world markets. But to do that in some of those industries we need to introduce new technology, new equipment and new ideas, as well as new funds and new thinking.

It is crucial that the venture capital industry play a role in that process, but it will not be persuaded by this legislation if this government continues to hammer taxes and charges that are beyond the capacity of business to deal with, to tie up those industries in red tape and to bring in enforcement and compliance models in every piece of business legislation that comes before this house — compliance models that in many cases increase rights of entry into business premises. If it continues to fail to understand that not having a stable and genuine industrial relations climate that respects the capital, the employer and the strategies of those companies as companies that are likely to take Victoria into world markets, then we will not attract the sorts of funds that are anticipated by this legislation.

This is a good step, but it does not go far enough. Taxation policies at a federal level have an impact. I know the government has an innovation strategy, and those sorts of policies are important too, but there is no doubt that this government needs to stop seeing all of its decisions as silos — every decision unique unto itself, because that is not the way the venture capitalists read us. They look at all of the risks. There is no doubt that many of those companies assess Victoria's potential compared with other states of this country, New Zealand and other places around the globe, because much venture capital funding is available in a global market. Industrial relations and the risks associated with it are very high on the list of things they look at, and in many cases it is a telling argument against investing in this state. That is to the detriment of all Victorians, and it is certainly to the detriment of future job opportunities for our children and grandchildren.

Hon. C. A. STRONG (Higinbotham) — In supporting this enormously important legislation for the future of Victoria, not to mention the future of our nation, I express my surprise that it has come forward from this government. Basically this legislation is about the individual and his ability to triumph over corporatism, because it will reward individualism and entrepreneurialism. Members on this side of the house see that as a very important part of our incredibly deeply felt sense of liberalism. It is a surprise to me, because more often than not we see from the government legislation that stifles individualism through bureaucracy, rules, red tape and so on.

Entrepreneurialism is the ability to come up with a good idea and have it manifest itself in something which is of benefit to the community and to the individual who has come up with the good idea. That the individual is able to extract some profit from it is enormously important to our society.

In many ways it has been the mainspring of advanced civilisation — the individual who could come up with a good idea and develop that good idea to the benefit of the community at large. This bill seeks to advance that in some small way within the strictures of the law — corporate law and partnership law that exist today — because if somebody gets a good idea they really need the capital to turn that good idea into the reality that will benefit the individual and the community. If we look at Australia and Victoria we see an enormous reservoir of talent and enthusiasm to create good ideas. But how do we harvest these good ideas for the benefit of society?

Unfortunately that requires capital. How can we get that capital involved? That is the trick of a successful society. This legislation tries to smooth the way forward for capital to be involved. As other speakers have said, unfortunately capital all too often goes into what is safe. There is a lot of money out there in

investment funds that wants to find a profitable outlet, but all too often the investors look at an existing business enterprise or existing idea; they look for a track record. They look for something that says, 'The money put in here will not be wasted and is not a gamble. It will exercise a return'.

The big returns are from taking the risk. What we know about investing and venture capital, and Australia and Victoria, is that all too often the people who are prepared to invest in venture capital are high-worth individuals. In truth there are only so many of them. So we have to somehow be able to expand the scope of people who are prepared to invest in venture capital exercises beyond just a handful of high-worth individuals and into corporations' investment funds and so on. You find that corporations' investment funds are risk averse. They are not interested in putting money into an enterprise that can come back and bite them. That comes back to the type of vehicle in which they invest.

If you invest in a normal partnership and something goes wrong in that normal partnership, then you have a very significant risk. In a normal partnership if there is a debt incurred or something goes wrong, then the partners are liable. If a partner wants to put capital into a new idea or enterprise through a normal partnership, then he runs the risk that if something goes wrong — if some bright idea gets into production and as part of that production something happens which lays the company or the partnership open to claims of damages — then the person who has invested does not simply lose the capital he has put in; the insurance companies and law courts will reach beyond that to the assets of the individual. He loses his house and his investments.

So this bill seeks to create a new form of partnership for a person who is prepared to put money into venture capital or a new enterprise and gamble on the initiative, enterprise and ingenuity of an inventor. For somebody who is prepared to put that money on the line — and is prepared to lose that capital — this legislation establishes a new form of partnership which allows them to do that while the totality of the risk that they are exposed to is only the capital they actually put out there. They are not joined as in a normal partnership jointly and severally in liability, which means that somebody can reach into and take many of their personal assets. In their involvement in a new enterprise, which is essential to a venture capitalist, their risk is limited to what that investment is.

This is a very positive thing. It will encourage venture capital investors; it will encourage people to take a gamble or to have the courage to put a certain amount of capital in place to try and develop the incredible ingenuity, skills and inventiveness that exist in the Australian and Victorian mindset, and the economy.

