PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FIFTH PARLIAMENT

FIRST SESSION

5 October 2004

(extract from Book 2)

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By authority of the Victorian Government Printer

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FIFTY-FIFTH PARLIAMENT — FIRST SESSION

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Hirsh, Hon. Carolyn Dorothy	Silvan	ALP	Vogels, Hon. John Adrian	Western	LP

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TUESDAY, 5 OCTOBER 2004

Tuesday, 5 October 2004

The PRESIDENT (Hon. M. M. Gould) took the chair at 2.01 p.m. and read the prayer.

ROYAL ASSENT

Message read advising royal assent on 21 September to:

Gambling Regulation (Amendment) Act
Parliamentary Salaries and Superannuation (Amendment) Act
Sex Offenders Registration Act
Water Industry (Environmental Contributions) Act.

QUESTIONS WITHOUT NOTICE

Gas: regional supply

Hon. PHILIP DAVIS (Gippsland) — I direct my question to the Minister for Energy Industries. In regard to the announcements by TXU of proposals to reticulate natural gas in the Macedon Ranges and Creswick areas at a capital cost of $40 million, what is the contribution to the project from the natural gas extension program fund?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — I have to say I am surprised that the Leader of the Opposition has come into the house and asked this question. Essentially what he has done is lead with his chin — like this! — because all this time the opposition has been going around accusing this government of not delivering in relation to the natural gas program. That is what it has been doing. Every time it goes to country Victoria it runs down the program, just like it runs down the state. That is what it does. It raises people's fears that they might not get natural gas. It carries on about natural gas. The member for Gippsland's colleague the member for Templestowe is meant to be the spokesperson on these matters, but he is never given the question. I am surprised — —

An honourable member interjected.

Hon. T. C. THEOPHANOUS — You have asked the question; however, he is the one who has made the comments in this house in the past. He came into the house and accused Joanne Duncan, the member for Macedon in the other place, of all sorts of things regarding the gas extension program. He said it was a cynical political exercise. That is what the opposition said — that it was a cynical political exercise and that we had unfairly raised the hopes of thousands of rural Victorians. That is what the member for Templestowe accused Joanne Duncan of. He further accused her of knowing that Macedon — —

Hon. Philip Davis — On a point of order, President, I think the house has been tolerant. The minister was asked a specific question. He is debating the question and has come nowhere near responding to it. I ask you to bring him back to the question.

Hon. T. C. THEOPHANOUS — On the point of order, President, I put it to you that the question that was asked of me by the Leader of the Opposition was in relation to the delivery of a very important program on which there has been significant speculation and a lot of comment in this house as well. I put it to you that I am not debating the question. I am providing an answer to the question that has been asked of me by the member, which includes putting into context the nature of this debate and this point of order.

Honourable members interjecting.

The PRESIDENT — Order! In response to the point of order raised by the Leader of the Opposition, I point out to the minister that he is more than halfway through his allotted time. I ask him to respond to the Leader of the Opposition's question in concluding his remarks.

Hon. T. C. THEOPHANOUS — As I was saying, we on this side of the house are very proud of this program because it is going to deliver to people in rural Victoria. I think Joanne Duncan deserves an apology from Mr Forwood, because he must feel pretty stupid having come into this place and accused her of misleading her constituents by saying that she knew Macedon and Lancefield would not be connected. The announcement has already been made. Mr Forwood should get up and apologise, and apologise publicly, for what he said about Jo Duncan, because she is a member who has delivered for her constituents, which is more than he ever did in his place.

Supplementary question

Hon. PHILIP DAVIS (Gippsland) — In regard to the minister's answer, and I recite that the announcements about Bairnsdale have been illusory, will the minister advise the house what amount of the fund will remain to facilitate the extension of gas throughout country Victoria where the Labor Party made commitments, including Bairnsdale, Paynesville, Romsey, Avoca, Heywood, Port Fairy, Terang, Camperdown, Smythesdale, Myrtleford, Bright,

Beechworth, Barwon Heads, Nathalia, Bonnie Doon, Alexandra and Lancefield?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — Opposition members must be feeling pretty jealous by now, because what will happen is that the government will continue to make these announcements. We have just started making them by announcing a number of towns, and I will be happy to inform the house about all of that information. The government is announcing them progressively. I look forward to the Leader of the Opposition apologising every single time the government makes a further announcement that will benefit people in regional Victoria.

Gas: regional supply

Ms HADDEN (Ballarat) — I direct my question to the Minister for Energy Industries. Will the minister inform the house of the latest developments in the Bracks government's $70 million natural gas extension program?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — I thank the honourable member for her question. She is a member who has been doing a lot of work in her electorate and certainly lobbying me and the government to ensure that gas is supplied to her constituents.

Last Friday the government made a major announcement regarding the $70 million gas extension program, which saw the seven towns of Gisborne, New Gisborne, Woodend, Romsey, Lancefield, Riddells Creek and Macedon — for your information, Bill, it included Lancefield and Macedon, despite what you said in this house — being connected to the natural gas network.

Today the government has also announced that Creswick will be joined to the network as well. This is the biggest rollout in provincial Victoria of natural gas since the 1970s. Just through these announcements made to date in all these eight towns more than 20 000 Victorians will gain access to natural gas — more than 20 000 Victorians! Mr Forwood should listen carefully, because he never delivered to 20 000 Victorians in regional Victoria. Just so the people understand what it means, I point out that it will bring to these residents not only the opportunity to use clean natural gas but the opportunity to save between $600 and $1200 a year in energy costs by converting to natural gas.

Hon. P. R. Hall interjected.

Hon. T. C. THEOPHANOUS — The National Party has never come on board with it either. We are happy for it to come on board and say, 'We support it.' We are happy for it to do that. Importantly, it offers businesses the opportunity to save thousands of dollars every year. It will dramatically lower costs, increase investment and create new jobs in regional Victoria. It is a great announcement for these towns and Victoria.

Much of it is due to the hard work of the local representatives. In particular I would like to mention the work done by the two upper house members of this Parliament, Dianne Hadden and John McQuilten, who continually and consistently represent the interests of their electorates. I also thank Geoff Howard, the member for Ballarat East, and Jo Duncan, the member for Macedon, in the other place. I also acknowledge the efforts and representations made by Cathy King, the local federal member. I especially mention the Labor candidate for the federal seat of McEwen, Jenny Beales, who also made representations. She has been a strong advocate for getting gas extensions. She has been doing the job that Fran Bailey, the member for McEwen, should have done.

The gas extension program is great news for regional Victoria. We now project that 85 per cent of the rollouts will be completed by 2006. The opposition and Bill Forwood should apologise to Joanne Duncan.

Small business: public holidays

Hon. B. N. ATKINSON (Koonung) — I direct my question to the Minister for Small Business, the Honourable Marsha Thomson, and I ask: does the minister support the Shop Distributive and Allied Employees Association's claim for the declaration of 25 December, 26 December and 1 January 2005 as public holidays, a move which would create a substantial additional cost to small businesses throughout the state?

Hon. M. R. THOMSON (Minister for Small Business) — We know the opposition in government thrived on dividing communities and Victoria. When we came to government Victorian employees were disadvantaged on public holidays compared with their interstate counterparts. We saw a cut in public holidays, together with a whole lot of services, that were enjoyed by Victorians prior to the Kennett years. The Victorian government has restored the comparative public holiday regime between Victoria and other states. We now enjoy the same level of public holidays in Victoria that is enjoyed in other states. We are pleased we are a government that is about bringing Victorians together to grow Victoria's economy, not dividing them, and not

ensuring that one succeeds at the expense of another part of the Victorian community. We will continue to ensure that we govern in that way.

Supplementary question

Hon. B. N. ATKINSON (Koonung) — I think the minister has mistaken her publicity screed for an answer to my question. Will the minister assure small businesses throughout the state that the Bracks Labor government will not declare 25 and 26 December 2004 and 1 January 2005 as public holidays?

Hon. M. R. THOMSON (Minister for Small Business) — As I said before, we have put in place a public holiday regime that is fair to all Victorians, and that is the regime by which we stand.

National competition policy: payments

Ms MIKAKOS (Jika Jika) — My question is directed to the Minister for Local Government. Can the minister advise the house what progress she has made to secure the $17 million paid to Victorian councils by the Bracks government each year from national competition policy payments following the Howard government's decision to terminate this funding?

Ms BROAD (Minister for Local Government) — I thank the member for her question and interest in this issue. I note that Banyule, Darebin, Whittlesea and Yarra city councils in the member's electorate will be some $979 000 worse off each and every year as a result of the Howard government's decision to terminate national competition policy payments to the states and territories. These payments are shared with local government by the Bracks government as part of the local government improvement incentive program, which is designed to encourage councils to engage as fully as possible with their communities and explore the best way to provide cost-effective services.

In 2003–04 a total of more than $16 million was passed on to Victorian councils by the Bracks government, representing around 9 per cent of the national competition policy payments it receives from the commonwealth. I am pleased to advise the house that while the Howard government is intent on abandoning its responsibilities to local government, federal Labor is committed to ensuring that Victoria is not disadvantaged under any agreement with the state government in relation to future national competition policy payments. This means that under a Latham government, Victorian councils will not have to choose between cutting services and staff or increasing rates. Specifically, federal Labor — —

Honourable members interjecting.

The PRESIDENT — Order! There is enough interjection in the house, and I ask all members on my left to desist to allow the minister to conclude her answer.

Ms BROAD — Specifically, federal Labor has agreed to top up Victorian local government for that share of the competition payments affected by federal Labor's decision to allocate $400 million to public hospitals, and, of course, the Bracks government will continue to pass on 9 per cent of the remaining amount of the national competition policy payments to Victoria. With this supplementation by federal Labor, councils are not disadvantaged under Labor's proposals, as they are under the federal Liberal and National policy to strip away the entire payment.

The choice for local government in Victoria is now very clear indeed. On the one hand the federal Liberals and Nationals are promising to rip $17 million from councils across Victoria every year if they are re-elected this Saturday. On the other hand, a Latham Labor government, in partnership with the Bracks government, would not allow local governments to be disadvantaged — in other words, under Labor councils will be guaranteed that these funds will continue to flow to the important services provided by councils to Victorians. I remind the house that this unnecessary assault on state and territory and local government budgets is coming at a time when the federal government has a $25 billion surplus over the period of the forward estimates. The real question is: where do members opposite stand on this? Are they Liberals first and Victorians second, as usual? Yes, they are.

Electricity: coal drying

Hon. P. R. HALL (Gippsland) — My question without notice is directed to the Minister for Energy Industries. In early August — —

Honourable members interjecting.

The PRESIDENT — Order! I am trying to hear the question of the Leader of The Nationals. With the interjections and the banter across the chamber from both sides, it is difficult to hear, and I ask members to desist.

Hon. P. R. HALL — In early August the federal government allocated $2.2 million for the development of a pilot plan to dry brown coal, which would reduce greenhouse gas emissions from brown coal generation by 30 per cent. This $2.2 million was conditional on the Bracks government matching that figure. Given the

environmental importance of this project, when we will see the state government put its money on the table?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — Brown coal drying and the technologies associated with it are important parts of trying to find technological solutions to some of our greenhouse gas emission issues for Victoria. It is important that we develop new technologies for brown coal drying.

I make it clear that the government has supported the cooperative research centre's coal drying technology in relation to mechanical thermal expression, which is one type of coal drying technology that is being looked at. We support that financially, as does the commonwealth government and the industry itself. The program is at a crossroads. Some initial work has been done and we need to consider whether to step it up to the next stage of a substantial plant, which would be the forerunner of a full-scale plant. That is being supported by the government, as are a number of other initiatives in relation to coal drying.

As members would be aware, we had a significant problem when the briquette factory burnt down. One of the ways we decided to deal with that problem was to encourage the establishment of an alternative source of briquettes. It is being developed down in the Latrobe Valley using coal from Loy Yang A.

Members might be aware that Rod Carnegie through his firm was involved in helping us to develop that. Again, that project received assistance from the state government in getting it off the ground in order to have an alternative to briquettes. I can also inform the house for the benefit of the honourable member that management of the briquette factory has also decided to reopen it and the factory will be producing briquettes. The management of that process and the position that the government took in looking after the workers in the briquette factory who were laid off have ultimately paid off, because the company remained viable and has now been able to reopen that factory. There are also coal drying technologies that are being investigated by a number of different players — —

Hon. J. M. McQuilten — One in my electorate!

Hon. T. C. THEOPHANOUS — One is in Mr McQuilten's electorate, as he as indicated, but it is not the only one. There are many of these technologies. I must say that whilst we are going around in a number of different ways trying to develop different types of coal-drying technologies in order to bring them into play, the critical factor, as I have informed the house before, is always going to be who is going to ultimately make the investment to put in place technology for coal drying which will reduce greenhouse gas emissions? The answer is that no-one is going to while we do not have a policy on an emissions trading scheme which has been accepted by the federal opposition but which continues to be opposed by the federal government. Without that emissions trading scheme in this state we are not going to be able to bring these systems into operation.

Supplementary question

Hon. P. R. HALL (Gippsland) — On a supplementary question, President, I welcome the minister's interest in and acknowledgment of the importance of this particular matter, but I am disappointed that there was not a specific answer to the question. By way of supplementary question, I refer the minister to his reported comments in the *Latrobe Valley Express* of Thursday, 5 August, where it says:

> Energy Minister Theo Theophanous said the government had not yet received the paperwork for the proposal from CRC
>
> ...
>
> 'We are keen to support industries which develop technologies to reduce greenhouse gas emissions and look forward to getting the proposal' ...

I ask the minister: has he received a proposal on this particular project from the cooperative research centre, and if so, is he prepared to support it?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — Let me answer this question in this way: the proposal from the cooperative research centre for this has been something that we have been supporting for a number of years including financially. There have been several million dollars involved. If the member wishes, I can get him the exact amounts, but it is several million dollars of investment by the government in the technology up to this date.

Hon. P. R. Hall interjected.

Hon. T. C. THEOPHANOUS — Yes, for the mechanical thermal expression technology. We have invested several million dollars in this. We want a proposal from the company which will come up to scrutiny and is worth while. We are talking to that company. I am happy to let the member know as soon as I am able to what Victoria's contribution will be to that ongoing program.

Sport and recreation: industry awards

Mr PULLEN (Higinbotham) — I refer my question to the Minister for Sport and Recreation, the

Honourable Justin Madden. I refer the minister to his recent ministerial statement where he highlighted the strength of the sport and recreation sector in Victoria and I ask: what action has the Bracks government taken to recognise and reward individuals and organisations which contribute to this success?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I thank Mr Pullen for his question and his interest in all things in sport and recreation, and in particular for the representations he often makes to me on behalf of many sporting groups in his province. Members of the chamber might appreciate that the sport and recreation sector contributes in the order of $3.5 billion to total Victorian production, which represents 2 per cent of the state economy. It also reflects the fact that 80 000 Victorians owe their main job to sport and recreation. We should not underestimate the economic value of sport to this state. The Victorian sport and recreation sector also has a strength and level of expertise that is outstanding given its relative size in terms of the state economy.

But what is most important about sport and recreation is that it plays a vital role in giving people of all abilities and all backgrounds and beliefs an opportunity to achieve things that they may not necessarily believe or may not originally have anticipated they could achieve. It is worth appreciating that we recognise this as a government and, as members of the chamber should appreciate, we have announced the sport and recreation awards for this year. We have had an overwhelming demand for nominees to be included and to celebrate their achievements across the respective sport and recreation sectors. That takes into account the fitness area and the outdoor recreation and community recreation sectors. For 2004 there will be 10 sport and recreation award categories. We have ensured that this year there will be one additional category — a new award has been created to focus on not-for-profit clubs that operate successfully by using their members, by inviting additional members and by using sustainable and safe ways to ensure that they continue the great work they do.

Each winner will qualify for a $5000 cash prize and a winner's trophy, and there will be certificates for the finalists so they can also be celebrated within their own organisations. It is a great opportunity to showcase the depth and breadth of sport and recreation in the state — the skills and expertise and the enormous capacity right across the sector. No doubt all members of the chamber will appreciate that we do have some tremendous volunteers out there who continue to deliver, and who deliver in spectacular ways. It will be great to announce the award recipients next month. Again this reinforces that we are all delivering for all Victorians when you appreciate that 7 of the 10 winners in last year's awards were from regional areas. We are delivering for all Victorians and reinforcing the role of sport in this state.

Mitcham–Frankston freeway: tolls

Hon. PHILIP DAVIS (Gippsland) — I direct a question without notice to the Leader of the Government in his capacity as Minister for Finance with responsibilities in relation to the economic review committee of cabinet. On 15 April 2003 the Premier said on radio that:

> ... two weeks ago ... I had not at that stage at all, ever, considered the fact that we would put on a toll —

on the Scoresby freeway. Did the Premier lie to Victorians about this matter?

Mr Viney — On a point of order, President, it is, I think, fairly well established in this chamber that questions need to be directed to ministers in their area of administrative responsibility. That clearly does not fit into the guidelines for questions in the chamber.

Hon. PHILIP DAVIS — On the point of order, President, I make the point that I phrased the introduction quite particularly in relation to the Leader of the Government's responsibilities as the Minister for Finance with responsibilities in relation to the expenditure review committee of cabinet. It is quite clear that he is competent to answer this question.

The PRESIDENT — Order! I have a problem with the Leader of the Opposition's question asking the minister, the Leader of the Government, whether the Premier lied or not. I do not believe it is within the responsibility of the minister to answer the question in the way it was formed. I know the honourable member referred to the Minister for Finance and to a cabinet committee, but I do not think a question to the minister about the Premier in that form falls within the minister's portfolio responsibilities in that sense.

Hon. PHILIP DAVIS — Thank you, President. May I take your guidance and rephrase the question? In that case I refer to a leaked document dated 20 February 2002 providing advice to the Premier regarding the Scoresby freeway for the cabinet expenditure review committee, and I ask: can the minister confirm that despite the government's election promise not to toll the Scoresby, the government was preparing for tolls nine months before the 2002 election?

Hon. T. C. Theophanous — On a point of order, President, I am not quite sure how to draw your attention to two matters, but the first thing I would say is that this is clearly outside the responsibility of the minister. The rephrasing of the honourable member is about a comment made by the Premier in relation to — —

Hon. Bill Forwood — No, it is not; it is about a memo to the expenditure review committee.

Hon. T. C. Theophanous — The memo that is being referred to is a memo to a cabinet committee. There are a number of cabinet committees. If you were to allow this question, the precedent would be set that any cabinet minister sitting on a cabinet committee would be subject to questions — even if the questions had nothing to do with their portfolio responsibilities — simply because they happen to be on that cabinet committee. That would be a huge extension of the way this has been interpreted in the past. I urge you, President, to rule the question out of order on the basis that this issue of the Scoresby does not fall under the responsibility of the minister of whom it has been asked.

Had the question been asked of either the Premier or the Minister for Transport, then it would have been in order, because both the Premier and the Minister for Transport have responsibilities and can be questioned in relation to the issue. But the Minister for Finance does not have such responsibility. I ask you to rule it out of order on that basis.

I also point out — and I think it is important that this precedent not be set — that inviting ministers to answer questions about the Premier lying, or anyone in this house lying, is out of order and should not be allowed anyway.

The PRESIDENT — Order! In response to the minister's final comments, the first question that the member put up was unacceptable and has been ruled out. He rephrased it, and then a point of order was raised on that rephrasing about whether it falls within the minister's portfolio. Does the Leader of the Opposition wish to raise a further matter on this point of order?

Hon. PHILIP DAVIS — I do not wish to raise a new issue but to respond to the point of order that has been raised. I reiterate that a question has been asked irrespective of the preamble that is the background to the question. The question that was asked was specific in relation to the minister and a government decision. I point out that the question is asked of the Minister for Finance in his capacity as a member of the cabinet in relation to both a government decision and his role on the expenditure review committee. I recite for the benefit of the house the specific question I asked: can the minister confirm that despite the government's election promise not to toll the Scoresby the government was preparing for tolls nine months before the 2002 election? I put it to you, President, that it is within the competence of the Leader of the Government in this house to respond to a question about the government's decision in relation to a matter that the cabinet deliberated on.

The PRESIDENT — Order! Rulings have been made by my predecessor and me regarding the asking of questions of ministers, and it has been made abundantly clear on each occasion that when you ask a question of a minister it can only be asked about the portfolio for which he or she is responsible. When you ask a question in the house it can only be about that ministerial portfolio not about any other position that person may have outside the house. So the question can only relate to the minister as the Minister for Finance, and as the question asked by the Leader of the Opposition does not refer to him as being the Minister for Finance, I rule the question out of order.

Information and communications technology: global market

Ms CARBINES (Geelong) — I refer my question to the Minister for Information and Communication Technology, the Honourable Marsha Thomson. Victorian information and communications technology firms must increasingly compete in the global market to succeed. Can the minister inform the house what action the government is taking to help Victorian firms compete in a global marketplace?

Hon. M. R. THOMSON (Minister for Information and Communication Technology) — I thank the honourable member for her question. I know that she has an interest in the information and communications technology (ICT) sector and the way in which we promote that sector internationally. It is crucially important at this time to promote what the Victorian ICT industry can do globally because the eyes of the world are on the Asia-Pacific region as an ICT development centre. The Bracks government takes very seriously its role and responsibility in promoting the capabilities of Victorian ICT firms in the global market. It is important to talk about the attributes that they bring to the ICT sector in the broader global sector. The innovative capability of this sector needs to get worldwide recognition if it is to grow and develop a global reputation.

Towards the end of October I will be leading a trade mission of around 30 companies to India to promote our capabilities in India. Members will be aware that India is a global ICT giant, especially in software development. It is important that we are able to look at the opportunities that may be available to Victorian ICT industries to develop partnerships, to spread the knowledge of their capabilities to personnel within the senior levels of Indian ICT companies, and to assist Victorian firms in developing a working relationship with those potential Indian partners. The trade mission will involve key company visits and networking events in Mumbai, Chennai and Hyderabad. It will culminate with those companies taking part in Bangalore IT.COM.

The development of the Victorian ICT industry relies on Victoria growing its opportunities in the overseas market, and the government has always been conscious of that. Unfortunately, that has not been the case with the Howard government over the past eight years. However, on 9 October we will see a change of government, and I am looking forward to working with the federal shadow minister for information technology, Kate Lundy, in providing an opportunity to aggressively promote the capabilities of the Victorian ICT industry. In fact Kate Lundy has announced an $8 million initiative that will be set aside for the promotion of Australia's ICT industry internationally. More importantly, Labor federally is committed to working collaboratively with the states to deliver on this commitment. It is one that I am looking forward to and wish that we had had over the last five years. The ICT industry has suffered because the Howard government has been unwilling to work collaboratively with the states. We are looking forward to that collaboration in the future, as we are with respect to the collaboration on Medicare Gold.

Mitcham–Frankston freeway: tolls

Hon. PHILIP DAVIS (Gippsland) — I direct my question without notice to the Minister for Finance. I refer the minister to a second leaked document dated 26 February 2002 titled *Expenditure Review Committee Paper 285,* and I ask: can the minister confirm that this advice identifies commercial tolls on the Scoresby freeway as the government's preferred position in February 2002? Before I get comments from various members on the other side of the house about whether or not the question is in order, I point out that this is a matter that is within the competence of the Minister for Finance as a result of his holding that office and as a consequence of being a member of the expenditure review committee. He has been fully apprised of these discussions, and I expect that he will answer this question.

The PRESIDENT — Order! There is the same problem with the question of the Leader of the Opposition as there was with the last one. The question to the Leader of the Government does not relate to the responsibilities of the Minister for Finance, and I again rule the question out of order.

Aged care: federal Labor policy

Hon. J. H. EREN (Geelong) — I direct my question to the Minister for Aged Care. The minister has previously outlined the difficulties experienced by the aged care sector in Victoria due to the shortage of operational beds and the ongoing need to improve care for older people. I ask: have the most recent commonwealth budget and subsequent commonwealth policy directions created the circumstances to address these issues in Victoria?

Mr GAVIN JENNINGS (Minister for Aged Care) — All members of the house know that any state minister for aged care has probably been very proud this last week to talk about the issues of aged care following the successful launch of the Medicare Gold policy by the federal Labor Party. It is a very important initiative of which we can all be proud. We know for the first time that older members of our community are writ large in terms of the political priorities of the federal Labor Party. To give it its credit the federal government has recognised the fundamental failing in the last federal budget that did not address the structural problems in the aged care industry. Indeed in the last budget that Peter Costello hopes he will ever deliver to the people of Australia — the very last budget that we certainly hope he will deliver — the situation in Victoria is that there are 3244 beds short. The commonwealth benchmark for aged care was not satisfied — there was no structural adjustment allocated within that budget; there was no money allocated to increasing hospital care; and there was in fact less money for home and community care than there had been in the previous forward estimates.

That has turned around in the last week, because with the announcement of the Medicare Gold program the Labor Party has clearly indicated that aged care will be a major priority of the incoming Labor government. The federal government has made some commitments in terms of new allocations for health care to deal with the needs for older Australians, but they fall into the category of ongoing rebates for Medicare or private health insurance.

Medicare Gold was the highlight of a $4.2 billion commitment of the Latham Labor Party to increase medical care. An essential component of that commitment is $2.9 billion worth of support for older members of the community. Significant savings were attributed to it so in fact Medicare Gold had the net projected cost of only $837 million. For that all older members of our community under Medicare Gold will be entitled to hospital care for free.

To augment the Medicare Gold program significant investments have been made to make sure that the public hospital system has the capacity to provide for additional care — $1 billion has been provided for public hospitals. There has been a commitment to augment Medicare Gold to provide for an additional 1000 doctors and an additional 1800 nurses throughout Australia for our public health care system. Medicare Gold by design will also make an impact by ensuring that older members of the community get access to the spare capacity within private health care.

John Deeble, who designed the Medicare system, is actually quoted in last weekend's *Australian Financial Review* as saying that Medicare Gold will be successful because it will augment that significant investment, but it will only work if there is also the tax investment to provide for residential aged care. Mark Latham, assisted by Annette Ellis, followed up with a Medicare Gold announcement to make sure an additional $300 million was allocated to residential aged care. It will provide 3000 additional places. So at the beginning and the end Medicare Gold will play an essential role in improving the capacity of our system to care for the needs of older people. I welcome Medicare Gold.

QUESTIONS ON NOTICE

Answers

Mr LENDERS (Minister for Finance) — I have answers to the following questions on notice: 1498, 1541, 1551, 1590, 1592, 1675, 1748, 1750, 1751, 1758, 1760, 1808, 1823, 1867, 1868, 1877, 1880, 1881, 1927–37, 1940, 1941, 1943, 1959, 1979, 1980, 1982, 1983, 1989, 2028, 2049, 2057, 2063, 2066, 2109, 2110, 2113, 2182, 2203, 2215, 2216, 2218, 2219, 2285, 2299, 2302, 2303, 2307, 2340, 2341, 2345, 2357, 2429, 2430, 2439, 2447, 2448, 2450, 2451, 2517, 2531, 2534–36, 2539, 2540, 2544, 2561, 2562, 2567, 2570, 2571, 2575, 2587, 2645, 2661, 2662, 2671, 2679, 2680, 2682, 2683, 2749, 2763, 2767, 2768, 2776, 2805, 2806, 2810, 2895, 2896, 2905, 2913, 2914, 2916, 2917, 2983, 2997, 3038, 3039, 3043, 3054, 3055, 3102–14, 3117–21, 3124, 3126, 3129–39, 3147, 3148, 3150, 3151, 3217, 3225, 3231, 3234–36, 3239, 3240, 3245, 3250, 3302, 3303, 3332, 3334, 3347, 3396, 3406, 3407.

MEMBERS STATEMENTS

Wind farms: South Gippsland

Hon. PHILIP DAVIS (Gippsland) — Last Wednesday evening I attended a public meeting of 800 members of the Foster community in South Gippsland, which is remarkable given the size of Foster let me tell you! Professor David Bellamy flew directly from the United Kingdom to attend and speak at this meeting, the subject of which was wind farms.

Indeed it is interesting to note that points were made at the public meeting that the Labor Party is committed to a policy of more than doubling the mandatory renewable energy target (MRET), and that means more wind farms for South Gippsland if Labor wins the federal election. Labor's Christian Zahra will vote for Labor's policy on MRET, and the state Labor government has shown its disregard for community concerns in regard to putting wind farms where the state government wants to put them. It is quite clear that any vote for Labor will be a vote for more wind farms in South Gippsland. The only way for South Gippslanders to protect themselves from the overbearing approach by the state government in regard to this matter is to vote for Russell Broadbent and the Howard government, because they will support appropriate wind developments that are acceptable to local communities.

Goldstein: federal Labor candidate

Mr PULLEN (Higinbotham) — I thank my Higinbotham colleague, the Honourable Chris Strong, for including on his strange web site — a site that is full of spelling mistakes and grammatical errors — my statement of 15 September regarding the endorsed Labor candidate, Cr Craig Tucker, for the federal seat of Goldstein. He also included his own vicious attack on Cr Tucker of the same date; however, he obviously has been instructed to do that or he forgot that on 29 October 2003 he had said amongst other things that Cr Tucker was standing up for his residents in relation to a development in Highett. But of course I can understand that. Mr Strong is either confused or simply does not know the area his electorate covers, because he made a statement on 15 September that Higinbotham Province takes in the totality of the federal seat of Goldstein. Well, it does not!

Because he is cocooned in Brighton I have to inform him that part of the Goldstein electorate is situated in the seat of the outstanding Leader of the Government, John Lenders — that is, Waverley! I can understand why Mr Strong is upset, because the Liberal candidate for Goldstein has been parachuted in from Sydney, and Mr Strong's faction got rolled. I thank Mr Strong for his support of the excellent local Labor candidate, Cr Craig Tucker. I warn each of my Liberal colleagues opposite that they may be next to have someone parachuted in from anywhere. It may even be Biggles!

Hospitals: federal Labor policy

Hon. ANDREA COOTE (Monash) — I wish to condemn the federal Labor opposition for misleading senior Victorians in its election promises. Labor's Medicare Gold policy is economically unsustainable and will not eliminate the waiting lists for the elderly. A report commissioned for the Australian Medical Association by Access Economics found that an ageing population and unrestrained demand will make Medicare Gold financially unsustainable. Any improvements to hospital waiting lists for over-75s will only come at the expense of other patients who will face longer waiting times.

Labor will not be able to deliver its promise to deliver a drop in the private health insurance costs. Labor's federal leader, Mark Latham, has raised the expectations of the frail elderly of Victoria with his ill-conceived policy. The reality is that Mark Latham and the economically irresponsible Labor Party intend to scrap the Medicare safety net. On the other hand the federal Liberal government, under the excellent economic stewardship of John Howard and Peter Costello, has put in place a policy to give elderly Victorians hope for a healthy and sustainable future. They will allow access to the Medicare safety net. There will be a 35 per cent private health insurance rebate for people aged 65 to 69, and a 40 per cent private health insurance rebate for people aged over 70. The Mark Latham Labor opposition is defrauding the people of Victoria.

Jewish Care: new Torah

Mr SCHEFFER (Monash) — It was with great pleasure that I accepted an invitation from Jewish Care on Sunday, 5 September, to attend the dedication and welcoming ceremony for a new Torah. The specially commissioned Sefer Torah is, as the *Jewish Care News* proclaims, the pride and joy of residents of Jewish Care's disability homes. The Sefer Torah is an essential element in Jewish Care's mission to enable all its residents to fully participate in Jewish life, which involves participation in prayer services associated with Jewish festivals.

Jewish Care's old Torah dates back to before the Second World War and is now fragile and its ink and lettering faded. I was moved to see some of the residents of Disability House participate in the creation of a Torah by having a letter, word, verse or chapter written in their honour. The shul at Jewish Care's St Kilda junction location caters each week for more than 250 residents and their families. As a result of the excellent pastoral work led by Rabbi Meir Shlomo Kluwgant, a growing number of younger people with disabilities participate in special services during Jewish festivals.

I pay tribute to the great work undertaken at Jewish Care by many dedicated people — professionals and volunteers — in the service of the frail and the vulnerable. The ceremony welcoming the new Torah was impressive, because it fully celebrated the residents. There was not a hint of performance or tokenism. Everyone prayed and danced and admired the beauty and meaning that the new Torah held for each member of the community.

Planning: Wheelers Hill development

Hon. ANDREW BRIDESON (Waverley) — The urban character of the world's most livable city, Melbourne, is under assault. Recently the Victorian Civil and Administrative Tribunal permitted the strongly contested development of an inappropriate tower construction in Mitcham to proceed. The Minister for Planning in the other place stated not only that the building was too high but that she hoped the developer and council would agree on a design more sympathetic with local neighbourhood character. This did not occur.

Now Wheelers Hill has become the latest victim in what has become the horror of Melbourne 2030. A nine-storey building on the summit of this sensitive and historic part of Melbourne is proposed, not for an activity centre but for a residential area. It is opposed by Monash City Council and hundreds of residents. The council and residents have both requested the minister to call in this proposal. The minister remains bunkered down, and no response has been received by either party. The government clearly has abdicated its responsibility for planning in this state. Let me restate the situation in Wheelers Hill. This proposal is inconsistent with the objectives of Melbourne 2030. The neighbourhood character of this residential area, as defined by the local planning authority, is under assault. There can be no justification whatsoever for a

nine-storey tower in the middle of a residential area on the summit of historic Wheelers Hill. No significant public transport exists, no consultation has occurred with any of the thousands of affected residents and the minister again refuses to act. When will the Premier and Minister Delahunty accept their formal responsibility and take control of planning policy?

Libraries: Northcote

Ms MIKAKOS (Jika Jika) — On Friday I had the great pleasure of attending the official opening of the $600 000 makeover of the Northcote library complex by the Minister for Local Government, the Honourable Candy Broad, together with the Darebin City Council mayor, Cr Ray Perry. A contribution of $183 750 was made to the project under the Living Libraries program, a $12 million initiative to renew Victoria's libraries. The refurbishment of the Northcote library complex has improved access for people in wheelchairs and parents with prams and has been designed to meet the accessibility requirements of disabled users and create a more open area for children with extra space for recreational reading.

The new floor plan has created a more usable internal space with more natural light and energy efficiency. Darebin City Council service centre has also been integrated into the library complex, improving access for customers between the customer service centre and the library. This reinforces the library's role as a community hub, making it easier for people to access council services. I take this opportunity to thank the Darebin City Council and the minister for their dedication to serving the community in delivering this important initiative.

Murray: federal Liberal candidate

Hon. W. A. LOVELL (North Eastern) — I rise to congratulate Dr Sharman Stone, the federal member for Murray. Dr Stone has worked tirelessly to protect the apple and pear growers of Australia from the risk of the disease fire blight becoming established in Australia through the importation of apples from New Zealand. Dr Stone's hard work has been rewarded, and she announced last week that the flawed import risk analysis — which had recommended apples from New Zealand be allowed entry to Australia after an 80-year ban — had now been abandoned.

Dr Stone declared the report was now dead. Fruit growers and the entire apple and pear industry have welcomed the announcement. Chairman of the National Fire Blight Task Force, John Corboy, said the announcement was a good outcome, and he thanked the members of Parliament who had supported them, particularly Dr Stone. Goulburn Fire Blight Action Committee chair, David Jobling said:

> It's the most we could have hoped for ...
>
> Everyone should be happy ...
>
> Sharman Stone has worked hard to achieve it ...

Even Rob Bryant, the independent candidate standing against Dr Stone for the seat of Murray, said it was the best news of the whole election campaign.

Dr Stone deserves the praise she has received. This announcement is due to her hard work and tenacity, and it shows that the federal government understands and values the apple and pear industry in Australia.

In contrast, during a recent visit to Seymour the federal Labor leader, Mark Latham, showed a complete lack of understanding of the issue by having to ask what the nature of the fire blight problem was.

Australian Labor Party: federal policies

Hon. J. G. HILTON (Western Port) — On Saturday the voters of Australia will have a clear choice. They can vote for a party whose campaign has been positive or a party whose campaign has been characterised by fear and smear. The main smear tactic of the Liberal Party has been to say that interest rates are more likely to rise under a Labor rather than a coalition government. Not one reputable economist in this country supports that view.

The other aspect is where the federal coalition parties say Mark Latham is not a fit and proper person to be Prime Minister. He is younger than John Howard and cleverer than Peter Costello, and he is certainly more honest than Tony Abbott. The Labor Party has developed policies which will improve the lives of all Australians, from their earliest to their later years. These policies indicate the vision of hope rather than the policies of the government, which essentially throw money at issues, ideally to be caught by the wealthier members of the community. I wish Mark Latham and my local candidates in Western Port Province, Simon Napthine, Helen Constas and Christian Zahra, every success.

Great Alpine Road: upgrade

Hon. P. R. HALL (Gippsland) — I wish to congratulate the federal government on its commitment to provide $6.5 million for the upgrade of the Great Alpine Road between Bruthen and Ensay. I was delighted to welcome John Anderson, the federal

Minister for Transport and the Leader of The Nationals, to Bruthen to make this very important announcement for East Gippsland. He was accompanied by the federal member for Gippsland, Peter McGauran, whom I must congratulate for his outstanding advocacy in getting this $6.5 million in super quick time. It was only four or five weeks ago that a public meeting was held in Omeo, which I attended with 150 or more locals, where there was a cry for money to be allocated for this road. Mr McGauran has achieved that within a matter of weeks, and for that he needs to be congratulated.

Today I call on the state government to match that $6.5 million in funding. This B class road, what we call the Great Alpine Road, is marketed as one of the major tourism roads in Victoria. It needs the state government to chip in another $6.5 million to match that figure to bring it to standard. The federal government is leading the way. I call on the state government to match that figure today.

Ballarat: Paralympians

Ms HADDEN (Ballarat) — I would like to congratulate Ballarat's five-time Paralympian, Jodi Willis-Roberts, who returned home from Athens last Friday. Jodi won a bronze medal in the visually impaired shot-put event — one of four medals that she has won in that event. She previously won gold in Barcelona and Sydney and a silver medal in Atlanta. Jodi also competed in the discus event, finishing fourth in Athens and second in Atlanta and Barcelona. Jodi is now preparing for her sixth Paralympics in Beijing and believes the world has not seen the best of her yet. Jodi is a tremendous Paralympian and a leader and role model in the Ballarat community and I commend her for that. Now that Jodi has returned to Australia and Ballarat she is campaigning for a permanent tribute to Ballarat's Paralympians. There are five of them, including Jodi: Greg Smith, wheelchair track and road, Sandy Blythe, wheelchair basketball, Brad Dubberley, wheelchair rugby, and Peter Tait, shooting. I call on the Ballarat City Council to support Jodi Willis-Roberts's proposal to set up a permanent tribute in Ballarat to its tremendous five Paralympians.

Boating: ramps

Hon. J. A. VOGELS (Western) — Up to 30 per cent of Victoria's boat ramps are run down and unsafe according to a survey carried out by recreational fishing peak body VRFish. In my opinion if WorkSafe was involved many of them would be closed down. With summer approaching, these launch sites will be used by 150 000 boats and hundreds of thousands if not millions of fishers. Fishing is a fantastic pastime from the frail and elderly to young children. Launch sites listed as amongst the worst in the state include Barwon Heads, Mallacoota, Lorne, Torquay, and Warrnambool, all among the most popular venues in Victoria. Recreational fishermen significantly boost the local economies of rural and regional Victoria, spending tens of millions of dollars on accommodation, equipment and so on.