As Mr Atkinson said, it is one thing to put in place the framework to do this but another for the government to have the mindset to really develop, husband and obtain a real benefit from this. We need to think more as an entrepreneurial society. We should not be afraid to face up to the fact that there are enormous skills, ingenuity and talent within Victoria and Australia to capitalise on this.

My fear is that although we have put this measure in place through this legislation, which the opposition has clearly signalled it is not opposing, it requires a change of mindset for the government. The government can do more and should be thinking of incubator schemes to capitalise on the skill that exists in Australia and Victoria. If you look at the venture capital that is flowing into Australia or Victoria, the truth is that the amount of money that has gone into schemes is reducing. That is sad.

All the statistics show that less and less venture capitalists are prepared to invest in Australian ideas; less and less are prepared to invest in Victoria; and although the total quantum of venture capital coming into Australia and into Australian ideas is reducing, the amount going into Victorian enterprises is reducing at a faster rate. Hopefully this legislation will do something to reverse the trend. I have no doubt that if you look at the skills, the talent, the ingenuity and the raw enthusiasm to create new ideas and new technologies, we are in every way the leaders.

Over the years we have invested in education, in universities and technical colleges, so now is the time to recoup the dividend from that, which is through initiative and through venture capital coming in and exploiting these new ideas for the benefit of Victoria and Australia. Hopefully this legislation will do something to help that. I must say it requires a government that really believes in the individual and really believes that through initiative and individual skills this will happen. I fear that although the legislation is in place the philosophy to back it up may tend to dampen the benefit that should come from this. With those few words I commend the bill to the house.

Hon. R. H. BOWDEN (South Eastern) — Honourable members who are interested in collecting interesting pieces of memorabilia should have put aside the *Hansard* containing the speech by Ms Mikakos. I believe her sincerity was real and for a member of the government to be openly espousing the benefits of free

enterprise and high-risk venture capital is unique in this house's experience. To hear that sincerely expressed by a member of the Labor Party makes the *Hansard* published about today's debate a collectable. Perhaps the honourable member could sign it because it is a memorable event in this place. I mean that with good faith and good humour as a compliment to the member and to mark a strange event in the history of the Australian Labor Party.

It is true that in world markets Australia is a known player, but in the total volume of capital movement back and forth we are not a major entity. We are a known international trading nation and on the information I have we are the eighth largest country in terms of goods and trade with imports and exports. Victoria is a long-established manufacturing entity in terms of Australia's history, so we can look at the importance of the importation of capital for our standard of living and the good fortunes of our nation and our state.

The facilitation and the ability for this state in Australia to sensibly tax capital is extremely important to all of us. I want honourable members to know about some comments made to me in London last July. I am the opposition spokesman for the financial services industry. While I was there last July I met with some senior people in the London financial community, and I said, 'What do we need to do to get more capital into Victoria?'. They offered some sensible and good advice. I appreciated that.

One interesting common point that was offered by these major players in world capital markets was that Australia and Australian states have to have more friendly taxation regimes. It is seen externally that Australia is not necessarily, with the commonwealth and limited range of state flexibility that we have, receptive and friendly to the placement and hosting of international capital of size. I will not dwell on that, but they offered advice that I have compiled for future policy development.

The provision of capital is one very important part of several parts of what makes the strategic planning exercise that can result in the operation of new industries, high-risk ventures, new jobs and new enterprises. Some other issues are an understanding of the marketing plan and the business plan, whether the market is to be domestic or international, the labour and industrial relations mix that goes with the capital placement, the technology involved and, of course, the capital.

It is an interesting characteristic that there is often plenty of capital available in certain places, but no-one expects the capital to be provided and committed unless the other elements, of which I have mentioned some — not an exhaustive list — the technologies, industrial relations and the marketing and business plans, and sensible expectations of the plan are looked at in terms of the capital requirement, capital provision and capital utilisation. It is a great pity that in the four years since the advent of the Labor government in Victoria we have seen bill after bill after bill that is in itself a small chain in a lengthy process of restricting, regulating and controlling business.

If honourable members care to think about it for a moment they will realise that we have a lot of environmental legislation. Much of it can be justified on its stand-alone position, but some of the extreme legislation — and some of that recent legislation is particularly directed to the rural industries — when put together with the industrial relations legislation and some of the social engineering legislation this Parliament has passed since 1999 means we get to the situation where external providers of capital looking at Victoria start to say, 'Hang on, that might be a sensible situation, but look at all the other stuff that could go wrong'.

Therefore I am not surprised that in recent years, particularly under the Bracks Labor government, our share has fallen. It is a fair statement, because the people who are looking at these investments and the provision of capital are not from this country — they are not from Victoria, and they are worried about their capital — are interested in placing their capital where it will get a good return.