The Bracks government collects millions of dollars from fishing licences and boating registration fees, and only a small percentage is returned to upgrade and build new launch sites. I fully support VRFish that with three different masters — state, local government and Parks Victoria — no-one is taking direct responsibility to ensure adequate facilities are in place. At the end of the day the buck stops with the state government, as it owns the land where launch ramps are built and, most importantly, it collects the fees from our recreational fishers. I would like to see a lot of the money going back to these facilities.

Melbourne West: Crime Prevention Week

Hon. S. M. NGUYEN (Melbourne West) — Crime Prevention Week, which runs from 3 to 9 October, is well organised by Crime Prevention Victoria. Even though crime in Victoria is 22 per cent below the national average, crime and violence are of concern to many people in the state. Crime Prevention Week involves the community, business, local police stations, the multicultural unit in the Victoria Police, local councils and many local organisations. Events are held at many different locations, and displays were organised by the Maribyrnong City Council at the Footscray Mall last Friday. That was well attended and many local people were involved. Other events will be organised at the Highpoint Shopping Centre, the Brimbank Central Shopping Centre, the Central West Shopping Centre in Ashley Street, the shopping strip on the corner of Williamstown Road and High Street and the Sunshine Market Place. Police are working with traders regarding crime prevention. I had the opportunity to talk to traders last Friday in connection with the multicultural unit of Victoria Police. They want many people involved.

Australian Labor Party: federal policies

Hon. RICHARD DALLA-RIVA (East Yarra) — I thought it important to remind the house of the issues that the people of Victoria will face this Saturday, 9 October. The journey of the federal coalition government during the last eight and a half years has involved many difficult decisions. Let us look first at the backdrop that it faced. The Prime Minister, John

Howard, and his dedicated team inherited a $96 billion Labor government debt. Wannabes, Simon Crean and Mark Latham, are both saying that Labor governments will stay in surplus. Let us not forget that when Labor was last in power its last five budgets produced total deficits of $70 billion — that is, $70 000 million. Who could forget the 17 per cent housing interest rates, the 21 per cent small business interest rates, the 22 or 23 per cent bill rates that many farmers had to pay? No doubt rising interest rates dominate everything else when it comes to family security. Just a tiny upward movement in interest rates — —

The PRESIDENT — Order! The clock was not set. I will give the member a further 20 seconds to conclude his statement.

Hon. RICHARD DALLA-RIVA — For workers under the federal coalition government real wages in this country have risen by between 13 and 14 per cent, against a miserable 2.6 per cent in the 13 years of Labor government. In 1996, 35 federal electorates had double digit unemployment. The federal coalition has repaid $73 billion of Labor's debt.

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

Westgate Migrant Resource Centre

Hon. KAYE DARVENIZA (Melbourne West) — I want to let the Parliament know how delighted I was to be able to attend the Westgate Migrant Resource Centre's annual general meeting on Wednesday, 29 September. The Westgate MRC was established in 1973, and over the past 31 years has provided key community welfare services and a focal meeting point for ethnic communities in the City of Hobsons Bay.

The decision of the federal government to close the Inner West Migrant Resource Centre in Footscray in 2002 has resulted in Westgate MRC taking up providing some of the services that were previously provided by the Inner West MRC, and in the last year the Westgate MRC has established an office in the City of Wyndham that is providing excellent services to the many migrants and ethnic communities who live in that city. A close working relationship has also developed between the MRC and the Wyndham City Council.

I congratulate the MRC's chief executive officer, Mr George Papadopoulos; the outgoing president, Mr Paul Cassar; the outgoing secretary, Mr Bill Baarini; and the outgoing committee of management for the excellent work they have done over the past year. I particularly enjoyed attending a number of functions that were organised by the MRC over the past year, including the multicultural festival at Newport Lakes and the celebrations held during refugee week, and I am looking forward to continuing to work closely with the MRC and the newly elected committee of management.

Hazardous waste: Nowingi

Hon. B. W. BISHOP (North Western) — I urge everyone to support the no-Mallee-toxic-waste-dump rally in Melbourne on Wednesday, 13 October. The rally will begin at the State Library of Victoria at noon, with the message being spread during the march to the Parliament House steps. The Nationals and members of the community of the Mallee will be there, and if anyone has not yet booked a seat and wants a ride down then they should book immediately and join in the cavalcade of buses that will converge on Melbourne that day. Please encourage your relatives and friends who live in Melbourne to come along, put their shoulders to the wheel and give us a hand to defeat this outrageous proposal.

I issue an invitation to those communities on the toxic waste trail from Melbourne to Hattah-Nowingi to join in. Remember your communities are also at risk, as the transporting of this waste will take it directly through your towns and past your schools, hospitals, businesses, parks and homes. This is our best chance to show the Bracks government that we are fair dinkum about this fight to reject the government's proposal to site a toxic waste dump in the middle of our food bowl, next to two parks and the world-renowned Ramsar wetlands enjoyed by thousands of visitors, and 500 kilometres from where the waste is generated. If it is so safe, we challenge Mr Bracks to find a site on Crown land within 100 kilometres of Melbourne. I urge everyone who can attend the rally to show this government that we will not give up, give in or allow ourselves to be pushed to one side over this ridiculous issue.

PETITIONS

Motor registration fees: concessions

Hon. R. H. BOWDEN (South Eastern) presented a petition from certain citizens of Victoria requesting that the Victorian government abandon immediately the introduction of motor vehicle registration fees on low and fixed-income people (757 signatures).

Laid on table.

Kyneton Bowling Club: site

Ms HADDEN (Ballarat) presented petition from certain citizens of Victoria requesting that the Minister for Planning act in accordance with the law and return the land leased by the Kyneton Bowling Club to its reserved purpose and revoke the appointment of the Shire of Macedon Ranges as the committee of management of that land under the Crown Land (Reserves) Act 1978 (136 signatures).

Laid on table.

Seymour District Memorial Hospital: obstetric services

Hon. D. McL. DAVIS (East Yarra) presented petition from certain citizens of Victoria praying that obstetrics services be restored and a full inquiry into the treatment of doctors at Seymour District Memorial Hospital be conducted as soon as possible (459 signatures).

Laid on table.

Life Education: funding

Hon. W. A. LOVELL (North Eastern) presented petition from certain citizens of Victoria praying that the Minister for Education Services and the Victorian government increase government funding to the Life Education program, to enable Life Education to continue to deliver vital life, health and drug education programs to the students of Victoria (126 signatures).

Laid on table.

Kew Residential Services: site development

Hon. RICHARD DALLA-RIVA (East Yarra) presented petition from certain citizens of Victoria requesting that the Victorian government reverse its current plan for high-rise and high-density development for the Kew Residential Services site and opposing the Boroondara council's active support of the government's agenda of forced imposition of its high-density 2030 plans (10 signatures).

Laid on table.

ECONOMIC DEVELOPMENT COMMITTEE

Economic contribution of Victoria's culturally diverse population

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

Laid on table.

Ordered that report and appendices be printed.

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

That the Council take note of the report.

I do so to make a few remarks about the report. At the outset I thank members of the committee who were involved in the report, and I certainly acknowledge the great many organisations and individuals who made a contribution to the report by way of submissions or evidence at a number of regional hearings as well as hearings in Melbourne. There were only 12 formal written submissions, if my memory serves me correctly, but the committee undertook trips to the Latrobe Valley, Shepparton, Mildura, Swan Hill and Milawa, and also conducted hearings in Canberra and Melbourne as a move to broaden the input to this particular report. The committee, like all parliamentary committees, is obviously indebted to those people who made themselves available and shared their knowledge and experience with members of the committee.

I commend the work of the officers and staff of the Economic Development Committee. Members of Parliament would be well aware of the extraordinary work that is done by the men and women across all parliamentary committees. This inquiry was well served by a number of people, and I mention Richard Willis in particular. Richard was the executive officer of the committee for an extended period but resigned and left on 2 July before this particular report was published and obviously before its presentation to Parliament today. Richard has taken up another appointment within the Department of Premier and Cabinet. We congratulate him on that and offer him our best wishes for his career advancement. His service to the committee has been very well regarded over a number of years.

Richard certainly did a lot of work towards completing this report before he left, but because of his circumstances a considerable amount of work in the finalisation of the report fell to other staff of the committee, such as Kirsten Newitt, who joined the

committee as a research officer shortly before Richard's resignation; Andrea Agosta, the office manager, who ended up playing a far more significant role than office managers normally do with committees because of the circumstances; and Frances Essaber, an editorial assistant, who has contributed to a number of reports by various committees and who has a particular expertise in the writing of final reports. She certainly contributed to the finalisation of this report.

The committee had the pleasure of welcoming Dr Russell Solomon from 26 August as a new executive director of the committee. He is already actively involved in our current inquiry into the labour hire industry, which is probably far more contentious than this inquiry.

This one had unanimous recommendations. I think the committee hopes some of those 22 recommendations will attract government support and enable people from ethnic communities to play an even greater role in Victoria's economic development.

The committee was most impressed with the role played by so many relatively new arrivals to our state, and indeed with what ethnic committees more broadly do in terms of supporting those new arrivals as they come to Australia, and opening gateways for Victoria into other countries and export markets. This particular report focuses very heavily on all the workers who support most of our horticultural and agricultural industries. Without their contribution, without their expertise we in this state would face a significant economic disadvantage and our industries would not be in the competitive position they are in world terms.

I think this is a significant report. It is not particularly controversial, and in many ways it will not keep people awake at night as a John Forsythe novel might. Nevertheless, it is a report which makes some significant recommendations and is important to Victoria's economic development.

Motion agreed to.

OUTER SUBURBAN/INTERFACE SERVICES AND DEVELOPMENT COMMITTEE

Sustainable urban design for new communities

Mr SCHEFFER (Monash) presented report, together with appendices and minutes of evidence.

Laid on table.

Ordered that report and appendices be printed.

Mr SCHEFFER (Monash) — I move:

That the Council take note of the report.

The report of the *Inquiry into Sustainable Urban Design for New Communities in Outer Suburban Areas* is an extensive account of national and international developments in sustainable urban design. The report surveys six key fields in which present-day ideas of urban design and sustainability are being worked through — namely, the management of water in urban settings, the uses and benefits of public open space, the imperative to reduce car dependency, road safety, public safety and crime prevention, as well as the role of urban design in achieving physical and social wellbeing.

The size of the report and the many areas into which it ventures will make absorbing reading for the increasing number of people who have an interest or concern in seeing our cities better designed so as to improve the way we live. The final section of the report deals with best practice in urban design and gives some attention to the complex question of the link between urban design and the development of a living, authentic community: can we create community through urban design? The section locates this debate within practical initiatives that have been tried here and overseas where local councils, residents, developers, landowners, employers and retailers have collaborated to produce community-owned urban plans. The section contains accounts of the committee's visits to sites in Western Australia, Adelaide and Melbourne to see and hear first hand something of both the exciting successes and the limitations of the work being undertaken. The report contains a total of 39 recommendations, which are reflective of the issues raised with the committee by community-based organisations, developers, farmers, urban designers and planners, researchers, local government and government agencies as well as activists.

In his foreword the committee's chair, Don Nardella, the member for Melton in another place, rightly states that the committee was established in recognition of the importance placed on the needs and aspirations of the increasing number of people who are living in Melbourne's outer suburbs. This first report is concerned with some of the most fundamental issues facing outer suburban residents and all urban dwellers. Increasingly human beings are becoming an urban species, with half the world's population destined to be living in cities within the next few years. How we manage this tectonic shift is one of the great issues of

our time, and this report is one contribution to this discussion.

I would like to pay tribute to the excellent leadership of our chair, Don Nardella, whose inclusive approach and easy grasp of the often complex material encouraged the willing engagement of members and staff in our task. I would also like to recognise the fine work of my parliamentary colleague in this chamber Mr Adem Somyurek, as well as that of the deputy chair and member for Bass in another place, Ken Smith, and the members for Hawthorn, Hastings and Nepean in the other place. Finally, but not least, I give very special thanks to the first-class work and unerringly good humour of our research team: Mr Sean Coley, Ms Chantel Churchus and Ms Natalie-Mai Holmes. Without them this herculean task could not have been accomplished.

Motion agreed to.

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Alert Digest No. 8

Ms ARGONDIZZO (Templestowe) presented *Alert Digest* No. 8 of 2004, together with appendices.

Laid on table.

Ordered to be printed.

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Auditor-General's performance audit report: reducing landfill

The Clerk, pursuant to section 36(2) of the Parliamentary Committees Act 2003, presented government's response to recommendations on audit report no. 65.

PAPERS

Laid on table by Clerk:

Commonwealth Games Arrangements Act 2001 — Commonwealth Games Designated Access Area Orders — Amendments and Commonwealth Games Venue Order, pursuant to section 18 of the Act (four papers).

Environment Protection Act 1970 — Sustainability Fund Guidelines, pursuant to section 70C(2) of the Act.

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

Banyule Planning Scheme — Amendment C45.

Bayside Planning Scheme — Amendment C35.

Brimbank Planning Scheme — Amendment C61.

Buloke Planning Scheme — Amendment C5.

Frankston Planning Scheme — Amendments C28 and C30.

Geelong — Greater Geelong Planning Scheme — Amendment C82.

Kingston Planning Scheme — Amendment C34.

Latrobe Planning Scheme — Amendment C7.

Manningham Planning Scheme — Amendment C35.

Melbourne Planning Scheme — Amendment C79.

Melton Planning Scheme — Amendment C29.

Monash Planning Scheme — Amendment C54.

Moorabool Planning Scheme — Amendment C26.

Mornington Peninsula Planning Scheme — Amendments C46 and C48.

Shepparton — Greater Shepparton Scheme — Amendments C17 (Part 2) and C23 (Part 2).

South Gippsland Planning Scheme — Amendments C10 and C28.

Whitehorse Planning Scheme — Amendments C46 (Part 2) and C53.

Whittlesea Planning Scheme — Amendments C60 and C65 (Part 2).

Wodonga Planning Scheme — Amendment C24.

Yarra Planning Scheme — Amendments C50 and C55 (Part 1).

Road Management Act 2004 — Code of Practice for Clearways on declared arterial roads and for Road Management Plans, pursuant to section 30(1) of the Act (two papers).

Statutory Rules under the following Acts of Parliament:

Ambulance Services Act 1986 — No. 112.

Building Act 1993 — No. 113.

Electricity Safety Act 1998 — No. 114.

Instruments Act 1958 — No. 117.

Property Law Act 1958 — No. 115.

Subdivision Act 1988 — No. 116.

Transfer of Land Act 1958 — No. 118.

Subordinate Legislation Act 1994 — Ministers' exemption certificates under section 9(6) in respect of Statutory Rule Nos. 111 and 112.

Victorian Law Reform Commission — Final Report on Sexual Offences.

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

Animals Legislation (Animal Welfare) Act 2003 — Remaining provisions of Part 5 — 7 October 2004 (Gazette No. G40, 30 September 2004).

Mitcham-Frankston Project Act 2004 — Remaining provisions (except sections 60 and 229(3) and Division 2 of Part 8) — 24 September 2004 (Gazette No. S206, 22 September 2004).

BUSINESS OF THE HOUSE

Program

Mr GAVIN JENNINGS (Minister for Aged Care) — I move:

That, pursuant to sessional order 20, the orders of the day, government business, relating to the following bills be considered and completed by 4.30 p.m. on Thursday, 7 October 2004:

Interpretation of Legislation (Amendment) Bill

Sentencing (Superannuation Orders) Bill

Major Crime Legislation (Office of Police Integrity) Bill

Aboriginal Lands (Amendment) Bill

Evidence (Witness Identity Protection) Bill

Crimes (Dangerous Driving) Bill

Major Crime (Special Investigations Monitor) Bill

National Parks (Additions and Other Amendments) Bill.

Hon. ANDREA COOTE (Monash) — Here we are again with another senseless repetition of the government business program. As the government knows, the opposition objects in principle to the implementation of a business program. It would be interesting to know how many times the business program has not been fulfilled. As I said, the opposition objects in principle to the implementation of any business program.

Motion agreed to.

ABORIGINAL LANDS (AMENDMENT) BILL

Second reading

Mr GAVIN JENNINGS (Minister for Aboriginal Affairs) — I move:

That, pursuant to sessional order 34, the second-reading speech be incorporated into *Hansard.*

I have the pleasure to introduce under my name a second-reading speech that deals with Aboriginal lands. The bill was passed in the Legislative Assembly without amendment and it does not contain a section 85 statement. It is in accordance with those two preconditions that, pursuant to sessional order 34, I have moved that it be incorporated into *Hansard.*

Motion agreed to.

Mr GAVIN JENNINGS (Minister for Aboriginal Affairs) — I move:

That the bill be now read a second time.

This bill has been developed in partnership with the Lake Tyers community to improve the health of the community and increase access to services.

It is designed to strengthen governance arrangements at Lake Tyers and forms part of the government's Growing Victoria Together commitments to build cohesive communities and reduce inequalities.

Specifically, the bill will amend the Aboriginal Lands Act 1970 to implement four reforms:

first, to improve access to trust land at Lake Tyers for the provision of services, including health, policing, roads management and other community services;

second, to strengthen governance arrangements at Lake Tyers by providing for the temporary appointment of an administrator to manage the affairs of the Lake Tyers Aboriginal Trust in limited circumstances;

third, to make procedural changes to assist both the Framlingham and Lake Tyers aboriginal trusts to hold valid general meetings;

fourth, to modernise the penalties for breaching offences in the act.

These amendments have been developed in response to issues that have been raised by the Lake Tyers community, including members of the trust committee of management. These issues relate particularly to governance, resident participation in decision making, community services and safety. The main application of the bill is to Lake Tyers because of that community's particular needs and situation. Some minor amendments will apply to Framlingham.

Accordingly, while the whole of the bill relates to Lake Tyers, only changes relating to general meetings and the modernising of the penalties in the act will apply to Framlingham. Consultations have involved both communities.

In amending the Aboriginal Lands Act, the government is very mindful of the original principles on which the act was based, namely, the rights of the Aboriginal communities involved to own and make decisions about the lands they occupy.

The act was a landmark law in 1970. It recognised the rights of the indigenous communities at Lake Tyers and Framlingham to own the land, and to control decisions about that land. To these ends, the act vested the reserve lands in two trusts, and provided for local occupants to hold personal shares in those trusts. To manage and make certain decisions about the land, the act provided for a committee of management for each trust to be elected by trust members.

This model has remained in place for the last 30 years. However, its effectiveness in practice has diminished over time due to a number of factors. In particular, local participation in decision making at Lake Tyers has declined due to the movement of shareholders out of the area, and the transfer of shares to non-residents. Because participation is linked to shareholding, there has been a decline in residents' relative capacity to participate in decision making, particularly in general meetings. In addition, the opportunity for trust members to be involved in the governance of the Lake Tyers Aboriginal Trust has been limited because there has not been a general meeting of the trust for some years. This is because of difficulties with the legislation. It has also had an impact on the ability of the trust to meet the governance requirements in the act.

In June 2002, Aboriginal Affairs Victoria completed a review of the Aboriginal Lands Act 1970, following extensive consultation with the trust members and the communities at Lake Tyers and Framlingham. This bill has taken into account the recommendations of that review as well as more recent consultations.

The improvements established by the bill will support the community renewal project at Lake Tyers, a major government commitment to strengthen the local community. Led by the Department of Justice, a range of Victorian and Commonwealth agencies are working in partnership with the local community to facilitate the renewal of key areas including health, children's services, training, sport and recreation. The project facilitates service provision to the community, as well as local capacity building to ensure community services and structures will continue to be viable in the long term.

Let me now turn to the features of the bill.

Access to trust land at Lake Tyers

A number of issues have arisen at Lake Tyers about accessing trust land for the purpose of policing and providing services — particularly the provision of health and community services.

At times, because of governance difficulties, service providers have been excluded from trust land, depriving residents of needed community services. Added to this uncertainty, has been a range of community concerns about law and order, and responsibility for road safety and road maintenance at Lake Tyers.

The residents at Lake Tyers should be able to expect the same level and continuity of essential services, and to enjoy the same rights to safety and security as any other community. To ensure this happens, the bill addresses the issue of access to trust land in two ways.

In the first place, the bill deems the main roads at Lake Tyers to be public roads. The bill ensures that the usual road safety rules will apply on these roads and that they will be maintained by the local municipal council to the standard of care expected under the Road Management Act 2004. Consistent with the original purpose of the act, the bill expressly provides that the land under these roads does not vest in the council, but rather stays with the trust. At the same time, the bill protects the trust from certain liabilities that may arise solely by virtue of the fact that they own the land under the road. This is appropriate given the trust will no longer have responsibility for road maintenance.

Secondly, the bill provides for 'designated places' on trust land to be accessible to public officials performing statutory functions and to government contracted service providers providing health and community services. Importantly, these persons must not remain in a designated place any longer than is reasonably necessary to perform their function or service. The bill ensures that 'designated places' are non-residential. In this way, it is intended that they will be areas that are shared for use in community services and activities — for example, the training centre, the child-care centre and the football oval. The process of designated places will be by ministerial declaration, published in the *Government Gazette*, following consultation with the community.

Appointment of administrator at Lake Tyers

There is a clear need to rebuild governance processes at Lake Tyers, and to assist the trust to meet its regulatory requirements under the act. More fundamentally, there is a need to rebuild the capacity of trust members through training and advice to develop good governance practices.

To address the immediate need to restore governance at Lake Tyers, the government has decided to make provision for a temporary administrator to be appointed to conduct the affairs of the Lake Tyers Aboriginal Trust.

The power to appoint an administrator can only be exercised in specified circumstances, which relate to serious failures by the committee of management.

In summary, these grounds are:

> where the committee of management has failed to comply with their statutory duties as set out in a compliance notice, and has failed to provide a satisfactory explanation;
>
> where the members of the committee of management have acted in the affairs of the trust in their own interests rather than in the interests of trust members; or
>
> where the appointment of an administrator is required in the interests of trust members or residents.

In order to assist the trust to recognise and remedy compliance problems, the bill provides for a compliance notice to be served in the first place when a failure is identified. A compliance notice sets out the action required within a given time frame to ensure compliance with the act. These notices are not intended to be punitive but rather a means of alerting the trust to a significant problem, and providing the trust with an opportunity to rectify that problem. If the trust fails to comply with the notice and does not provide a reasonable explanation, it would then be open to the minister to consider appointing an administrator in accordance with the first ground outlined above.

Before appointing an administrator, the minister must notify the trust of this intention, setting out the grounds for the appointment and allowing the trust an opportunity to 'show cause' why an administrator should not be appointed. If appropriate, the minister may also inform residents of the notice and invite their submissions.

Following the end of the notice period, and having considered any submissions, the minister may appoint an administrator if satisfied that any of the grounds for the appointment have been established.

The appointment of an administrator must be for a fixed period of time, although the minister may extend the term for a further specified period. Where necessary, provision is made for the replacement of an administrator, for example if the person performs poorly, resigns or dies during their term. In these circumstances, any new appointment will only run for the remainder of the original term.

Trust members and the local community will be notified of an appointment through the requirement to publish notices in newspapers circulating at Lake Tyers, as well as in the *Government Gazette*.

The effect of the appointment of an administrator is that the members of the committee of management cease to hold office. The administrator is then ultimately responsible for the conduct of the affairs of the trust and effectively steps into the role of the former committee of management and may exercise its powers and functions.

The government recognises that an administrator must work in consultation with trust members and the community. This is reflected in two important provisions in the bill. Firstly, the administrator is required to establish and consult with an advisory committee. The committee must comprise at least five persons, including three former members of the committee of management and two residents at Lake Tyers. Secondly, the role of the administrator includes the capacity to provide assistance and training to trust members in the administration and management of the trust. This is designed to build the capacity of trust members for the ongoing conduct of the trust's affairs.

Also recognising the temporary nature of the administrator's appointment, the bill ensures his or her powers are subject to some important limitations. In particular, the administrator is prohibited from selling or mortgaging the trust land.

When the period of the appointment of an administrator comes to an end or is cancelled, elections will be held for a new committee of management to take back the management of the trust, building on the foundations established by the administrator. The bill sets out the process by which this occurs.

I wish to stress that the power to appoint an administrator is intended as a strictly temporary measure, to address serious breakdowns in trust administration. The key role of an administrator is to restore good governance, and to assist in capacity building to enable a return to trust management as soon as possible.

Quorum for general meetings

The government recognises that effective community renewal requires effective community participation. To this end, the bill amends the procedure for general meetings of a trust to make it easier to hold valid meetings, and at the same time to increase the participation of resident members of the trust. This provision will apply to both Lake Tyers and Framlingham.

The act currently requires the trusts to hold annual general meetings to elect committee members when vacancies arise, to present audited books of account and other reports, and to vote on any resolutions put forward by members. At Lake Tyers, annual general meetings have not taken place in recent years. The main reason is a difficulty in reaching the quorum requirement for a valid general meeting, which is currently one-half of all shareholders. Because many shareholders live outside of Lake Tyers, this requirement has been difficult to meet.

To make it easier to hold valid meetings, the bill changes the quorum requirement for from one-half of all trust shareholders to one-half of trust shareholders who are residents. Only those shareholders who are recorded on the share register as a resident of the Lake Tyers or Framlingham reserve at the time the meeting is called, will be eligible to be counted as residents for this purpose. The bill also requires the share register to be maintained to ensure that it records the addresses of current shareholders.

Modernising penalties for breach of the act

Finally, the bill modernises the penalties for breaching an offence in the act, which were outdated and inappropriate. The bill provides that the maximum penalty for breaching an offence is 10 penalty units (approximately $1000) and repeals the penalty for continuing offences. This amendment applies to both the Lake Tyers and Framlingham trusts.

This bill has arisen partly at the request of, and wholly in consultation with, the involved communities, in particular at Lake Tyers. It is designed to strengthen governance and facilitate service provision, as well as develop local capacity.

The effectiveness of these amendments will be measured primarily in terms of community capacity building. The government will be monitoring their impact to ensure that they contribute not only to short term improvements in governance, but also to long-term community strengthening and renewal, in particular at Lake Tyers. These changes are designed to result in significant benefits, particularly to the Lake Tyers community.

I commend the bill to the house.

Debate adjourned on motion of Hon. W. A. LOVELL (North Eastern).

Debate adjourned until next day.

MAJOR CRIME (SPECIAL INVESTIGATIONS MONITOR) BILL

Second reading

For **Hon. J. M. MADDEN** (Minister for Sport and Recreation), Mr Gavin Jennings (Minister for Aged Care) — I move:

That, pursuant to sessional order 34, the second-reading speech be incorporated into *Hansard*.

On behalf of my colleague the Honourable Justin Madden, I inform the house that this bill was not amended in the Assembly and does not contain a section 85 statement.

Motion agreed to.

Mr GAVIN JENNINGS (Minister for Aged Care) — I move:

That the bill be now read a second time.

This bill is part of a package of measures to strengthen Victoria's capacity to investigate police corruption.

This bill will provide for the establishment of the special investigations monitor as a new statutory office to oversee the use of covert investigation powers by the director, police integrity.

In doing so, it complements the related Major Crime Legislation (Office of Police Integrity) Bill, which is also being introduced this session.

The Major Crime Legislation (Office of Police Integrity) Bill transforms the police ombudsman into the new statutory office of director, police integrity.

It also provides the director, police integrity, with new covert powers to investigate police corruption.

Those covert investigative powers relate to the use of surveillance devices, assumed identities, controlled operations and telecommunications interception.

Some of the investigative powers legislation provides for independent oversight of law enforcement agencies exercising powers under those schemes. That legislation is the Surveillance Devices (Amendment) Act 2004, the Crimes (Controlled Operations) Act 2004 and the telecommunications interception scheme. This oversight is necessary because of the intrusive and covert nature of the powers contained in these schemes. Due to the covert nature of these investigative tools, people being investigated using these powers would not be aware that the powers had been used against them. For example, a person would not be aware if a hidden camera was secretly installed in his or her house under a surveillance devices warrant. As people who have been subjected to these powers are not in a position to observe or complain about the manner in which the powers were exercised, effective external oversight of these powers is required.

The Major Crime Legislation (Office of Police Integrity) Bill will include the Office of Police Integrity as a law enforcement agency under these schemes. An appropriate oversight body is needed to oversee the Office of Police Integrity's use of these powers.

The Ombudsman is the relevant oversight body under these schemes in relation to Victoria Police. However, it would not be appropriate for the Ombudsman to exercise this function in relation to the Office of Police Integrity. This is because it is proposed that the same person would hold office as both the Ombudsman and the director, police integrity.

This bill establishes a new independent statutory office, the special investigations monitor, to exercise the relevant oversight functions in relation to the Office of Police Integrity.

The special investigations monitor will be appointed by the Governor in Council and will be accountable to Parliament, similarly to the Ombudsman.

The bill provides for the procedures for suspending and removing the special investigations monitor in the unlikely event that circumstances arise which render him or her unfit to hold office. It is proposed that the Governor in Council could suspend the special investigations monitor on specified grounds, including disability, misconduct or neglect of duty. If the Governor in Council suspends the special investigations monitor, he or she could be removed from office by resolution of both houses of Parliament.

This bill also establishes the Special Investigations Monitor's Office and enables him or her to employ staff to assist in performing his or her functions.

As members will be aware, telecommunications interception powers are dealt with under a national scheme comprising both state and commonwealth legislation. Accordingly, the government is consulting the commonwealth government about amendments to that scheme to provide the Office of Police Integrity with telephone interception powers. In anticipation of obtaining the commonwealth's agreement to those amendments, the Major Crime Legislation (Office of Police Integrity) Bill amends the relevant Victorian telecommunications interception legislation to facilitate the Office of Police Integrity's use of telecommunications interception powers.

Together with the related Major Crime Legislation (Office of Police Integrity) Bill, this bill will ensure that the director, police integrity, has significant investigative powers to fight police corruption in Victoria, while also providing for robust and independent oversight of the use of those powers.

I commend the bill to the house.

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

Debate adjourned until next day.

INTERPRETATION OF LEGISLATION (AMENDMENT) BILL

Second reading

Debate resumed from 15 September; motion of Hon. J. M. MADDEN (Minister for Sport and Recreation).

Hon. C. A. STRONG (Higinbotham) — In rising to speak to this bill I would like to say it is a small but nevertheless very important bill because it seeks to make quite clear how various acts and regulation are interpreted. It makes various amendments to the existing act to clean up areas where there has been some confusion or some potential confusion as to how certain matters can be interpreted.

When you stop and think of the correct interpretation of legislation, regulations and all the various edicts and statements by government, it is enormously important that the way they are interpreted by the courts and individuals be quite clear and not ambiguous because out of such ambiguity can arise many problems. We do not have to look much further for examples of that than the recent chronicle of events which has culminated in the Victorian Civil and Administrative Tribunal (VCAT) decision to approve 7-storey and 11-storey towers in Mitcham as part of the ongoing Melbourne 2030 debacle. How that has happened and the statements made by the minister and various other people concerned highlight the importance of a correct interpretation of the powers of the various people concerned, of the statements they have made and the principles they have laid down. We have had so many different interpretations.

We had the VCAT decision, as a result of which the minister quite rightly came under very considerable criticism for not calling in the decision and putting a stop to this development, which is totally out of character. Clearly it appeared that she had the power to do so but on her interpretation of her powers she is on the record as saying that, no, she was not able to call it in. She said she did not have the power to do so and, yet that opinion was totally contradicted by experts in the field, by the various expert planning lawyers who clearly said she did have the power to call in the Mitcham proposal and see that it did not go ahead.

And then of course we have the situation following on from that where quite clearly the minister is now under pressure with the interpretation of her instruction that VCAT follow Melbourne 2030. There is confusion about her ability to call in the towers and stop it. With all these confusions of interpretation, the minister came out only a week ago and said she would give councils interim controls to stop high-rise developments in their activity centres and major developments.

But has she given those same powers? Has she made it clear to VCAT what the situation will be? How will VCAT interpret these powers the minister is allegedly going to give local councils. I can throw some light on that from the situation in the Bayside municipality where, after many years preparing their planning documents and submitting them to the government — they rested on the minister's desk for about 18 months to 2 years — the minister, in response to the council's desire to have a two-storey height limit across the municipality, allowed the council to put in a preferred two-storey height limit. The minister was on the record as saying that she wanted a preferred two-storey height limit for Bayside. So how is that to be interpreted? This goes to the importance of how things are interpreted. She put that desired, preferred two-storey height limit on and yet the issue went to VCAT and — —

Mr Viney — On a point of order, President, the bill before the house is the interpretation of legislation bill. My reading of it is that I do not find much reference to the issues of planning and height control in this piece of legislation. I suggest that you advise the member to come back to the bill rather than meandering into other political issues on which he might want to score some points.

Hon. Andrea Coote — On the point of order, President, Mr Strong has not been into his speech for 7 minutes yet. He is developing it and giving an example of interpretation. He has not even started to develop his entire argument yet. I do not believe this point of order should be upheld.

The PRESIDENT — Order! The lead speaker on a bill is given latitude, and the member is entitled to develop his arguments with respect to the contents of the bill. I ask the member to continue.

Hon. C. A. STRONG — Thank you, President, for your ruling. The issues I am going to are how acts and regulations are interpreted. I can understand that Mr Viney would have some embarrassment about my touching on issues where interpretation has gone awry. No doubt it is causing the government some concern with the planning chaos arising out of the inability of the government and the minister to see that matters are correctly interpreted. It is causing some heat. I will continue, because I think this is a very important example.

I was giving the example of how these things can be interpreted in the Bayside municipality. The minister is on record as saying that she would prefer a two-storey height limit for the Bayside municipality. How is that statement to be interpreted against her previous instructions to VCAT to follow Melbourne 2030? I can tell you how that has been interpreted by VCAT — it has overruled in every instance when the Bayside municipality has come forward and tried to invoke this preferred two-storey height limit. It has been totally ruled out, and four and five-storey developments are being approved in the face of the preferred two-storey height limit.

It is critical that these matters are spelt out correctly. It is important that we have in place acts and regulations which are interpreted correctly in the face of confusing and often contradictory statements, let alone the question of the interpretation of how things are done for the public record. To conclude this particular development of my argument on the importance of interpretation, I quote from the *Age* of 17 September, under the headline 'Angry SOS residents cut ties to Bracks' and it states in part:

> Save Our Suburbs says the government has reneged on its 2002 election promise to protect Melbourne's existing neighbourhoods while encouraging higher density housing in 1100 shopping and transport hubs, known as activity centres.
>
> 'Since the 2002 election, not one government decision has been made to honour that commitment', the group's president, Nigel Kirby, said.

In this particular area we have another incidence of how these things go awry because of the government's decisions and approach. I and many people in Victoria think it has been quite happy to see confusion exist because through that confusion there is an underlying instruction to VCAT that says Melbourne 2030 will go ahead regardless of what other statements are made during election campaigns or after embarrassing incidents like the Mitcham towers. The ultimate interpretation is there — that is, to follow VCAT and slam in high rise and high density anywhere you can in Victoria.

Turning to how the bill deals with the critical nature of correct interpretation, it seeks to go to three areas where, as I understand it, the chief parliamentary draftsman sees there is some potential for confusion of interpretation. It first of all deals with the question of headings in bills. Essentially headings in bills were not considered to be part of the act, and previous amendments to the Interpretation of Legislation Act made it quite clear that headings were in fact part of the bill. However, there are other regulatory instruments like Melbourne 2030 and so on that I mentioned in my example and others such as court orders and subordinate instruments which also have headings; and there was some question about the clarity as to whether headings in those particular instruments were also part of those instruments. This bill makes it quite clear that they are.

The second issue it deals with is what happens at the end of a clause. There are certain things that, under the act, are at the end of a particular clause — for instance, penalties that are often at the end of a particular clause, notes at the end of a clause and so on. The Interpretation of Legislation Act sets out what can be at the end of a clause. It sets out, as was explained to us in our briefing, two options. It does not cater for situations where there may be three particular items at the end of a clause — for instance, if there is a penalty and a note it makes it quite clear that they are at the end of a clause and are read at the end of a clause — but where there might be a penalty, a note and an example, there is some potential confusion as to whether one of those particular items is valid, so the bill makes it clear that penalties, notes and examples are at the end of or the foot of a particular clause.

It also defines the term 'VCAT' which, as members will recall from my opening examples, is a term of some currency and importance. The bill defines the term and inserts 'VCAT' quite clearly in legislation, as Mr Baxter pointed out when Mr Viney took his frivolous point of order. Mr Baxter, with his enormous experience in this place, is quite correct, but we had the point of order already covered anyway because it was such a frivolous and irrelevant one!

The bill also defines 'statutory rule' and 'subordinate instrument' to make quite clear where they fall in the whole issue of how they are to be interpreted. So although it is a relatively small bill, it is very significant. As I have tried to set out quite clearly in my introduction, it is important to see that matters of law and statutory rules are interpreted in the correct way so that when these matters go to courts or tribunals and so on there is total clarification as to how these matters will be dealt with. As I highlighted, particularly in the whole planning issue there is total chaos and confusion, which could be cleared up if certain members of the government sought to interpret correctly, gave some thought as to how they managed these issues to ensure that there was clarity and did not seek — as I and many in the community believe — to hide behind the lack of clarity. Rather than create clarity they seek to create confusion to achieve the ends that they want to achieve and to hide behind the smokescreen of that confusion to pretend that they do not have the power to deal with the unfortunate consequences they are trying to force upon

this state, particularly in our low-rise, low-density suburbs. With those few comments, I indicate that the opposition will not oppose this bill.

Hon. W. R. BAXTER (North Eastern) — As Mr Strong has indicated, this is a small but important bill, and I agree with him. I remember when we had the Acts Interpretation Act: it always fascinated me that you needed an act to interpret another act when I first came here, as inexperienced as I was — perhaps still am — in reading the statutes. In 1984 that act was replaced by the current act, perhaps more conveniently named the Interpretation of Legislation Act.

I think it is very useful that from time to time we turn our mind to, firstly, the way legislation is couched, and secondly, how it is interpreted. Clearly on occasions people need to resort to the courts to get an interpretation of what a particular act means. Sometimes we see rulings made by the courts which seem to be at odds with what all of us who are here might have thought was the intent of the Parliament at the time. That is not to say that the judge in question was wrong; it is more likely to be that Parliament has been less clear than it ought to have been and needed to be. It seems to me that there is a duty upon the Parliament, and particularly upon parliamentary counsel, to make certain that the drafting of legislation is as clear as it is possible to make it and that there is no possibility of double meanings or misinterpretation.

I acknowledge that this is a big ask, and we have been very well served by parliamentary counsel in this place over many years. In my experience they have all been men and women of extraordinary capacity; nevertheless, we have had occasions when legislation has been found wanting.

I sometimes turn my mind to the difficulty the average person has in reading legislation that is before the Parliament. If it is a straightforward, new piece of legislation, the purposes and the clauses are set out seriatim, and they are reasonably easy to follow for anyone with even a modest education. However, it is extremely difficult for members of the public, and indeed for members of Parliament, when we have bills before the house which amend sections of acts — and in many cases, numerous acts in the one bill — and which sometimes add words, sometimes delete words in particular clauses, and sometimes do both.