In its own right the bill is quite supportable, logical and sensible. I would like to be comforted and assured that the commonwealth has already agreed to the provisions that we are enacting in this Victorian legislation. I wonder whether the commonwealth has given a commitment that it will honour the spirit and the detailed intentions of the bill. On the advice I have been given the commonwealth has not yet done that. Maybe it will come tomorrow, maybe next week. I guess the Victorian government is proceeding on the basis that it will do a deal with the commonwealth government, but it has not arrived yet. That is the advice given to me, and it is still an open question.

Be that as it may, this bill provides for incorporated limited partnerships, and the meaning of that has been fully explained by previous speakers. It is very much a mechanism that overseas financiers feel comfortable with. The splitting of the responsibilities in an

incorporated limited partnership between the general partners and the limited partners is clear and a good thing. Provided the limited partners do not go in and run the business, which changes their relationship, they will be exempt from all sorts of penalties and requirements if something really goes wrong.

The favourable treatment from the taxation department in allowing a lower tax regime and an exemption from capital gains tax is a very important concession. I am supportive of this. I think it is a good thing. It is interesting that for the first time we have had a credible member of the government, Ms Mikakos, speak enthusiastically and sincerely — —

Hon. Bill Forwood — Speak for yourself! Credible?

Hon. R. H. BOWDEN — Credible in the context of this issue, and I for one am going to have tonight's *Hansard* put aside as a collectable for the reasons — —

Hon. Bill Forwood — A collectable?

Hon. R. H. BOWDEN — It is a collectable. I am going to ask Ms Mikakos to sign my *Hansard* in the morning.

Mr SOMYUREK (Eumemmerring) — I rise to speak on the Partnership (Venture Capital Funds) Bill. The bill amends the Partnership Act 1958 to insert part 5, which will provide for a new form of partnership — an incorporated limited partnership. The purpose of establishing an incorporated limited partnership is to enable venture capital funds, particularly overseas funds, to be brought into Victoria in the preferred form.

The bill aims to encourage high-risk investment in key areas of economic activity and seeks to complement recent commonwealth changes in the tax treatment of venture capital funds.

The internationally preferred vehicle for venture capital investment is an incorporated limited partnership — a form of partnership in which the partnership is a separate legal entity from its partners. This form of partnership is not currently recognised in any Australian jurisdiction. The commonwealth Parliament passed its Venture Capital Act in 2002, and with the passage of this bill Victoria will be the first state in Australia to follow that lead and allow for the establishment of these types of incorporated limited partnerships.

Venture capital is frequently put into high-risk investment in cutting-edge industries. As such it can be difficult to source domestically, but it is vital in encouraging local initiative in new industries and then retaining that expertise in Victoria to ensure employment for Victorians in years to come.

Under part 5 an incorporated limited partnership, unlike an ordinary limited partnership under part 3 of the act, will be a separate legal entity distinct from its partners. For venture capital partnerships to qualify for registration with the commonwealth they must be partnerships established under Australian law or, if foreign partnerships, the law in force in their respective jurisdictions. They must also remain in existence for 5 to 15 years and have committed capital of at least $20 million.

These partnerships involve a substantial injection of capital into our community, and the bill provides that venture capital funds that are or intend to register with the commonwealth may register as incorporated limited partnerships in Victoria.

The object of the bill is to facilitate the attracting of that capital which is vital to the development of many of the cutting-edge industries that the Bracks Labor government is encouraging so much in our state. There are many examples of long-term processes made possible by venture capital. I was hoping to convey a couple tonight, but obviously time constraints will not allow me to do so. I commend the bill to house.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

In so doing I thank all honourable members for their contributions

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

ROAD SAFETY (DRUG DRIVING) BILL

Introduction and first reading

Received from Assembly.

Read first time for Ms BROAD (Minister for Local Government) on motion of Hon. M. R. Thomson.

SHOP TRADING REFORM (SIMPLIFICATION) BILL

Introduction and first reading

Received from Assembly.

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

FIREARMS (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. J. M. MADDEN (Minister for Sport and Recreation).

ADJOURNMENT

The PRESIDENT — Order! The question is that the house do now adjourn.

Planning: Bayside amendment

Hon. C. A. STRONG (Higinbotham) — The issue I raise with the Minister for Planning in the other place deals with part 1 of Bayside planning. scheme C2 and with many issues across the municipality of Bayside. Part 1 of the planning scheme specifically deals with the foreshore strip. Within Bayside the foreshore strip runs between 200 to 300 metres in from the beach for approximately 15 kilometres of the Bayside foreshore.

After going through the whole planning scheme process of talking to its residents and so on, Bayside City Council applied for a planning scheme that put a two-storey height limit on the whole foreshore strip of some 15 kilometres. After sitting on the planning scheme from late 2002 until August 2003 — for some 15 months — at the end of the period the Minister for Planning approved the planning scheme C2, part 1, and agreed to a two-storey height limit for the 15 kilometres of foreshore strip except for one property for which she allowed a three-storey height limit. It is on top of a heritage-listed hotel — the Hampton Hotel at 56 Beach Road, Hampton. Why did the minister agree to a three-storey height limit on that one property at 56 Beach Road, Hampton, against — —

The PRESIDENT — Order! The member's time has expired

Women: violence

Ms MIKAKOS (Jika Jika) — My adjournment matter is for the Minister for Women's Affairs in the other place. Today parliamentarians on all sides of both houses put their political differences aside to show their opposition to violence against women by wearing white ribbons in recognition of the United Nations International Day for the Elimination of Violence against Women. While women have been campaigning for many years to stop gender-based violence, 25 November was designated as an international day of recognition by the United Nations in 2000. The date itself is significant, because it commemorates the lives of the three Mirabal sisters from the Dominican Republic who were assassinated on that day in 1960. These women dedicated themselves to political activism and ending the repressive regime that eventually took their lives.

A new report by the United Nations Development Fund for Women, *Not a Minute More — Ending Violence against Women*, surveys global progress towards reducing violence against women. The report tries to answer the question why gender-based violence continues, seemingly unabated, after so many years of campaigning and efforts at all levels to bring change. The answer is both simple but depressingly complex. As the report says:

> … gender inequality fuels violence against women, and the power imbalances it creates are not easily rectified. As long as women in diverse countries do not have access to property and employment and equal wages, to the seats of power, to education, it is possible for governments to ignore them and their needs.

Thankfully women in Victoria do not experience violence to the same degree as women in many less-developed parts of the world and places where conflict pervades all citizens' lives. In war zones, women are subject to mass rape, abduction and sexual slavery. HIV/AIDS is a major problem as a result of war-time atrocities, but it can also be a cause and consequence of violence in peacetime. Female genital mutilation continues to be practised with devastating health implications. In some countries, violence is perpetrated by the instruments of government and lack of economic, social and political rights means women are without legal redress.

In all nations of the world the victims of violence are not the only ones to suffer. The impact can affect generations. In Soweto a mother who contracted HIV following rape may not be able to care properly for her children. In the Mexican City of Cuidad Juarez mothers mourn the generation of young women being disappeared and murdered. In Melbourne children who have witnessed domestic violence in the home may learn that hitting is the only way to solve a dispute.

I ask the minister on this important day to advise what specific action the government is taking to address violence against women in my province of Jika Jika.

Weeds: Paterson's curse

Hon. E. G. STONEY (Central Highlands) — I raise a matter for the Minister for Environment in the other place. It concerns the encroachment of Paterson's curse on farmland. I have been contacted by several constituents throughout my electorate who are gravely concerned at the apparent lack of decisiveness by the department in enforcing the control of the weed on farmland.

Mr Keith Eldridge, of Spring Creek Road, Alexandra, is fighting a losing battle on his property. He has spent many hours controlling his weeds. He rang me and told me that the neighbours around his farm have uncontrolled Paterson's curse, and the department is showing little interest, even though he has contacted it several times. He said:

> My wife and I spent 5 hours just pulling the weeds from our boundary fence lines, and I am at my wits end. I feel like saying 'Stuff it; let it grow'.

He is very upset about it. Several other farmers in my electorate have contacted me and said the same thing as Mr Eldridge. They are puzzled by the lack of interest or commitment by the department to enforce control of Paterson's curse and other weeds.

I ask the minister to assess why the department is not being proactive with the enforcement and prosecution of landowners who have weeds on their property and to instruct the department to develop a cheap and quick way to prosecute errant landowners.

Point Nepean: future

Hon. J. G. HILTON (Western Port) — My adjournment matter this evening is for the Minister for the Environment in the other place. The issue of the future of Point Nepean is still unresolved. A lease has been awarded to a consortium which includes a Queensland property developer. During the tender process there have been a number of statements made by various politicians which require correction. For example, the federal member for Flinders has suggested that the state government has plans to put new buildings on the Police Point site when in fact the Victorian government's concept plan made perfectly clear there would be no new buildings constructed.

The Queensland developer to whom the federal government intends signing away Point Nepean on a 40-year lease has not made public any of its plans for this unique piece of Victorian, and indeed Australian, heritage. There is speculation that there will be two new large buildings on a hill close to Police Point. It is not known what uses the developer has for the existing houses and whether it is proposing additional houses or other buildings.

In the other place lower house members criticised Parks Victoria for its lack of interest in Pearce Barracks when in fact the 1989 Mornington Peninsula National Park management plan identified Pearce Barracks as so extensively damaged that restoration was considered unwarranted.