It is often very difficult to get a sense of what the bill is trying to achieve, and sometimes people get the bull by the horns and get quite alarmed. I had a case last week with a bill currently before the other place which deals with amending the Accident Compensation Act in respect of the definition of 'remuneration'. Someone telephoned me expressing great concern that this amendment was going to impact very heavily on his business. This happened because he had completely misunderstood the intent of that amendment due to the fact that he had read it, as worded, in the State Taxation Acts (Amendment) Bill that was currently before Parliament. It was only when I got out the principal act and went through the process of inserting the words that were to be inserted and deleting the words that were to be deleted that he cottoned on to what the government intended, and his fears were, by and large, allayed.

It seems to me that in this technological age we ought to perhaps look at producing bills for the Parliament that set out in full the particular sections of the principal acts that are to be amended by ruling a line through the words that are to be deleted and underlining the words that are to be added. My office staff do that for bills that I am responsible for on behalf of The Nationals in this house. They are able to do it because of the technology we have available. The statutes are all on the web; you can get them in Microsoft Word format and you can easily insert the new words into the particular section of the act being amended — they can be underlined or put in heavier print — and you can rule a line through the words that are being deleted. It is much easier to get a sense of the intent of the bill if that is done.

I acknowledge that this would chew up a few more trees because it would expand the amount of paper we use, but that is a small price to pay if we can make what is being put to the Parliament much more easily understood. With complex legislation on many occasions it is a herculean task to go back to the various principal acts, get out the relevant sections and do that work manually yourself, but unless you do you quite often miss the point, or you do not grasp what is being done, or you are under a misapprehension where it is not warranted. I suggest that perhaps parliamentary counsel or the cabinet office, or whoever is responsible, could have a look at the way bills are presented to this house. We can see that it is now quite easy to do something like I have suggested. I acknowledge that before the use of computers and word processors and so on it would have been an impossible task, but it is well within the realms of possibility now, and it might well be another step forward.

There was a giant leap forward in 1958 when the statutes were consolidated. I understand that prior to 1958 the statute book was a dog's breakfast: there were acts, amending acts and spent acts all over the place. It was a very difficult task, and I commend the then government lead by Sir Henry Bolte and the Attorney-General of the day, Sir Arthur Rylah, and

maybe other members of the house on all sides who took it upon themselves that year to upgrade the statutes. We are still benefiting from that work carried out more than 40 years ago. Perhaps, now, the next big step is to make it easier for Parliament, bearing in mind that we are getting amendments to amended acts very frequently. In fact we are about to debate an amendment to an act that we only amended less than six months ago — I am not even sure whether the provisions are in force yet. It is very difficult to get this legislation in sequence unless it is clearly set out before you.

I simply put that suggestion on the table for the future, but I indicate that otherwise The Nationals are not opposing this legislation. We commend senior parliamentary counsel for making sure that the Parliament endeavours, to the best of its ability, to make certain that acts are able to be clearly interpreted with the smallest effort.

Ms MIKAKOS (Jika Jika) — This chamber and our Parliament have many traditions, and the introduction and passage of a privilege bill at the beginning of each new Parliament is one of those traditions. As we know, when the house first meets in a new Parliament members of both chambers are summoned to hear the Governor's opening speech. On conclusion, the Speaker is formally presented with a copy of the speech by the Governor's official secretary. Before the Speaker reports the Governor's speech to the Legislative Assembly, it is necessary for the house to transact some formal business, usually the introduction of a bill.

Its presentation is taken to express the house's traditional right to conduct its business without reference to the immediate cause of the summons by the Governor, which is to hear the opening speech. I note therefore as someone who has always strongly advocated the need for an independent Australian head of state that the privilege bill before us is an expression of the house's independence of the Crown. Perhaps with the imminent election of a new federal government it will not be too long before we are talking about independence from an Australian head of state.

I note that one aspect of this tradition is that a privilege bill usually contains amendments that are non-controversial. I am happy to say that this is the case with the bill before us. I note also that it is usually the case, one would say, that conservative parties are staunch advocates for traditions surrounding this place, or so they like to claim on a regular basis. However, Mr Strong in his contribution to this debate today has not upheld the tradition of keeping debate on a privilege bill non-political and non-contentious.

Whilst it is non-controversial, the bill is an important one. It does a number of things, including extending the rule that currently applies to references in an act to the commencement of that act or another act to references to chapters, parts or divisions of an act. The bill also clarifies that the headings to orders and parts inserted in rules of court are part of a statutory rule and provides for greater flexibility in dealing with the placement of notes and examples at the foot of a provision. Certain important definitions are also inserted into the Interpretation of Legislation Act. Mr Baxter has commented on the importance of the bill in the drafting and interpretation of Victorian legislation. It enables legislation to be drafted in a succinct and concise manner, something that is also desirable in members' contributions. I will be very succinct and concise in my contribution today.

In terms of the definitions being inserted into the bill, the only reference to 'VCAT' in the bill is to insert a definition of it into the Interpretation of Legislation Act 1984. I am not quite sure how Mr Strong managed to extrapolate the comments he made, but it certainly was an interesting attempt on his part.

In conclusion, all of these amendments have been proposed by the Chief Parliamentary Counsel. It is desirable that the Interpretation of Legislation Act 1984 be amended from time to time to enable our legislation to benefit from improvements in drafting techniques and to clarify that act's operation. I commend the bill to the house.

Hon. A. P. OLEXANDER (Silvan) — I take this opportunity to make another succinct and brief contribution to the bill following in the footsteps of my colleagues Mr Strong and Mr Baxter. I would have thought Ms Mikakos's contribution was a little too succinct, and she could have elaborated on some of the important issues relating to the interpretation of legislation and regulations, given her past experience on the Scrutiny of Acts and Regulations Committee, for example, where that was the nuts and bolts of what was being done for three years.

As Mr Strong has outlined, this piece of legislation comes to us because the Chief Parliamentary Counsel has requested that certain amendments be made to the Interpretation of Legislation Act which will enable and clarify the interpretation of provisions within legislation and their relationship to subordinate instruments such as regulations. New section 36B inserts the location of penalties, examples and notes — they should reside within legislative provisions to clarify their intentions. This is very important. It also makes reference to an acronym and further defines it.

This is fundamentally a housekeeping and technical bill. I agree with all the previous speakers that there are some incredibly important issues associated with it which relate particularly in my view to subordinate instruments like regulations. Members present may be aware they can be more important to those seeking to comply with the law than the actual technical provisions of acts themselves. Generally speaking, because of the complexity of government and bureaucracy, regulations underpinning the operation of acts are often overlooked by us as legislators. They are a very critical part of governance.

It is often said in this place that the devil is in the detail of any piece of legislation. But more often today it is my view and a growing view within western parliamentary democracies that the devil is actually in regulations which underpin legislation. Regulations govern how laws are implemented by governments in detail. The important complexity of subordinate instruments requires parliamentary scrutiny. This is usually carried out by powerful all-party committees charged with the task. In Victoria we rely on the Scrutiny of Acts and Regulations Committee. It is a very big job, to which I am sure Ms Argondizzo can attest given her current role there.

A subcommittee of the Scrutiny of Acts and Regulations Committee actually carries out the regulation review role in Victoria. Having served on that body for four years I am very aware of how onerous the task is. The sheer volume and complexity of regulation warrants another look by us here. In my view it is currently impossible for that subcommittee to properly cover every aspect of regulation in a timely manner. There have been numerous examples. Fundamentally it comes back to a question of resources devoted to the task. They are not adequate. Other jurisdictions such as the commonwealth and some states have addressed this by separating the legislative and regulatory review and interpretive functions. They have set up distinct and dedicated committees which are properly resourced with legal officer expertise. It works very well.

By contrast in Victoria our scrutiny function is not as adequate. It is often unfortunately very cursory, and sometimes it is non-existent. I believe we are falling down as far as subordinate instruments are concerned. In fact I do not think I can recall in four years in this chamber— despite the Scrutiny of Acts and Regulations Committee reporting to this chamber on the import and impact, and problems within, regulation and legislation — one instance where an *Alert Digest* has been picked up and debated and where problems have been addressed in a serious way by members in this place. That is a fundamental thing for legislators to be doing, given the importance of the impact of regulation on the community, business, the economy and the interpretation and implementation of any piece of legislation. When we consider that proper regulatory review requires that legislators are aware of public consultation and of specific community and industry submissions, that ministers and shadow ministers need to be made aware of these as well and that departments are responsible for preparing regulatory impact statements, I think we begin to appreciate how much of our function as legislators is actually carried out not here in this chamber, but by those who are not elected or subject to any scrutiny at all. In a democracy this is an emerging issue that goes directly to the issues of the sovereignty of Parliament and of the transparency of government.

I have seen numerous examples of regulation where insufficient consultation with interested community or industry groups has taken place or, if they are consulted, where their advice has been disregarded. This is not always as a result of considered government policy; sometimes it has occurred because of interpretative issues — how the legislation has been interpreted by the bureaucracy. Therefore the bill before us is an extremely important one, because it assists governments to be absolutely clear, as the representatives of the people, what the intention of legislation is and how it should be implemented.

Often the regulatory impact statement process does not consider key economic and social impacts of the legislation or the regulation that is being promulgated. I think this is a very serious issue indeed. In some instances I have seen new regulation delayed time and time again, often over a period of years, causing serious problems for those who need to comply with the legislation. An example — and I will only provide one in the interests of brevity — was a situation where there was some controversy over the issue of the qualifications of security industry officers and bouncers. We had had some instances in the community of harm being caused to members of the community by such individuals who were not properly qualified or who had criminal records. This issue was defined in the legislation as being supposed to be dealt with by regulation. Those regulations were delayed at least three or four times over a period of four years. It was argued that, if they had not been so delayed, the industry would have been tightened up, those individuals would have been better qualified and better able to cope with their jobs and — it was suggested by some in the media — perhaps we would not have had the spate of incidents of harm and damage caused to people by those employed as bouncers and security

officers. This is only one example, but it underlines the importance of regulation in our system and how important it is that those who promulgate regulation understand the intention of legislation. Otherwise the impact of the time and effort we spend here as legislators is diminished. If our system recognises that members of Parliament are representatives of the people in a democracy, then sovereignty should stay here — in the Parliament — and regulations promulgated should be accountable to this chamber.

I believe we need to urgently address some of these issues in Victoria. There is a good case for establishing a high-powered committee that is dedicated to subordinate instruments, legislation and regulation and has disallowance power, perhaps subject to parliamentary approval. We need a scrutiny function that can require and conduct further consultation, even where the bureaucracy has decided that it does not wish to do so. We need it to be able to require that further public consultation occur and even to order economic and social impacts to be assessed by the bureaucracy, reassessed by government departments and by the committee itself if the parliamentarians who sit on it do not believe it has been adequately done in the first place. This would be in the interests of parliamentary democracy and transparency in government. The opposition does not have any issue with this bill. The bill greatly assists the interpretation of both subordinate instruments and legislation, and we support it.

Motion agreed to.

Read second time.

Remaining stages

Passed remaining stages.

SENTENCING (SUPERANNUATION ORDERS) BILL

Second reading

Debate resumed from 15 September; motion of Mr LENDERS (Minister for Finance).

Hon. C. A. STRONG (Higinbotham) — In rising to speak on this bill I am happy to indicate that the opposition will not be opposing it. We agree very much with the sentiment and objective of the bill. However, we have a few little concerns about the scope, or lack thereof, which I will discuss in debating the bill.

The purpose of the bill is pretty clear. It is best set out in the bill itself, which says that the purpose of the act is to amend the Sentencing Act 1991 to enable the court to make superannuation orders as a new sentencing option when a person who is or has been a public sector employee is convicted of an indictable offence involving abuse of office, corruption or perversion of the course of justice. In essence and put simply, the objective of the bill is to make it quite clear that crime does not pay. We in this house all want to make sure that we enact and support whatever legislation is required to ensure that those who perpetrate crime are not rewarded and that there is as much disincentive as humanly possible for people to engage in crime.

When you look at the principles behind the bill you can see that they concern situations where people are working in the public sector. In many cases there are fairly generous superannuation schemes in place, and it is quite possible — and in many cases it is the fact — that people who may have been working in the public sector for 10, 12, 15 or 20 years will have accrued significant amounts of money in superannuation, much of which has been contributed by the taxpayer. A person may be found guilty of defrauding the government or of committing some crime which he or she is able to commit because of their position in the public sector. If they defraud the government and are found guilty, then maybe they will be put away for a year or given a suspended sentence, or whatever you like. There is not much justice in the system if they can still walk away with a superannuation payment that might be worth $1 million, three-quarters of a million dollars, or whatever. There is a clear need to ensure in terms of the principle that crime does not pay that if somebody is working for the public sector, and they defraud the public sector, then it is totally inappropriate that they are able to keep the superannuation benefit which they have accrued by virtue of the taxpayers contribution to the scheme. That is in essence what the bill seeks to do, and there is nothing wrong with that at all; it is highly commendable that this government brings in legislation to do this. However, it needs to be noted that there is legislation already in place in the commonwealth and in Queensland, which essentially does this and, as I said, it is appropriate that Victoria is bringing in legislation to that end.

One of the key elements of the bill that is worth discussing briefly is how it will work. It allows for the court to issue a superannuation order, and that superannuation order simply will be another tool that a court has for punishing people who are found guilty. Courts will be able to issue an order to take away the superannuation benefit that an employee has built up if that employee is found guilty of corruption et cetera. The point needs to be made that this is just another sentencing option and does not replace any of the

options that already exist. There still can be fines and incarceration for anybody who is found guilty.

It is also important to highlight how this amount is calculated, because as we all know superannuation is made up of various elements in this day and age. It is a movable feast which is ever changing and ever confusing. Superannuation is made up of the money that the member himself puts in, the money put in by his employer and his employer is able to put in money under various categories. All employers have to put in the 9 per cent superannuation guarantee levy, which has been legislated for by the federal government, and they also are able to put in amounts over and above that.

This bill says that, of the amounts that go into an individual's super, a superannuation order can be made to take away that element which is put in by the employer — namely, the government, as a surrogate for the taxpayer. If a person has defrauded or committed some corruption against the government, then the taxpayers contribution can be claimed. The bill does not seek to confiscate the contribution made by the individual himself, nor does it allow for the 9 per cent superannuation guarantee levy amount. I must say — and I am sure the government thought about this at some length — that it seems to me that the 9 per cent superannuation guarantee levy is still an amount contributed by the employer, and I wonder why that should be exempted, but that is the way the bill is structured.

In making a superannuation order, as well as being limited to how much money it can take by virtue of the categorisations which I have just highlighted, the court is also able to take account of an offender's family situation. It is the truth that superannuation can be a very significant asset to a family. Although it is quite clear that some punishment is applicable to the offender, the offender should not profit from his crime and it is absolutely appropriate that he loses that superannuation benefit, the court is also able to give recognition to the fact that it is perhaps unfair or may be unfair to penalise the offender's family — his wife, children et cetera — as a result, so the court has the ability to vary that superannuation order to take account of an offender's family situation and the extent to which there may be damage to innocent parties as a result of the confiscation of that superannuation benefit.

The other issue that is worth touching on in the process is how this money is recovered. In the commonwealth act this is relatively simple because, as we know, the commonwealth has control over superannuation. Therefore the commonwealth act allows for the money to be confiscated from the individual's superannuation account. At the state level we are not able to do that, so the order simply sets out an amount of money which is to be taken in compensation for super, as it were. In other words, it is akin to an extra fine which is simply related to the amount of super that an individual has and that superannuation order. The collection of that money is the same process as the collection for any other fine that individual may have.

They are basically the fundamentals of the scheme. I think members can see by that quick outline that it is a fair scheme. People should not be allowed to profit from their crime and if they have built up a large superannuation benefit that is contributed to by the taxpayer and the government and they commit a crime or fraud against the government it would be inequitable for them to walk away with that superannuation benefit provided to them by their employer.

I now turn to some of the issues within the bill. I put on record to whom the bill will apply. The purpose clause clearly states that the superannuation orders apply:

> ... where a person who is or has been a public sector employee is convicted of an indictable offence involving abuse of office, corruption or perversion of the course of justice.

Correspondence dealing with the development of the legislation that the Police Association had with the Minister for Finance, John Lenders, has been forwarded to members of the opposition. I am sure it was made available to all other parties. I wish to read into *Hansard* some of the issues it raises. The correspondence from the Police Association dated 26 August states:

> As indicated in our letter of 19 May 2004 and reiterated in discussions with representatives of your department on 27 July 2004 the association remains concerned with the imprecise wording in regard to offences that may result in an application to the court for a superannuation order, in particular, the failure of the proposed bill to define the expressions 'abuse of office' or 'corruption'.
>
> The association acknowledges that the wording contained in the proposed section 83E is identical to provisions contained in the Commonwealth Crimes (Superannuation Benefits) Act 1989 and the Australian Federal Police Act 1979. However, the association also notes that substantially the scheme put in place to identify the quantum of superannuation benefits subject to forfeiture is similar to that contained in the Queensland Public Officers Superannuation Benefits Recovery Act 1988. That act goes to some length to define prescribed offences in more specific terms than that contained in the commonwealth legislation or in the proposed Victorian legislation. As indicated in the association's letter of 19 May 2004 the association believes the adoption of the Queensland approach to defining prescribed offences is a better course.

The letter then goes on to propose an amendment that it believes would better define the concerns it has — namely, the abuse of office or corruption. I wanted to put on the record that there were concerns among certain individuals to whom this bill will apply regarding the precise definition of crimes to which superannuation orders will apply.

The other issue I raise, which I must say is somewhat of a mystery to me and a mystery to the opposition at large, is the question of to whom this bill applies. I refer to the minister's second-reading speech, which I will paraphrase, where he outlines to whom the bill will apply. He says that the bill will apply to members of the Victorian public service; that the bill defines public sector employees widely so that it covers amongst others public servants, police and emergency services workers, teachers, judges and members of Parliament. In general workers whose employment is funded directly or indirectly by the state of Victoria will be covered by the bill. One could say that seems eminently reasonable because all the individuals mentioned in the list have superannuation benefits paid for them by the government and if you apply the principles that if you are convicted of corruption or of defrauding the government it is eminently appropriate that you should not have that windfall benefit paid by the taxpayer. But the bill itself further defines that broad-sweeping categorisation in the second-reading speech by saying in proposed section 83D(1) that the following public bodies are excluded: a council within the meaning of the Local Government Act 1983, and an institution listed in schedule 1 of the Tertiary Education Act 1993 — in other words, universities, technical colleges, technical and further education institutions and so on. One is left wondering why it is that a person who works in a TAFE college or university or organisation associated with those bodies who is found guilty of corruption or of defrauding the body for whom they work should be exempted from this legislation. Why would you exempt people who work at a university or TAFE college from these provisions when you include everyone else in the list taken from the second-reading speech? Further, why would you exempt people who work for local government? In many cases their superannuation is very generous, paid for by the ratepayers or taxpayers of their municipality. Why should they be exempt? Why of all the people who work in the public sector does the bill seek to exempt these two categories of individuals — those who work for universities or TAFE institutions and local government. If the bill had exempted politicians, I could understand that, but to exempt these two organisations I must say I find rather strange. You would find that doubly strange if you look at what is going on.

We have a situation which has been in the news and media over recent times of attempts to defraud the Royal Melbourne Institute of Technology and Victoria University, cases which are perhaps not before the courts at this stage but which nevertheless are out there under active investigation and where there are on foot examples where this bill could be used. We have a situation of the student union at Melbourne University where huge amounts of money seem to have disappeared for whatever reason. These are issues which are under investigation. The public is entitled to ask why it is that these institutions where those things are now potentially in play have been left out of the bill.

If we put ourselves in the place of the public then it is clear it sees local government as an area for potential corruption. In this place we have had inquiries into local government, such as Frankston and the like, so it is not as if there is no concern in the minds of the public that these are areas which will always be corruption free, as it were. I, the opposition and the public have the right to ask why it is that where there are potential cases on foot in these particular areas they are isolated and excised from the bill so that the people who work in these areas are not affected.