I ask the minister to correct the misrepresentations made by federal and Victorian members and commit himself to protecting Point Nepean from the exploitation being promoted by the commonwealth government.

Tourism: backpackers

Hon. ANDREA COOTE (Monash) — In the latest Bureau of Tourism Research bulletin it is stated that backpackers touring Australia spent $2.8 billion in the relevant period. Of those who spent this amount, 88 per cent were from overseas.

It is interesting to note some of the statistics about backpackers. They are only 10 per cent of the visitors to Australia, but they contribute 22 per cent of expenditure by international visitors. Domestic backpackers spend $130 per night and international backpackers spend $79 per night; but international backpackers spend $5319 per trip and domestic backpackers spend $2549 per trip.

Backpackers travel more widely than other tourists; they travel to 2.7 Australian states compared with other tourists, who travel to 1.7 states. New South Wales is the most popular state for backpackers. Queensland is the most popular state for international tourists, and Victoria is the most popular for domestic backpackers. I ask the minister why Victoria has not attracted as many international backpackers as Queensland.

Shanghai: business opportunities

Hon. S. M. NGUYEN (Melbourne West) — I raise a matter for the Honourable John Brumby, the Minister for Innovation in the other place. Last week the minister signed a memorandum of understanding for the new biotechnology strategic alliance and joint venture between Victoria and its sister state of Jiangsu Province in China. Last week we welcomed the delegation from Jiangsu Province to visit our Parliament and the state of Victoria. We hosted the first world congress on Chinese medicine, which was opened in Melbourne last weekend. It was very strongly supported by the Chinese medical communities.

China and Hong Kong together now comprise one of Victoria's largest export markets and are our second-largest trading partner, with two-way trade worth over $7.6 billion in 2002–03. In October this year I visited Shanghai city, a capital business city of China. I was surprised to see how big the city of Shanghai had become in the last 20 years; now it is one of the strongest cities of the world. China now has many big brand name companies from small to large in size and from all parts of the world. It is indicative of the transfer from communism to capitalism. The living standard in China has improved a lot. The economy has gone very well, and there is now more opportunity for companies from Australia to do business in China.

I, together with two Chinese Australians — one is a local businessman and one is a medical doctor who has a surgery in Shanghai — had a meeting with Mr Sam Gerovich, Australian consul-general in Shanghai; Ms Dianne Zou, trade commissioner; and George Haddad, principal migration officer. The meeting was vibrant thanks to the support of the office of the consul-general and the staff of the foreign affairs department in Melbourne, Angela Varey and John Woods.

I ask the Minister for Innovation when he goes to China next week to explore opportunities to engage business between China and Australia, and especially for Victoria, in health services, hospital management and investment in Shanghai.

Public transport: fares

Hon. A. P. OLEXANDER (Silvan) — I seek the attention of the Minister for Transport in the other place, Peter Batchelor, and the issue I raise is the hike in public transport fares announced today. Yarra Ranges and Maroondah commuters today arrived home to the news that the Bracks government plans to slug them with an increase of up to 30 per cent on their train, tram and bus fares.

Local Labor lower house members of Parliament like Dympna Beard, the member for Kilsyth; James Merlino, the member for Monbulk; Peter Lockwood, the member for Bayswater; and Heather McTaggart, the member for Evelyn, have remained completely silent at this massive slug on eastern suburban residents. I hear Ms Hirsh in this chamber muttering away in the corner, but she has been silent on this as well. They need to ask their Premier, Steve Bracks, why he and Minister Batchelor suddenly announced that the Scoresby freeway would be tolled and why at the same time eastern suburbs commuters are going to be hit with these massive rises in public transport fees.

The Minister for Transport originally said he could not run the Scoresby freeway without tolls because the government had to bail out the public transport system. That excuse is now a joke, because Steve Bracks is slugging public transport users with a massive increase as well.

Full-fare travellers from Ringwood, Lilydale, Croydon, Chirnside Park, Mount Evelyn, Heathmont and Bayswater who buy 2-hour tickets will be hit with an 11 per cent fare rise to travel to Camberwell and the city. Students now buying 2-hour tickets to the city will have to pay 10 per cent more than they do now. Students will be hit twice, because the cost of student cards will also rise by up to 10 per cent. The cost of a monthly adult concession ticket to the city will rise by 10 per cent, and for a full fare traveller purchasing 11 monthly tickets a year it will mean an extra $172 — —

Hon. J. G. Hilton — On a point of order, President, I believe the member is making a set speech, which is contrary to your rulings on the adjournment debate.

The PRESIDENT — Order! I think the member is straying into that field, but he has not quite got there. He has a minute remaining of his time, and I ask him to use it in accordance with the guidelines I have already ruled on in this sitting.