I have not studied the Queensland bill in any detail, but certainly the activities happening there at the moment place significant question marks over some of the Labor mates who work on various statutory authorities and boards, and whom Premier Beattie has decided to get rid of for various reasons. One wonders why they are not protected from the same situation that this bill puts in place to try to protect those who are under some cloud in universities and local government. This is where the government is a little silly in many ways, because if in 12 or 18 months any of these people involved in the current investigations are found guilty there will undoubtedly be an appropriate clamour about somebody being found guilty getting the benefit of their superannuation. What will the government say then and how will it respond to why it left out these two key areas? If in two or three years time, something which we are not aware of at this stage, there is significant corruption in local government and somebody is convicted and walks away with a separation penalty of $1 million, what will the government say then? Will it say, 'We left them out'. Why did the government leave them out? It makes no sense.

The government should be revisiting that particular issue because it makes no sense, and at the end of the day because it makes no sense, and because it flies in

the face of the problems that are already identified, well known and well publicised, it creates a not unreasonable doubt in people's minds that this is a deliberate attempt to protect people who perhaps should not be protected. It certainly has the potential to create that impression and therefore it makes no sense to leave out those areas. With that significant caveat, the opposition has no problem with the concept of people in government employment who are found guilty of corruption forfeiting or having confiscated benefits which they accrued from the taxpayer.

Hon. W. R. BAXTER (North Eastern) —

Mr Strong has given the house a very clear and concise overview of the legislation, and for similar reasons to those of the opposition The Nationals will also be supporting the legislation. We see it as another arrow in the quiver in terms of applying appropriate sanctions against persons, in this case public servants, who commit indictable offences. I was concerned initially that innocent persons, to wit the members of the family of the recalcitrant, might be unduly punished by this move for a superannuation order, but my concerns have been allayed upon studying the legislation. It is clear that the court has the power to make orders in the light of the particular circumstances applying to each case, and I am sure the court will take into account the responsibilities and rights of any of the dependants, the spouse or the children in particular, of the convicted person.

As Mr Strong pointed out to the house, the superannuation order does not cover the member's own contributions nor does it cover the superannuation guarantee contribution (SGC) of 9 per cent. It applies only to that part of the superannuation amount that has been accumulated that relates to the contribution made by the public sector employer over and above the member's own contributions and the SGC 9 per cent. It is getting to that part of the superannuation which is perhaps of more generous proportions than might apply in the private sector, where superannuation schemes traditionally have been somewhat less generous than those applying in the public sector; and certainly applies in the case of defined benefits, which have not applied very much in the private sector and which until relatively recent times at least have been the standard fare in the public service. There are sufficient safeguards in that respect.

This does not make superannuation orders mandatory; it simply gives the court an option in determining an appropriate penalty when someone has been accused or convicted of what is a very serious offence in anyone's language — an indictable offence. It also goes to the matter of maintaining the integrity of the public sector work force. The community at large has to have faith in its public servants and has to believe that they are acting in good faith and that they are honest persons; and that the few rotten apples in the barrel are found out and have the appropriate penalty applied to them. That could well be a very hard penalty, and there are no two ways about that. I am now convinced that there are sufficient safeguards that can be applied in a fair manner.

Like Mr Strong I am somewhat intrigued by the exclusions. For the life of me I cannot comprehend why local government has been excluded. We all know that corruption has flowered, if that is the right word, in local government on occasions; fortunately perhaps not in recent times. However, we remember inquiries into the former Sunshine City Council, for example, which exposed some extraordinary shenanigans out there. We also recall inquiries into the Labor-controlled Richmond City Council a few years ago, which again exposed a deal of corruption.

Bearing in mind that local government is a creature of the state in that it operates under the Local Government Act, I fail to see why that exclusion was made. I know this government wants to put local government on an apparent pedestal by recognising it in the constitution and pretending that it is some separate and glorious tier of government. That might be a good political story, but the reality is that local government is not that at all — it is a creature of the state — and I would have thought that it might well be appropriate that laws which apply to employees of the state, particularly in respect of criminal behaviour, should also apply to members who work in local government. It seems to me that the level of accountability can be somewhat less in local government, the risk of exposure is probably somewhat less — the searchlight is not as bright — and to a degree this is sending a signal to some persons who work in local government that their activities might be considered to be less serious than those of public servants. I do not make that distinction at all, and I think it would be very unfortunate if this legislation sent that sort of signal to persons who work in local government and who might well be tempted to engage in corrupt behaviour.

Similarly, in terms of universities, TAFE colleges and the like, I acknowledge that they are mainly funded by the federal government and it might have been thought that that was a reason for exempting them. I do not think it is. Just because the funds are coming from Canberra does not in some way or another exonerate persons who work in that particular field of endeavour from the sort of the sanctions that apply to others who work in the public sector. Again, I am not persuaded.

Like Mr Strong I can think of examples we have seen in very recent times where the jury is still out, but there may or may not have been corrupt behaviour in some of the institutions he named. I think it is peculiar, to put it mildly, that those exemptions have been made.

However, having said that, I indicate that The Nationals are prepared to support the bill. We look forward to seeing how it operates in practice. Hopefully it will not need to be applied on very many occasions but it is, as I said at the opening, another weapon in the armoury.

Mr SMITH (Chelsea) — I am particularly pleased to speak on this Sentencing (Superannuation Orders) Bill 2004 because this is one of those rare opportunities when you get to do something you know the public really wants. The fact that we in the house are in raging agreement is even more gratifying.

I start by saying that unlike members opposite we on this side and the Labor government actually like public servants. We think they are important, and we have an enormous amount of respect for them. However, unfortunately, as in all walks of life, there are always some who could be considered to be rotten apples and who bring the reputation of their workmates and the like into disrepute. The genesis of this bill relates to a detective sergeant who was convicted of trafficking some very heavy prohibited drugs and who, through a loophole, was able to retain his superannuation benefits by resigning a few days prior to sentencing. The judge described this former detective sergeant as being a cold, calculating criminal. There was a fair degree of outrage when it became public knowledge that he was able to exploit this loophole. Comment was made by the current Leader of the Opposition, and we all felt that this was wrong and had to be dealt with; hence we have this bill before the house. As I said, it is pleasing to speak on something we all agree is needed.

The former detective sergeant I am talking about gained $500 000 from the superannuation fund in addition to $100 000 in personal contributions. It is highly unsatisfactory for a convicted criminal to walk away with $600 000. I am also reminded, unfortunately, of a Labor member of Parliament in Queensland, a Mr Wright, who some years ago was convicted of sexual molestation of a minor. It was a very unsavoury circumstance and the issue of parliamentary superannuation was at the forefront of everybody's mind at the time. We all felt that people in those circumstances should not benefit in any way from the public purse when convicted of what can only be described as heinous crimes. I will not be diverted into current events surrounding paedophilia and the like, but all members in this chamber would agree that those crimes are heinous.

I am reminded further that the former detective sergeant pleaded guilty to trafficking, so there is no doubt that he was not deserving of those benefits. I am interested in the expression on the face of one of my colleagues opposite — he seems to be enjoying this particular debate — and I can only assume he had something to do with either the arrest or conviction of that particular individual.

The fact is that this bill is being presented to the house on the basis that it is needed and agreed to. The changes are necessary. I heard a comment in one of the earlier contributions about the courts being able to make orders regarding whether people's superannuation would be withheld in these circumstances. That is seen as a protection in terms of any unfairness which might eventuate. I particularly like the idea that the court will not take into account in sentencing the fact that a superannuation order has been made. There have been some arguments about this being a double punishment. In my view, so what? If you would gain at taxpayers expense and commit a crime which under this bill warrants the withholding or removal of your superannuation, so be it. Although I accept the protections that are in place with regard to the families, quite often those families will have benefited as a result of the corrupt behaviour of their partner or whoever and that should be taken into account. I am thinking on my feet back to the comment made by the previous speaker that the court will be able to take that into account. Again, that protection is there. On that basis and for those reasons, this is good legislation. It is fundamentally fair and desired by the general public. I commend the bill to the house.

Hon. R. H. BOWDEN (South Eastern) — The comments I would like to make today are in accordance with the expectations of the community. This bill will increase the ability for our system of justice to apply a fairer measure of justice where required. One of the reasons we in Australia have been able to become a first world country and an advanced economy is that essentially over many decades and generations the communities in Australia — whether they are in far-flung parts of our nation, within this state or wherever our population and citizens may be — have the expectation that those who serve the community are required to be honest. That premise has served our nation well. Over a long period of time it has enabled the community to engage in commerce and government activities with confidence. We have been the beneficiaries as a nation and citizens of a fundamentally honest public service and an honest community

approach to community endeavours. Therefore this bill further strengthens and reaffirms the expectation that those who are on the public payroll have that opportunity to serve us all and have the privilege — and it is a privilege to serve the community, whether that is a high position and high office or very modest position and modest office — and the obligation to be honest. It is a fundamental. As long as that honesty is in place and the people who are a part of our public structure understand that and work diligently — and overwhelmingly our people do — we as a community are much richer for that commitment. Therefore the intention of this bill is a very good one.

The focus of the superannuation orders is that it will apply to courts that are required to adjudicate and consider indictable offences, specifically those involving abuse of office and power, corruption and perversion of the course of justice. Those particular definitions are well known, those pathways through the courts are well documented in cases in history and this is not a radical or unusual definition of the types of crimes that will attract the consideration such as before us in the bill.

I come back to the requirement of our community and I have mentioned the fundamental reasons why those high standards are required. I come back to the expectations of that community and I have indicated why we are entitled to expect those high standards. The superannuation orders are a sentencing option of the court. They are not automatic and they are not mandatory. They are a part of the list of options that a court can refer to in deciding a penalty for the particular crime or offence that has been found to have been perpetrated and carried out by the accused. In several ways it is a good thing that the court does have discretion. It can decide to exercise, or not to exercise, the superannuation orders, and the extent of the superannuation orders are again available to be determined by the court. That is a very flexible, fair and practical way that the courts have available to them in determining a level of penalty to whom those penalties may apply. The fact that it is not mandatory is a good thing, and also the flexibility allows the courts to apply them and the extent that they are applied. This is a fair and just approach.

It is my understanding that the superannuation orders can only be applied to indictable offences that were carried out during the time that an individual was a member of the public sector. If someone has completed their service to the public, then moved on to the private sector and some event occurs of an indictable nature whilst they are in the private sector, it is not retroactive. That is my understanding of the circumstances. The ability of the court to take into account the family circumstances and the complexity of the impact that superannuation orders may have on the family circumstances is a compassionate, interesting and desirable feature of the bill. It is able to be demonstrated that the justice system, together with the intention of the bill, is to not penalise innocent members of a family, but to look carefully at the ways to focus on the appropriate level of penalty to the offender under those circumstances. The ability of a court to take into account the total family circumstances as are known and documented is a very good feature of a bill. That is an important factor and is contained in the legislation.

As has been mentioned by previous speakers, I likewise cannot understand why universities and local government have been exempted. We have seen in this state on several occasions questionable circumstances in tertiary institutions and some of those have been cause for considerable concern. Also, in the past on several occasions there have been very real concerns over difficulties and proprieties in the local government sector. I would suggest to the government that it should over some period of time reflect very carefully as to the need for this exemption. I do not believe universities and local government should be exempted at all, because if there is to be an abuse of power, privilege or position, then it is possible anywhere in the public service. I suggest there is always that potential in particular where zoning matters, council planning matters and land subdivision matters are concerned. I am deeply concerned about the fact that local government has been exempted and suggest the government should reconsider and amend the bill in due course.

With those comments, I indicate that the bill is a positive move. It strengthens and sends another signal to the public sector that we appreciate the hard work, dedication and performance of the overwhelming number of its members and that their work is noted and understood. This bill will also send a signal that the legislature and the community will not tolerate indictable offences such as those contained in the bill and that, in addition to other laws and regulations, the bill will be applied carefully and with justice so that it can truly be a positive contribution to the fundamentals of our society.

Hon. KAYE DARVENIZA (Melbourne West) — I am pleased to rise and speak in support of this bill. I will only make a brief contribution, given that I do not have anything new to add to what has already been covered by Mr Smith on the government side and certainly by members of the opposition and The

Nationals. It is always pleasing to make a contribution to a bill that has the support of both the opposition and The Nationals. I think that goes some way to indicating just how important this piece of legislation is. We are all aware of the recent convictions and jailing of former members of the Victorian drug squad for drug-related offences; that has certainly generated significant media attention in recent times. It is also understood by members of this house and by the public generally that a number of members of Victoria Police are currently under investigation or have been charged with very serious offences.

The commonwealth and Queensland governments have put in place legislation that provides for the recovery of superannuation benefits in circumstances where charges have been made. The bill before us today provides for the forfeiture or recovery of superannuation benefits from a public sector employee convicted of an offence involving corrupt conduct. The courts, when looking at corrupt conduct, have to be satisfied that the person before them who has been convicted of an indictable offence is a public sector employee who has engaged in corrupt conduct that involves an abuse of their office or the offence was committed for a corrupt purpose or in an attempt to pervert the course of justice.

The purpose of the bill is the creation of a superannuation order that will allow for the forfeiture or recovery of superannuation benefits from public sector employees who have been convicted of these serious offences. The superannuation order would only apply to all or part of the employee's financed superannuation contribution that is above the superannuation guarantee component which at the moment is 9 per cent. The court would also have broad discretion in making a superannuation order that takes into account a whole range of relevant and very important circumstances that not only go to the individual themselves, but also to their families and their responsibilities to their families. So they will be able to have consideration of relevant circumstances such as the offender's length of service prior to the offence, the nature of the offence or offences and the degree of corruption that has been involved, and the degree of hardship that is likely to result from making a superannuation order on a convicted person and on their spouse, domestic partner or dependants. So all of these circumstances are determined to be relevant circumstances and will be taken into account by the courts. The courts can also consider any family orders that may exist or any family agreements that may have been entered into.

The bill provides that the court can make such a superannuation order in respect of members, officers or employees of public sector agencies, emergency service personnel, members of Parliament, members of constitutionally protected schemes, such as judicial officers, the Chief Crown Prosecutor, the Director of Public Prosecutions and the Solicitor-General. It also applies to persons appointed to public office by the Governor in Council or ministers, teachers and TAFE employees. So all these various public sector employees and others are covered by this bill.

It is an important bill. A great deal of media and public attention has been given to people who hold public office and have been convicted of indictable offences. The community has expectations that the government will ensure that these sorts of provisions are put in place and that appropriate punishment and processes are there to deal with offenders who hold important public office and are held in very high regard by the community.

It is recognised that public sector employees do an excellent job and provide a great public service and that the corruption that has been found to exist in these areas involves only a small number. It is incumbent upon us as members of the government and Parliament to ensure that measures can be taken against these people when they are convicted of these indictable offences. The bill is a very good one, it deserves the support of all members of the house, and I wish it a speedy passage.

Hon. A. P. OLEXANDER (Silvan) — We have had two contributions now by government speakers, and it is disappointing to note that the only two questions that the opposition and our friends in the National Party have put forward relate to why this bill does not go further and that the definition of 'public service employee' does not cover employees in local government or in the tertiary sector. These are the only two questions opposition members have taken issue with, and neither of the speakers for the government today have dealt with those issues in any way to provide any form of explanation.

When opposition members were briefed on this bill by the department they asked those questions. So the government has known from the time of that briefing that we do not understand why the definition of 'public sector employee' — which is already very broad — does not encompass two very large areas of government activity. The answer that we were given at that briefing was that the tertiary sector was not included in the definition of 'public sector employee' because there were specific commonwealth-state financial arrangements and that both levels of government, commonwealth and state, contributed money to the administration of the running and funding of universities and tertiary institutions and therefore it

was inappropriate to include employees from within those institutions and to cover them with the provisions of this legislation. But that seems fundamentally illogical to the opposition because other public sector employees are in exactly that situation and are so covered — nurses, for example. Public hospitals are covered by funding formulas for which contributions are made by both levels of government through one form or another, so in our view there is no justification on that basis.

We still do not understand why such a large sector containing so many public sector employees has been excluded. We also do not understand why local government, another huge area of public sector activity, has not been included, and we really would like some form of answer. There is no issue: the opposition will not oppose the passage of this legislation but is simply seeking further information. Given that the two government speakers have already been on their feet to explain the government's perspective on this bill, we are very disappointed that they have not done this.

When the opposition asked why local government was not included in the definition in the briefing by the department we were informed that in the Bracks government's view local government is a separate tier of government. We do not have any problem with that; but to us that seems a little illogical, too. We all accept that local government is the third tier of government. Although it is not constitutionally recognised, we accept that local government is a separate area of government. But we also understand that local government and the rules governing it and what it can and cannot do in terms of raising money and responsibilities allocated to it is largely governed by the Local Government Act, which is a state act. Further, the opposition cannot understand what the logical extension of that argument is. For example, are we trying to argue that local government employees should not be subject to the same rules and laws as the rest of the public sector because they work for a level of government which is distinct? Should they be establishing their own courts and tribunals, for example, and their own rules as to how people can and cannot be sentenced? I do not think anybody is seriously suggesting that. We certainly would not support such a proposal, so again why have not employees from within that very wide area of public sector activity been incorporated into what is otherwise a very sensible piece of legislation?

As has already been outlined by speakers for both the opposition and the National Party, superannuation orders are just another sentencing option available to courts when they are dealing with cases of public sector employee corruption. They are not inclusive of any other sentencing option. Things like the situation of spouses, partners, domestic partners, children and other dependents can be taken into account when sentencing takes place, and superannuation orders will be no exception.

In concluding my contribution I ask, again in the interests of transparency: can the government please explain to the opposition why those two areas of public sector activity have been specifically excluded, and can it give us an assurance that we will not be back here in six months time amending this piece of legislation yet again to incorporate them? We have seen that happen so many times before in this chamber; I certainly hope that is not the case. It certainly would be a welcome addition to the debate if the minister or another government speaker could please elaborate and tell us why.

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — I am pleased to rise this afternoon to speak on the Sentencing (Superannuation Orders) Bill. As other members have said, the bill provides for a court to make a superannuation order against an offender who is convicted of certain indictable offences. For this to occur an application has to be made by the Director of Public Prosecutions or, in the case of an offence that is tried summarily, the Chief Commissioner of Police. Against that, the DPP or the chief commissioner can make an application to the court in the case of an offender who is convicted of those certain indictable offences if that offender were a public sector employee as defined in the legislation at the time of the offence.

The order, which is made by a court effectively garnisheeing the offender's superannuation, can only consider the component of the offender's superannuation that is both taxpayer funded or public sector funded as defined in the act and in excess of the commonwealth superannuation guarantee charge requirement which, as we know, is currently 9 per cent; so it would only be on amounts that were in excess of that minimum superannuation guarantee contribution. Before making an application, the DPP or the Chief Commissioner of Police must consider the criteria that are laid out in proposed new section 83E which will be inserted into the Sentencing Act.

Proposed section 83E provides that the Chief Commissioner of Police (CCP) or the Director of Public Prosecutions (DPP) can apply for an order if they are of the opinion that the relevant offence for which the court has convicted the offender:

(a) involved an abuse by the person of his or her office as a public sector employee; or

(b) having regard to the powers and duties of his or her office as a public sector employee was committed for a purpose that involved corruption; or

(c) was committed for the purpose of perverting, or attempting to pervert, the course of justice —

The commissioner or director having made an application with that belief, the court must then be satisfied that one of those three grounds exists.

As an aside, having raised the issue of those three tests, in his contribution Mr Smith referred to the circumstances of former Queensland Australian Labor Party member of Parliament, Mr Keith Wright, who was convicted of certain offences relating to children. It would seem that under this legislation those offences would not be picked up and it would not allow a superannuation order to be made because the nature of the offences was such that they did not relate to corruption or perverting the course of justice. As I said, I just raise that as an aside.