Hon. A. P. OLEXANDER — For concession card holders who do not have Seniors Cards the cost of a trip to Box Hill to do the shopping will rise by 11 per cent — three times higher than the inflation rate. Christmas shoppers travelling from the Maroondah area to the city will pay $11 instead of $8.40.

Hon. J. G. Hilton — On a point of point of order, President, the member has obviously paid no attention to your instructions and is still reading a prepared speech.

Hon. A. P. OLEXANDER — On the point of order, President, I am not reading. I have been — —

Honourable members interjecting.

Hon. A. P. OLEXANDER — You have had your go and now it is mine. I am referring quite legitimately, as is the practice in the adjournment debate and 90-second statements, to copious notes. We have only a very limited time in which to convey significant facts and make our request. I am seeking to continue with this. Government members may not like it, but I am within the standing orders.

The PRESIDENT — Order! The member is referring specifically to figures and percentages, and as I said in my last ruling about 20 seconds ago the member was straying into a set speech. I do not think he has got to that point, and I hope he does not do so with his remaining 39 seconds.

Hon. A. P. OLEXANDER — Thank you, President. The bottom line for outer eastern suburbs commuters is that after Christmas they will have to find possibly another $200 a year to pay their public transport fares thanks to this Labor government. Will the Minister for Transport join me over the Christmas break in attending local railway stations in the outer east to explain to commuters why he has made this heartless decision and to hear their views first hand?

Parliament House: Smith Family toy appeal

Ms HADDEN (Ballarat) — I wish to raise an issue with the Premier of Victoria with respect to the Smith Family Christmas toy appeal for this coming Christmas. Parliament House staff are again assisting.

Honourable members interjecting.

The PRESIDENT — Order! There is too much chatter in the chamber. The Honourable Andrew Olexander has had his opportunity. I do not see Ms Hirsh on the list, so I ask her to desist from her chatter across the chamber. If she wants to continue, she will have to leave the chamber.

Ms HADDEN — Parliament house staff are once again assisting the appeal. The aim is to provide over 150 gifts to our precious children — our future — who are less fortunate than ourselves. I therefore request that the Premier, who himself came from humble and Christian beginnings in Ballarat, implore and direct his ministers, cabinet secretary and all government MPs to look into their hearts and, in the spirit of Christmas, leave a gift or two or three under the Christmas tree to be placed in Queen's Hall in our grand state Parliament on Thursday of this week. These gifts can then be delivered to the Smith Family, which is a very worthy organisation in this state, for distribution over the weekend to needy children.

Fishing: commercial licences

Hon. P. R. HALL (Gippsland) — Tonight I wish to raise a question for the attention of the Minister for Agriculture in the other place. It concerns changes to conditions attached to commercial fishing licences. Two days ago I received a facsimile message from Mr Wayne Cripps of Port Franklin. Some in this chamber will remember Wayne Cripps very well. He invited members of Parliament to be taken out to visit Corner Inlet during the debate on marine national parks. I know members from both the National and Liberal parties accepted his invitation and went out with Mr Cripps, and at a different time two members from the Labor Party also accepted his invitation.

Wayne Cripps's message informed me that on 17 November he received a letter from the Department of Primary Industries signed by the manager of commercial fisheries and licensing informing him that there had been some minor changes to the entitlements on the ocean fishery access licence he holds. The letter outlines what those changes are. It then states:

> These changes were included in a larger package of regulatory amendments covering a range of fisheries. This package, the Fisheries (Amendment) Regulations 2003 was made law on 11 November 2003 and commenced on 14 November 2003. Prior to this the proposed regulations were open for a 28-day public consultation period as advertised in the *Herald Sun* on 17 September 2003.

Mr Cripps thought it was great that the department would write to him and tell him of the changes that had been made and that were now law. However, the department failed to write to him or any other holder of commercial licences prior to these changes being made. As he points out in his facsimile, unless you were an observant reader of the *Herald Sun* or unless you picked it up on 17 September, people who own ocean access licences would not even know the changes were being considered or were imminent.

My question to the Minister for Agriculture tonight is: if it is good enough to notify commercial licence-holders after the event, why is it not good enough to alert them before the event so they can have some input into the proposed regulations?

Drugs: Dandenong

Mr SOMYUREK (Eumemmerring) — I raise a matter for the attention of the Minister for Health in

another place concerning the use of drugs in the Dandenong district component of my electorate. I have my electorate office in Dandenong and so does my colleague Mr Gordon Rich-Phillips. I often bump into him on Lonsdale Street, Dandenong — —

An honourable member interjected.

Mr SOMYUREK — Some experience.

Up until three years ago — I am sure Mr Rich-Phillips will vouch for this — you could not walk down Lonsdale Street, Dandenong, without seeing illicit drug activity on the street. Unfortunately Dandenong is still one of the hot spots in the state. The street-based injecting drug users are one of the biggest problems in the area, because they form the most marginalised group and they do not seek access to mainstream health services.

I understand the recent evaluation of the local drug strategy initiative found that early intervention and the active outreach approach of the primary health services was promoting a better ongoing standard of overall health for injecting drug users. The result has been a marked reduction in illicit drug activity on the streets of Dandenong. Therefore, I welcome the news that the state government will increase funding for the primary health services to the tune of $1.95 million over three years. The City of Greater Dandenong's primary health service will benefit to the tune of $720 000 annually from this. In addition there will be a funding pool of up to about $800 000 a year for local drug strategy projects across the board.

The successful programs include a respite program for children whose parents want to enter drug treatment and the employment of a drug-outreach lawyer to work with street-based drug users and sex workers to assist with their local issues. I ask the minister to ensure that the intended consumers of the primary health services are aware of the services in Dandenong.

Greyhound Racing Victoria: administration

Hon. D. KOCH (Western) — My issue is for the attention of the Minister for Racing in the other place. It deals with the serious challenges facing Greyhound Racing Victoria. There are ongoing concerns for owners and trainers who fear a decline in stake money, while volunteers who support and play such a major role in the racing codes feel their local club autonomy is threatened by policies espoused by GRV.

There is no industry representation on the board of GRV. While the industry does not want to control the board, it needs to have a voice — a voice that is not being heard at the moment. Many greyhound racing supporters believe that GRV's bureaucracy has gone mad, and that it has become top-heavy with an ever-increasing operating budget.

It has been indicated that during the last three years, GRV has reported full-time staff numbers have increased by 82 per cent, administrative and financial costs by 70 per cent, stewards' costs by 83 per cent and marketing costs by 36 per cent. At the same time revenue from races administered by GRV has increased by only 15 per cent.

Part of the concern is fuelled by the news that GRV commissioned a research company to assess the future viability of greyhound racing in Victoria. This research company identified that there will be a shortfall of $13 million in funds available to maintain tracks and facilities over the next 10 years. The report also shows that 50 per cent of participants believe the best option to alleviate the shortfall would be for GRV to cut administrative costs.

Ninety-one per cent of participants do not want tracks to close, yet this is exactly what many in the industry believe GRV is contemplating. Greyhound racing in Victoria is a growing sport, and many people supplement their incomes from it. Smaller operators feel unfairly treated, knowing larger owners and trainers are being paid inequitable appearance sums per race meeting and are regularly entering up to five dogs per race. Smaller owners feel disfranchised seeing GRV giving dominant participants unrivalled nomination opportunities. Surely when times are tough responsible business management requires cutting overheads, not closing tracks or cutting returns.

Will the minister demand that GRV run a leaner operation to curtail bureaucratic dominance, maintain and upgrade tracks at current facilities, not diminish regional autonomy and listen to owners, trainers and volunteers who make greyhound racing possible?

Parks Victoria: rubbish bins

Hon. W. A. LOVELL (North Eastern) — I raise a matter for the attention of the Minister for Environment in the other place. In December 2002 Parks Victoria removed all rubbish bins in the riverside camping area between Echuca and Gunbower. It introduced a policy whereby campers were responsible for disposing of their own rubbish. Parks Victoria did not consult with the Shire of Campaspe as to whether or not this course of action was practical, or about how the needs of campers and the local community would be best met.

The Shire of Campaspe wrote to Parks Victoria in December 2002 and raised these matters but unfortunately did not receive a response. The result of the removal of these bins by Parks Victoria was that in the period from Christmas last year to Easter this year there was a huge increase in illegal dumping of rubbish in and adjacent to riverside camping areas and in wayside stops and council parks.

The matter of illegal dumping of rubbish on the roadside and in bushland is of significant concern to the community along the river. There is a clear message from the community that this matter needs to be resolved. The collection of illegally dumped rubbish has also caused significant concern and cost to the Shire of Campaspe. It is disappointing that a state government body such as Parks Victoria decided to remove all rubbish bins without any consideration of the impact it would have on the local community.

Over the winter non-camping period representatives from the Shire of Campaspe met with Parks Victoria and voiced their concerns, but unfortunately they were unable to satisfactorily resolve the problem. We would all agree that campers should be responsible for their own rubbish and that they should be required to dispose of it in approved locations as is required of the rest of the community. It is inevitable that short-term difficulties will be experienced in changing the attitudes of campers to being responsible for their own rubbish, but in the long term these attitudinal changes would have a lasting benefit on the way people care for our environment.

At present the removal of all rubbish bins by Parks Victoria has simply become another unfair cost-shifting exercise by the Bracks government to local councils because councils have been left to foot the bill of cleaning up after campers have moved on. If Parks Victoria's policy of making campers responsible for disposing of their own rubbish is to be successful, there needs to be an education program for campers, and councils need to be assisted with the cost of transitional arrangements. I ask the minister to initiate an educational program to inform campers of the new arrangements to avoid rubbish being illegally dumped and also to assist local councils to cover the cost of rubbish collection during the transitional period.