As other members have said, the opposition does not oppose this legislation. However, I place on record that I have some concerns about how it may operate and about the general direction that we may be taking with respect to this type of legislation from time to time, because there is no doubt that the government likes to thump its chest on the issue of law and order. Over the past 12 months in particular we have seen various pieces of legislation brought into this place which in some instances reverse the onus of proof required in certain criminal matters. We have seen legislation brought forward that provides for the confiscation of assets, even in cases where there has been no conviction or indeed, if my memory serves me correctly, no charge. As a Parliament we need to be careful that we do not legislate away the basic concepts of the justice system simply because a particular bill provides a quick fix and a good press release.

One of those concepts that we as a Parliament need to ensure that we protect is the concept of equality before the law. My concern with respect to this legislation is the potential for creating two classes of offender — an offender who was, at the time of the offence, a public sector employee, and an offender who was not. With respect to the tests that I outlined earlier, in proposed section 83E, the first is quite straightforward. It provides that the order can be made where the offender was involved in an abuse by the person of his or her office as a public sector employee. That is quite straightforward, and all members of this place would probably agree that that would be sufficient and appropriate grounds under this legislation on which a court should make an order. If the person has used their public office for some type of abuse that is an indictable offence, it is appropriate that an order can be made under this legislation.

My concern is with the second test, which is outlined in subsection (1)(b) of proposed section 83E and which reads:

(b) having regard to the powers and duties of his or her office as a public sector employee —

the offence —

was committed for a purpose that involved corruption ...

I am also concerned with the third test, which is outlined in subsection (1)(c) and which reads:

(c) was committed for the purpose of perverting, or attempting to pervert, the course of justice ...

My concern with those two tests is that there does not seem to be a need for a link between the offence and the holding of a public sector office, particularly with respect to the third test, which refers to perverting the course of justice. There may well be instances where public sector employees could be convicted of indictable offences that involved perverting the course of justice which had absolutely no relation to their employment in the public sector. My concern, as I said earlier, is that this creates two classes of person and that therefore a person who was employed in the private sector and was guilty of the same offence of perverting the course of justice would be subject to a different penalty from the person who happened to be employed in the public sector. Simply by virtue of their employment, which would not be related to the offence, there would be the potential for them to receive a different penalty. As a Parliament we need to be cognisant of not creating through legislation such as this a situation where we could have two classes of people subject to two different classes of penalty resulting in a situation where the basis on which people were classified did not relate to the offence for which they were convicted.

The second issue I raise is the fact that the superannuation order could only be made with respect to public sector funded superannuation in excess of the commonwealth minimum superannuation guarantee. It seems to me that that dramatically narrows the scope of this legislation because most employees in the public service, as defined in this bill, are on the basic 9 per cent commonwealth-legislated superannuation, with the exception of those public servants who are in defined benefit superannuation schemes and certain pre-1992 accumulation superannuation schemes. This means that this legislation will not have an impact on the majority

of public servants. Again, you are creating two classes of people: those who are in defined benefit schemes and those who are in pre-1992 schemes, who can be penalised under this legislation, and presumably the now majority of public servants who are in post-1992 superannuation schemes, who by virtue of the operation of this act would not be able to have a superannuation order made against them. Again I am concerned that we may be creating two classes of offender by the operation of this legislation.

In conclusion I point out that bills like this provide governments with good headlines; they are popular in the public domain. However, in making legislation such as this we as a Parliament need to be careful that we do not compromise the basic tenets of our justice system.

Mr LENDERS (Minister for Finance) — In summing up the second-reading debate I take on board two questions that have been raised by a number of speakers from the Liberal Party and The Nationals. In doing so I want specifically to repaint the context of where this legislation has come from. The government was trying to deal with corrupt officials — and we use the word 'corrupt' deliberately — who benefit from corruption. There is a view in this Parliament and the community that people should not be able to benefit when they have had a public trust and more generous superannuation scheme than most of the community and they have abused the public trust.

How can you get a court to actually make some determination? We are dealing here with the issue of above-and-beyond-normal crimes. There has been an abuse of public trust. Some people — and it is a very small percentage of the public sector these days — get more generous superannuation than the general community because they hold an office of public trust.

The first thing we have sought to do is to separate that office-of-public-trust component from the rest. This deals partly with Mr Rich-Phillips's question regarding two categories of people being set up. That is correct. There is the general community, which has a mandated standard form of superannuation set by the commonwealth in addition to that 9 per cent that is their own contribution. There is a more specific part of the public sector which — because it historically has involved an office of trust and those in such positions may get lesser pay or for whatever reason — is more generously rewarded. We seek to treat the two classes quite differently.

There are some genuine policy issues involved. We as a government have put a lot of thought and energy into how to get this package right. Two jurisdictions already have a form of superannuation being taken into account for corruption offences. The first is in Queensland, and this arose out of the Fitzgerald inquiry. Queensland's tests came into place essentially before there was mandatory superannuation for the whole work force. Queensland had one size fits all at a time when there were two classes of people — those without superannuation and those in the public sector with a greater form of trust. The commonwealth also has legislation of its own but, as always on a matter of superannuation legislation, it has the capacity to exempt its own laws from some of the general superannuation laws that apply to states.

We had to come through with a balance. We thought it was inappropriate for politicians or Parliament to try to usurp the courts. In the end we have a judicial discretion on a number of these areas. We had a view that the extra portion of superannuation held on trust is something that should be held to a form of account, but someone needs to make a judgment as to what part is a family's component. If a person has been incorrupt for 20 years and corrupt for three, how do you make a judgment about what is an appropriate amount? How do you make a judgment as to what goes to defendants? That is a very onerous task. We thought the most appropriate place for that to happen is in the courts. This legislation seeks to say to the courts that they have the power to make a superannuation order. Because it is an order, rather than affecting superannuation funds, we have jurisdiction.

That leads to the question raised as to why local government and universities are exempt. Part of this goes to the models — we looked at Queensland and the commonwealth. We were acutely aware that this had to be contained in order to deal with corrupt public officials rather than more broadly in the community. The tests that were marshalled around what happened in other jurisdictions gave us guidance to limit it to people in generous superannuation schemes in Victoria, who are emergency services people — police, ambulance and fire — members of Parliament, judges and public sector employees on defined benefit schemes. While universities are created by acts of the state Parliament, they are essentially funded by the commonwealth. With local government there is a distinction by levels of government of what it is. The material policy issue is that we looked at what happened in Queensland and the commonwealth — they are far more police-related responses — and we tried to model our laws on that basis. That is where the Premier started this discussion, and we have excluded local government and the universities. We have narrowed it to the classes of people that are generally

caught by the commonwealth and Queensland legislation.

I think that answers the questions that were raised by members opposite in the second-reading debate, and on that basis I commend the bill to the house.

Motion agreed to.

Read second time.

Remaining stages

Passed remaining stages.

MAJOR CRIME LEGISLATION (OFFICE OF POLICE INTEGRITY) BILL

Second reading

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

Hon. RICHARD DALLA-RIVA (East Yarra) — I rise to make my contribution to the Major Crime Legislation (Office of Police Integrity) Bill. In doing so on behalf of the opposition, I say that we will not be opposing it, but I want to raise a number of concerns principally about the way the entire process of legislation dealing with police corruption and corruption in general in the state has been managed by the government. The bill comes about as a continuation of the ad hoc approach of the government. The government sees the way to deal with police corruption as not to manage it on a strategic or higher level but rather to react to the media and opinion. That is a sad reflection of the legislation before us.

The bill has a substantial number of parts — there are 10 parts in this amalgam of legislation — and I will look at where the parts have been changed more broadly later. More specifically I want to discuss part 3, which deals with the Ombudsman Act 1973. It talks about the director of the Office of Police Integrity replacing the police ombudsman.

We debated the Ombudsman Legislation (Police Ombudsman) Bill in this house in May, yet we are now debating a bill to remove the police ombudsman and to replace him with the director, police integrity. This shows how ad hoc the approach of the government is.

If you look further down at part 6 you will see that the Surveillance Devices (Amendment) Act 2004 is mentioned. We debated that bill in this house in May, but now we are amending it in the second week — as soon as we can — of the next sitting! Part 7 is about the Crimes (Assumed Identities) Act 2004. We debated that bill in this house in May, yet here we are amending it with another bill. Part 8 is about the Crimes (Controlled Operations) Act 2004. Again, we debated that bill this year, yet here we are amending it again. All this demonstrates the way the Bracks government is going about its legislation and how it is taking a very ad hoc approach — almost a week-by-week approach — to the legislation.

As I said, there are 10 parts to this bill, and of those the majority are amendments to bills that were introduced this year. Now we are repealing a substantial number of those bills or updating them. Members on the other side will say, 'That shows how we are dealing with the matters', but I think it demonstrates that there is absolutely no coherent long-term strategy to deal with corruption. Members on the other side will get up and say that they oppose corruption, but everyone is opposed to corruption in the police force. I do not think anyone on this side, or anyone in the house, would say, 'We support it'. But there should be some realisation that the way it has been handled by the government is less than satisfactory. The unfortunate thing about all this is that, as I said, we debated these bills in May. It is now October, only five months later, and again we are changing the legislation to move down the path of dealing with corruption.

Whilst I will not talk about the bills that are coming up for debate in the house, I indicate that further amendments to bills concerning police corruption legislation that will be debated again take ad hoc approaches to dealing with the matters, but I will not go to those now. I will talk about them as they arise in succeeding weeks, or indeed this week.

Mr Lenders — I am sure you will!

Hon. RICHARD DALLA-RIVA — I am sure I will. As I said, I am not trying to make a political statement saying that one side holds police corruption at a higher level than the other, but it astounds me that when we are meant to be managing corruption in a sense this bill is indeed creating another tier of bureaucracy or another level of bureaucratic nightmare. Why do I say that? You need only go to part 2 of the bill, and in particular to new part VB which is proposed to be inserted into the Police Regulation Act 1958. Clause 3 states:

New Part VB inserted

After Part VA of the **Police Regulation Act 1958 insert** —

> **'PART VB — OFFICE OF POLICE INTEGRITY**
>
> **102A. Office of Police Integrity**
>
> (1) The Office of Police Integrity is established.

So we now have another bureaucracy, but that is all right. We then go to the next proposed subsection:

> (2) The Office is to have a Director, called the Director, Police Integrity, who is to be the same person as the person who holds office as Ombudsman.

So we now have the office of director, police integrity, being held by the Ombudsman — the same person. My understanding is that it will be a separate office, but I may be wrong. The office will have additional staff and additional resources, while the Victoria Police is in need of basic resources. Anyone who has been out there listening will understand that the police are struggling to get a pen out of their office and struggling to get extra cars into the environment. You have 24-hour police stations that can only be manned for 16 hours a day — and the list goes on.

Hon. W. R. Baxter — And country police stations are understaffed.

Hon. RICHARD DALLA-RIVA — Indeed, as Mr Baxter said, country police stations are understaffed. The fact of the matter is that the government is creating another resource and another drain on the coffers of the Victorian taxpayer to fund another area when it could have taken a more coherent and strategic approach. Instead we seem to be taking an ad hoc approach and creating another bureaucracy, and that is a great shame. Although I am opposed to the way the process has been going on, I do support some of the nuts and bolts of the bill. As the bill states on staffing in proposed section 102E(1)(c), which is to be inserted into the Police Regulation Act:

> (1) For the purpose of performing the functions of the Office of Police Integrity or the functions of the Director, the Director may —
>
> ...
>
> (c) take persons on secondment from other bodies.

I gather that the appropriate mechanism would be similar to those of other organisations, like the Australian Crime Commission, to which police officers can be seconded. There will be a further drain through seconding police from operations into the Office of Police Integrity. It would seem more relevant to have an independent crime commission, as has always been proposed by the opposition. That would be an appropriate way to deal with crime — that is, to take a centralised and coordinated approach. I make it clear that I am making no criticism of the Ombudsman, but we should let him deal with Ombudsman-type activities and work and let a crime commission — like those established in Queensland, New South Wales, Western Australia and every state except Victoria — do its work. For some unknown reason members of the Victorian government cannot seem to get it through their thick heads that the only way to deal with corruption at a higher level is to establish an appropriate, properly funded and independent crime commission, not to take the ad hoc approach that we are seeing in this legislation and in the additional bills that will come before the house.

Most of the issues contained within the legislation are appropriate. If you take away the fact that it is ad hoc and the government cannot seem to get it right, many of these provisions should be covered by an independent crime commission. When I was at the National Crime Authority (NCA) you had to sign a document that you would not disclose things, and that is outlined within proposed section 102G which concerns confidentiality. Other than a case of perjury, if you provide information outside you would be sentenced to 12 months in jail or 120 penalty units. I remember signing something like that when I was doing a secondment at the NCA. The guts of the bill are appropriate. The problem is just the way the government has gone about it and dealt with the entire process in establishing the office. One can only wait until we see some further amendments down the track. Undoubtedly something will hit the media and government members will react as they do — that is, they govern by the media; they do not govern for the good or the will of the rest of the people. Mark my words, some other legislation will be before the house when something else arises.

As I indicated earlier, part 3 of the bill amends the Ombudsman Act 1973. Clause 7 removes references to the police ombudsman and replaces it with director, police integrity. It seems absolutely ridiculous that we had a whole bill, the Ombudsman Legislation (Police Ombudsman) Bill, before the house in May. It astounds me that we now have before us a bill that repeals it. Clause 7 repeals the words 'police ombudsman' in the Ombudsman Act, and repeals sections 6A and 6B of that act, and omits the words 'or police ombudsman' from that act.

I think it makes a mockery of the house when Parliament is implementing this legislation. The government manages on an ad hoc basis. We are debating this bill now, but in the next session we may be debating a bill that throws out the Office of Police Integrity and introduces the Wiggles bill because that is

the way this government is managing corruption. It does not know what it is doing. It is all over the place and really needs one of those little cars that may give it more control. It is ludicrous. I am being facetious in the way I am discussing this, but it frustrates me that we cannot get on top of this issue.

It makes me wonder whether the investigators who are engaged in this are dealing with the legislation. The law enforcement people deal with the legislation that comes from this place. On the one hand the government is heading down this path, yet on the other hand all of a sudden the wheel on the Wiggles car turns because the government has a heart palpitation when a journalist in a local paper writes something nasty about its favourite son, the Premier. All of a sudden he is changing his mind again.

This legislation demonstrates that the government has no clear vision for dealing with corruption in this state. It should have visited other states where strategies have been put in place. Western Australia has a very clear strategy for dealing with crime. It is absolutely bullet proof. Queensland has extensive experience with this issue, as has New South Wales. No, Victoria has gone down the path of introducing legislation — 58 pages of amendments to 10 or more pieces of legislation. The majority of them were introduced not less than six months ago to give clear guidance in dealing with police corruption and overall corruption. The government is not getting through its thick head that it cannot continue to deal with this entire process with legislation that is all over the place.

Part 5 refers to amendments to the Surveillance Devices Act. My notes say that they are appropriate and make sense. The amendments refer to surveillance provisions and are similar to what occurs. Clause 10 refers to the provision of annual reports by the director to the minister. It states that the director must submit a report to the minister that includes the following information:

> (i) the number of applications for warrants by and the number of warrants issued to prescribed members of staff of the Office of Police Integrity during that year;

This house already receives reports from Victoria Police about surveillance devices. It receives reports from the federal police and the Australian Crime Commission and other like bodies. Again, one cannot argue with the intent of the legislation but the concern is with the methodology, the lack of strategy and the lack of a strategic approach that is creating confusion.

In my view and in the minds of many people in the community the issue is that people think corruption is being dealt with in the broader sense. Police investigators can only operate within the framework of legislation. They cannot go outside those boundaries because courts may determine that the legislation was not adhered to and throw out a case. It is incumbent upon members of Parliament to make sure we have a coherent approach to corruption. This does not appear to be the case.

Part 6 proposes amendments to the Surveillance Devices (Amendment) Act 2004. Parliament is amending the Surveillance Devices (Amendment) Act that was amended earlier this year to amend the Surveillance Devices Act. That indicates the rationale of the government. This indicates its strategy in dealing with corruption and surveillance issues. Good on them! The content set out in the proposed amendments seems appropriate, but it is the way it has been dealt with. Clause 16 proposes a substituted new section 16 for the Surveillance Devices (Amendment) Act and the repeal of section 37 of the principal act. If the government were serious about dealing with corruption why was this provision not in the earlier amending act or the principal act? It did not get it right earlier, and you can guarantee that further amendments will be proposed a third time, a fourth time or a fifth time until finally this government is kicked out and a proper process is put in place with the implementation of a crime commission.

Part 7 proposes amendments to the Crimes (Assumed Identities) Act 2004. Again this house is amending an act that was debated in this place in May. I contributed to the debate, as did many others, on that bill yet now we are changing it and mucking it around again. It must be so confusing for the law enforcement officers who are trying to work within the parameters of this legislation. Members opposite are in noddy land if they think the police look at legislation every day to see what the Parliament of Victoria will do. They are getting on with the job of trying to deal with corruption, yet the people opposite, who are in noddy land, have a hot flush and all of a sudden we have another piece of legislation. The police investigators are meant to be out there trying to understand these changes! The government has no idea.

Part 8 amends the Crimes (Controlled Operations) Act 2004. I indicated earlier that I spoke in the debate on that bill, as did many others. We thought this would bring finality in moving forward on controlled operations, but further amendments and changes and confusion are now being put in place.

Part 9 amends the Telecommunications (Intersection) (State Provisions) Act 1988. We know the history of the government in trying to utilise telecommunications as an investigative tool to identify corruption. As has

been reported widely, if there was an independent crime commission, the federal government would not be so hesitant in assisting the Victorian government. I can understand the confusion that occurs with these pieces of legislation. The federal government is indicating that it does not know what this government is doing. It says, 'What is your next tack? How are you approaching it? Where are we going to now?'. It does not know what other bureaucracy will be established, probably the Wiggles office, with no disrespect to the Wiggles. The Wiggles are probably more coordinated than the Bracks government, because at least they know where they are going. This goes on and on.

The opposition does not oppose the legislation, but must put on the record its absolute dismay at the level of bureaucracy, and that is what makes Labor governments Labor governments — if they cannot work it out they create another bureaucracy. This is another bureaucracy to investigate bureaucracies. The real people undertaking covert operations, using surveillance devices, assuming different identities, controlling operations, telephone intercepts and basic policing and investigations are at a disadvantage. It is a shame that the Bracks government needs to deal with this in such an ad hoc way. It is disappointing for those hoping there would be some attempt to deal with corruption in the state.

While the Liberal Party does not oppose the bill, it believes it does not go far enough, and it demonstrates that the way the government approaches corruption in the true sense lacks credibility.

Hon. W. R. BAXTER (North Eastern) — Like Mr Dalla-Riva I am troubled by the legislation because it smacks of adhocery and confusion. The government is like a chook with its head cut off, tearing around blindly. We can all see that something needs to be done regarding corruption. It is staring us in the face. We thought for years that perhaps we were immune in Victoria, that corruption in police forces was particularly a Queensland and New South Wales phenomenon. We perhaps kidded ourselves for too long that that was so. We have seen some evidence in more recent times, and very unfortunate evidence, that despite our having a police force in Victoria that is of the highest integrity and is made up of very dedicated men and women who undertake their duties, responsibilities and tasks in the community in a very honest way and with the absolute good faith, there have been one or two rotten apples. It seems to be a part of human nature that we can not all act responsibly all the time. There are always one or two who succumb to temptation, the quick buck or whatever it is that attracts them to step outside the norms of behaviour and break the criminal law. In this case it has been particularly in the drug squad, as I understand it, that we have had some who have fallen into that disgrace.