Prisons: closures

Hon. R. DALLA-RIVA (East Yarra) — I raise a matter for the attention of the Minister for Corrections in the other place. It relates — —

Honourable members interjecting.

Hon. R. DALLA-RIVA — He may not be there after next week, but who knows with your mob? The matter I raise relates to the closure of Victoria's correctional facilities, and in particular to the decommissioning — —

Hon. S. M. Nguyen interjected.

Hon. R. DALLA-RIVA — I am raising a matter for the Minister for Corrections, whoever that may be next week, Mr Nguyen.

It relates to Victoria's decommissioning of three Victorian jails — in Beechworth, in Bendigo and Won Wron jail in Yarram. I raise the issue tonight because with the closure of those jails we have a situation where in Beechworth there is a gazetted 123-bed medium-security facility; in Bendigo the government is closing an 85-bed medium-security jail, and in Won Wron the government is closing a 127-bed minimum-security facility. Essentially, with the closure of the three prisons more than about 200 medium-security beds are being closed and replaced by only the one new jail in Beechworth, which is gazetted as a 120-bed jail.

Whilst I understand the government's program in relation to the construction of facilities, the issue I raise tonight is my concern about where the allocation of the extra 200 medium-security jail prisoners are going to be allocated, given that the recent justice department report shows there are 121 prisoners for every 100 permanent prison beds.

I request that the minister take the appropriate action where necessary to ensure that those prisoners who are currently in the medium-security jails are not put in the awkward position of being placed in minimum-security correctional facilities when the new jail in Beechworth has been built.

Responses

Hon. M. R. THOMSON (Minister for Small Business) — The Honourable Chris Strong raised a matter for the attention of the Minister for Planning in the other place concerning Bayside Council's planning scheme C2 part 1. I will pass that on to the minister for response.

Ms Mikakos raised a matter for the attention of the Minister for Women's Affairs in the other place about today being International Day for the Elimination of Violence Against Women. She asked what specific action the minister is taking in relation to the prevention of violence against women within her province. I will pass that on to the minister for response.

The Honourable Graeme Stoney raised a matter for the attention of the Minister for Environment in the other house concerning Paterson's curse on farmland. He sought assistance from the minister to follow up with prosecutions for lax land-holders.

The Honourable Geoff Hilton raised a matter for the Minister for Environment in the other place concerning Point Nepean and misinformation that is going out in relation to the government's position and the protection of Point Nepean. I will pass that on to the minister for his response.

The Honourable Andrea Coote raised a matter for the Minister for Tourism in the other house about attracting backpackers to Victoria. She compared the number of backpackers who travel to Queensland with the numbers coming to Victoria. She sought a response as to why Victoria does not have as many backpacker visitors as does Queensland. Mrs Coote will enjoy the response!

The Honourable Sang Nguyen raised a matter for the Minister for Innovation in the other place concerning his imminent trip to China in relation to the potential for investment and business opportunities between China and Victoria, particularly with Shanghai, and in relation to potential health services. He asked for those issues to be pursued. I will pass that on to the minister.

The Honourable Andrew Olexander raised a matter for the Minister for Transport in the other place concerning public transport fares.

Ms Hadden raised a matter for the Premier concerning the Smith Family Christmas toy appeal and the fact that the staff here at Parliament House are collecting toys and presents. She asks that the Premier seek support from ministers and members of Parliament to place presents under the tree, and I will pass that on to the Premier.

The Honourable Peter Hall raised a matter for the Minister for Agriculture in the other house concerning the notification of changes in licensing conditions in relation to commercial fishing licences, and I will pass that on to the minister.

Mr Somyurek raised a matter for the Minister for Health in the other place concerning drugs in Dandenong and the strategy being put in place to assist those in the Dandenong district and to ensure that there is an awareness campaign tailored to those people to ensure they are taking advantage of those supports.

The Honourable David Koch raised a matter for the Minister for Racing in the other place concerning the administration of Greyhound Racing Victoria, and I will pass that on to the minister.

The Honourable Wendy Lovell raised a matter for the Minister for Environment in the other house concerning riverside camping areas between Echuca and Gunbower and the illegal dumping of rubbish along the river, seeking an educational program to be initiated for campers along there, and I will pass that on.

The Honourable Richard Dalla-Riva raised a matter for the Minister for Corrections in the other place concerning the decommissioning of Beechworth, Won Wron and Bendigo jails and the allocation of medium-security prisoners after the closure of those jails, and I will pass that on to the minister.

House adjourned 10.36 p.m.