When one thinks about the huge dollars involved in the drug trade one can to a degree, but only to a degree, understand the temptation and that some succumb to it. The experience in other states — especially in Queensland and New South Wales — should have demonstrated to the government that we need a standing commission into corruption or some such organisation much the same as those two states have, and indeed Western Australia and South Australia have as well, and that we are kidding ourselves that we can get away without having some organisation to exercise that oversight. The government knows it but it got itself in such a bind early in the piece that it could not then move and set up such a commission, or bring itself to do it, because prima facie it would have looked as if it was admitting it was previously wrong.

Hon. Richard Dalla-Riva — An emu state!

Hon. W. R. BAXTER — Exactly. No-one likes admitting that they are wrong but occasionally you have to acknowledge that you are not always right. I do not think the government would have lost too much face if it had said, 'Hang on, we are getting increasing evidence of an ongoing incidence of corruption that is endemic, albeit hopefully to a very minor degree. Yes, we opposed the setting up of a permanent commission before but we now think that that is the way to go'. The government would not have been alone in having that view because there were others who had that view that we did not need it but who are now convinced that the state does need it. I cannot understand why the government is turning itself inside out to avoid having to make that admission. We are now seeing the circus Mr Dalla-Riva outlined to the house where a police ombudsman appointed not more than 100 days ago is now being abolished by this legislation and another setup is being put in place.

The system being imposed is very convoluted. It is putting at risk the office of Ombudsman, and there is no doubt that is a proud office. We have had an Ombudsman in this state since 1973. I went back and read the second-reading speech of that great Attorney-General in the Bolte and Hamer years, Sir George Reid, who introduced the legislation prior to the 1973 election. He outlined the purposes of the Ombudsman's office and its origins in the Scandinavian countries, particularly Sweden. We have been extremely well served by ombudsmen in that office in the last 30-odd years, such as Norman Geschke, the first Ombudsman for quite a while, and

then his successors. I am concerned that this legislation could compromise the position of Ombudsman. The Ombudsman has been seen by the public as an independent arbiter, in some respects an appeal of last resort to an aggrieved citizen who believes the bureaucracy has been overbearing on him or her.

The bill is likely to get the Ombudsman in hot water, not in that particular office but wearing his other hat that is established under this bill as the director, police integrity. We will have the contradictory circumstance of the Ombudsman and the director, police integrity, being one and the same person. On the one hand and wearing one hat he will not be oversighted and his rulings and decisions will be gospel, yet on the other hand wearing the other hat he will be oversighted by a monitor established under legislation that the house will be dealing with later this week. They will be two extremely different modes of operation. Mr Dalla-Riva says it will probably mean two offices. Yes, it will; not necessarily two buildings perhaps, because they might be just across the hall from each other. We will have the crazy situation when the mail comes in of someone having to decide where it will be sorted to. Some will go to the Ombudsman and be dealt with in a public fashion and some will go across the road and be dealt with in a very secret fashion. We will have the same person engaging in public activities on the one hand as Ombudsman and engaging in covert activities on the other hand as the director, police integrity.

We will have the situation that I experienced years ago in local government where often as shire president I wrote to myself as chairman of the water authority, all in the same building and all providing the same services to the same community but wearing two hats. It becomes a ridiculous situation. In those days it did not matter much because we were not dealing with criminal behaviour; it was a quirk of the law and that law was fixed. Here we have a much more serious situation where we are dealing with matters of criminality. It seems to me that the government and we as a Parliament should not be setting up a circumstance where we will have internal conflicts, clashes and a lack of clarity by the public as to how all this operates when it is one and the same person holding both of these offices.

That is not to say that people do not hold multiple offices in other circumstances — they do but they are usually of similar ilk. Here we have two very different charters and two very different ways of operation. That seems to me to be a recipe for confusion and in that confusion disaster, injustice and danger. What happens if in his capacity as director, police integrity, the Ombudsman is criticised by the monitor we are about to appoint through other legislation? It would not be criticising the Ombudsman directly but what does that do to his role and standing as Ombudsman? He is immediately compromised, Surely the government can see that this legislation is fraught with such danger for it. It is going to get the government into trouble in the future when the Ombudsman has a cloud cast over his work because of the work he does as director, police integrity. I warn the government that it is digging a very large hole for itself with this legislation. It is not too late for the government to accept it has gotten this wrong and to go back and establish a proper standing commission on corruption in this state. I think it would win the plaudits of the public of Victoria by so doing rather than risking going down this path where it could end up with egg on its face and worse than that in effect it might well destroy the office of Ombudsman in the process.

Of course it is worth noting, and Mr Dalla-Riva referred to this in his contribution, that, in its confusion, haste and perhaps arrogance the government overlooked the fact that it does not have any power in relation to telephone interceptions and that it needs to get that power from the commonwealth government. One could say that it was a lack of diligence on the part of the Attorney-General but, knowing him as I do, I think it was arrogance on the part of the Attorney-General — he just assumed that there would not be any problem getting approval from the federal government for this, and he did not bother to sort it out before he made the public announcements.

I think quite rightly the federal Attorney-General was less than welcoming of this proposal. In a press release dated 24 August Mr Ruddock said:

> ... the Victorian Ombudsman and the director of police integrity would remain one and the same body.
>
> 'The difference will be that the Ombudsman does not have interception powers in his own right,' he said. 'However, that same person, in his role as director of police integrity, will be given covert powers including the power to intercept telecommunications.
>
> 'The fact that the Ombudsman is exercising these conflicting roles under the guise of a new name does not alleviate my concern about the inappropriate juxtaposition of the roles.'

'Well said', I say to the federal Attorney-General, Mr Ruddock. If one has regard to the commonwealth Telecommunications (Interception) Act 1979, under section 34, headed declaration of an eligible authority of a state as an agency, it states:

> (1) Subject to section 35 —

Section 35 sets out certain conditions which are quite acceptable —

> the Minister may, at the request of the Premier of a State, declare an eligible authority of that State to be an agency for the purposes of this Act.

There is no problem in actually getting the commonwealth to make such a declaration at the request of the Premier provided the body you want declared an eligible authority is the right way to go in the eyes of the commonwealth. If one looks at the definition of an eligible authority, in relation to a state, it means:

> (a) in any case — the Police Force of that State; or —

We know the police force has certain powers under very stringent conditions to intercept telephone calls —

> (b) in the case of New South Wales — the Crime Commission, the Independent Commission Against Corruption, the Police Integrity Commission or the Inspector of the Police Integrity Commission; or
>
> (c) in the case of Queensland — the Crime and Misconduct Commission; or
>
> (d) in the case of Western Australia — the Anti-Corruption Commission, the Royal Commission into Police Corruption, the Corruption and Crime Commission or the Parliamentary Inspector of the Corruption and Crime Commission.

They are all established statutory bodies in the usual way we understand corruption bodies to be. Here we have the situation where the Ombudsman, wearing a different hat and under a different name, will be requested to be the eligible authority for Victoria. It may well be that the federal Attorney-General after 9 October — it could well be Mr Ruddock continuing in the task, or maybe a successor from the conservative side of Parliament if Mr Ruddock moves on to other ministerial responsibilities — will accept the request from the state of Victoria to make this director, police integrity, an eligible authority under the act. However, I understand the commonwealth's reluctance. I understand why it has questioned this move, and I certainly understand its dismay that it was taken for granted by the Attorney-General of this state who went at this like a bull at a gate and made this announcement without having checked it out with the commonwealth, bearing in mind that it has the power in this instance.

In conclusion, The Nationals are not opposing the bill. We will vote for it because we think we need an organisation which has the power to oversight the police in terms of corrupt activities. We do not think this is the right one. We think it is messy, and we think it is going to lead to conflict. It could potentially compromise the Ombudsman in his other activities which are well respected and well supported by the community. We say to the government, we are acquiescing to this legislation but be it on your own head if it comes unstuck.

Ms MIKAKOS (Jika Jika) — I want to begin my contribution by once again affirming that Victoria Police members have our full support as they go about the important and often difficult task of keeping our community safe. Last week we marked Blue Ribbon Day, an annual opportunity to remember those police officers who have given their lives serving the Victorian people. Occasions such as Blue Ribbon Day remind us how much we value our police members and that the vast majority of police operate with honesty and integrity. However, the Bracks government has faced the reality that the behaviour of a small minority of police officers demands a coordinated response that is decisive and comprehensive. The bill before us is a central element in that response to police corruption and related organised crime.

The key purpose of the bill is to establish the Office of Police Integrity, to be headed by the director, police integrity. The director replaces the police ombudsman. However, the same person will hold the office of Ombudsman and the office of director, police integrity. The current arrangements whereby the Ombudsman and police ombudsman are the same person have proved successful. This is why the government has made a specific decision to stick with the existing structure, which has proven to be streamlined and integrated.

The director, police integrity, is being given a significant level of independence through this bill. The bill provides that the director, police integrity, will not be obliged to inform the minister or the Chief Commissioner of Police of the intention to conduct an investigation on his or her own motion. The director can so inform but is not required to, with the discretion resting ultimately with the director. Additionally he or she has discretion as to whether a copy of a report into an investigation is provided to the minister or chief commissioner.

The expanded functions and powers to investigate police corruption conferred on the director, police integrity, by this bill and legislation passed in the last sitting mean it is desirable to administratively and physically separate the staff exercising these powers from the ordinary staff of the Ombudsman. Given the strict controls that apply to the use of the director's powers, it is appropriate that the persons who exercise them are clearly identifiable. This is why the bill

establishes a separate Office of Police Integrity which will employ staff and engage persons to assist them in the exercise of their functions.

Separating the staff that assist the director, police integrity, in carrying out his expanded functions from the staff of the Ombudsman is also appropriate for security purposes. Those staff will also require a different set of skills from the Ombudsman's existing staff. I note that the government has already achieved much in regard to addressing police corruption and organised crime. It is worth while briefly outlining some of these achievements.

A great deal has been done to give the person who will become the director, police integrity, the appropriate powers and resources to investigate police corruption. In June this year, legislation was passed allowing the director to initiate investigations on his or her own motion where previously a formal complaint was required. The director can investigate policies, practices or procedures of the force as well as the conduct of individual police members. He or she has powers of entry, search and seizure that are, in practical terms, the same as those available to a royal commission. The director can require the provision of self-incriminatory information and refer possible prosecutions to the Director of Public Prosecutions. Finally, the director can request assistance from the chief commissioner that the chief commissioner must provide. With regard to resources, again in June the Premier announced $10 million in additional funds for staff, including forensic accountants, legal counsel, investigators and other specialists. This funding boost gives us one of the most well resourced anticorruption organisations in this country.

This house has just passed other measures that have been pursued in the fight against police corruption including a new power for the courts to make police convicted of corruption offences repay superannuation to the state. I note also that the government is considering the Law Reform Committee report *Inquiry into Administration of Justice Offences* that recommends updating and widening those offences that involve interference with or undermining of the justice system. I am sure this is a report that the Acting President is very familiar with. The Premier and the Minister for Police and Emergency Services have also announced new coercive questioning powers for the chief commissioner and changes to the Australian Securities and Investments Commission confiscation regime respectively that will come before us for consideration later in this spring sitting. We already have a well-resourced office with quite significant powers, and this legislation will further enhance those powers.

It is unfortunate then that we have sit here once again and listen to members of the opposition flog their dead horse during this debate calling for crime commissions and royal commissions. I will not call it a policy because it is not one. I would have thought it would have been abundantly clear by now that the government's approach to tackling police corruption is the appropriate one. We have given the right powers and the right resources to the right people at the right time to tackle what is a very significant problem.

I want to briefly turn to the provisions of this bill. I note the surveillance devices that regulate the maintenance, installation and use of listening, tracking and optical devices. Honourable members may recall that in the last sittings we amended this act to implement model laws to create a warrant regime for the installation and use of surveillance devices by law enforcement agencies in cross-border regimes. The change was part of the terrorism and major crime package of legislation of which the government is very proud. The explanatory memorandum states that clause 9 of the bill before us:

> ... amends 3(1) the Surveillance Devices Act 1999 to include the Office of Policy Integrity in the list of law enforcement agencies defined under the Act. This enables the Office to obtain warrants or emergency authorisations to use surveillance devices, subject to the same control and reporting regimes that apply to the other agencies listed ...

in that legislation. Safeguards have been established in the regime: a supreme court judge or a magistrate will have to issue a warrant to install a surveillance device depending on the type of warrant and will have to authorise actions such as forcible entry where applicable. This is an appropriate safeguard against the improper use of the significant powers.

A matter related to surveillance devices is the consequential changes required to commonwealth telecommunications interception legislation to enable the director, police integrity, to exercise what are commonly known as phone-tapping powers. In anticipation of these changes being made, the bill establishes appropriate record keeping reporting and independent monitoring measures.

I call on the opposition in the unlikely event of the federal government's re-election to pressure the commonwealth Attorney-General to commit to making the necessary amendments to the national laws. To do otherwise would be demonstrate a disregard for the individual and organisational harm that can result from police corruption. I note that, as I said, in the unlikely event that should take place it is important that we not

play politics with this important issue, and that in terms of its establishment of the special investigations model which I will come to in a moment, the bill adequately addresses the concerns that the federal Attorney-General has previously expressed in regard to this issue. There should be no reason for any further delay in respect of the federal government moving to enable these powers to be exercised here in Victoria.

Among the consequential amendments to other legislation contained in this bill, there are changes to other elements contained in the tourism and major crime legislative package. The Crimes (Assumed Identities) Act establishes a scheme for the authorisation and oversight of the use of assumed identities in order to investigate offences or gather criminal intelligence. The Crimes (Controlled Operations) Act is about authorising persons to commit offences as part of a cross-border criminal investigation. Amendments to these pieces of legislation allow the director, police integrity, and relevant members of his or her staff to take advantage of these investigative tools.

As I mentioned previously, the bill also establishes the oversight functions of the new special investigations monitor. Consideration of that legislation will give us an opportunity to speak more fully on these changes, but in summary they ensure that the exercise of covert powers by the director of police integrity is subject to independent monitoring.

By way of concluding remarks, despite some of the issues raised by member of the opposition, I am pleased that this bill will proceed here today. It is important that we move to further enhance the powers of what would now be the office of the director of police integrity which will play a central role in the total package of anticorruption and organised crime measures which the government is implementing.

These measures represent a considered response to an isolated but serious problem and will provide an effective framework to enable us to rebuild full confidence in our police force. The force has a proud heritage, and it is one which will, I am sure, remain a source of pride for all of us. I commend the bill to the house and wish it a speedy passage.

Hon. B. N. ATKINSON (Koonung) — Welcome to a camel! This is a piece of legislation that has been cobbled together by this government to address the issue of police corruption in a way that is quite unsatisfactory. It has been adopted by the government because it refuses to walk away from a minister who is totally incompetent. The minister for police has absolutely botched his administration in the police force. I think this government dug itself a very deep hole in terms of its position on police corruption and refused from the outset to consider what was a very reasonable and very proper suggestion by the Liberal Party and, as I understand particularly from Mr Baxter's contribution today, supported by The Nationals to establish an independent crime commission or a similar independent body that would investigate police corruption and ensure the integrity of our police force which is absolutely crucial to the community. This government instead tried to play politics as a result of trying to back an incompetent minister in the minister for police and as a result we have what is now a camel.

Mr Baxter probably described this best in his contribution to the debate today. My concern as a member of this Parliament and as somebody who is looking at the integrity of government processes from a community point of view is that the Ombudsman's office has now been totally compromised by the political ineptitude of this government, by an ad hoc decision, by decision making and public policy creation on the run, by a government — as Mr Baxter rightly said and Mr Dalla-Riva alluded to in his remarks — that refused to admit that it was wrong in trying to tough it out and avoid any sort of scrutiny or any sort of action on police corruption issues in the first instance, and then day after day was forced to back-pedal and in that back-pedalling try and come up with some sort of policy response.

This government will find that it is to its detriment to continually use public relations spin as a means of developing public policy. In other words, it drafts the press releases first and then works out what the public policy might be to suit the press bin. The government will learn to its detriment that that is a very poor approach to the administration of government in this state and that Victorians are the losers for a government that is obsessed with its media image and fails totally to understand the need that it has to address the issues that face Victorians and to elect or to appoint competent ministers who are able to carry out the processes that are already laid down in legislation and are able to come up with proper public policy perspectives, processes and policy initiatives that will deliver better results for Victoria.

Ms Mikakos's speech today was simply a continuation of the public relations spin of this government. As the Honourables Richard Dalla-Riva and Bill Baxter indicated in their addresses — and I agree with them entirely — this legislation before the house today is simply a politically expedient solution. It is an attempt

by the government to compromise on good policy and design and to avoid any sort of comment that it might have backed down or changed its position on the need expressed by the Liberal Party to establish an independent crime commission. As the Honourable Bill Baxter said, one of the things that goes to the core of this as far as I am concerned is the quite different and conflicting responsibilities that we now give to the Ombudsman in this state. I think this is a recipe for disaster. I think the government's politically expedient solution will come back to bite it on the backside big time.

Sitting suspended 6.30 p.m. to 8.03 p.m.

Hon. B. N. ATKINSON — Before the dinner break I was expressing concern that the government's legislation before the house tonight is a piece of ad hoc legislation, a compromise on what ought to be the approach to dealing with police corruption and ensuring public confidence in the integrity of the police force.

I share that concern with the Honourable Bill Baxter, who earlier so eloquently spoke about the potential conflict of interest between the respective roles of the Ombudsman imposed by the government under this legislation. As we know, the Ombudsman is charged with undertaking investigations on behalf of citizens who are concerned about administrative disadvantages or government processes that they feel have treated them harshly — and the Ombudsman's independence and integrity in that role is so important — and now we have legislation that, according to Mr Baxter and also Mr Dalla-Riva, will compromise our Ombudsman because he is now expected to undertake a very different role with very different responsibilities that involve him in covert activity, in investigations that are of an entirely different nature to those that the public has come to understand an Ombudsman is responsible for. As I indicated, this is all because the government has simply refused to establish a separate body to investigate corruption in this state. As a result — again I refer to the speech of the Honourable Bill Baxter, because he put it so succinctly — we have a situation where the Ombudsman is compromised. Where these contradictory roles exist under this legislation there is potential for conflict.

The opposition does not oppose the legislation, and I note that the National Party's position is very similar: While we are not opposing this position, because we certainly believe any moves to ensure the integrity of the police force as a matter of public confidence is very important, we have absolutely no doubt that it is important to look at this legislation and at the fact that it is not achieving what ought to be, and would be, achieved by establishing that public confidence. This legislation is a compromise that fails to provide any guarantee of a full, exhaustive and comprehensive investigation of corrupt practices in the police force.

Government members, particularly Ms Jenny Mikakos, have argued that the government has provided a range of resources to the Ombudsman to ensure that there is proper investigation of police corruption and complaints against the police force in that regard. Other legislation is to come before this house that tackles a range of investigative powers and resources for the Ombudsman in carrying out the responsibilities that are also referred to in this bill; but the reality is that this is not the process that ought to have been followed by government — the body that ought to have been established to ensure the integrity of the police force and that there was rigorous, comprehensive and effective vigilance about police integrity in this state. That would only have been achieved in my view and indeed in the view of the opposition by the establishment of an independent commission.

The Liberal Party is certainly concerned that this position is bureaucratic. We have had reference to the fact that the Ombudsman effectively will be talking to himself about some aspects of this legislation and the administration or discharge of his duties. We have a situation where the Ombudsman and the director, police integrity, are the same person. There have to be issues about the workload involved in that role. There is a concern that this is very much smoke and mirrors and PR spin designed to protect an incompetent minister — the Minister for Police and Emergency Services in the other place.

There are great concerns that the level of funding provided to support the Ombudsman in his new capacity as director, police integrity, is inadequate, and that the level of resources, notwithstanding legislation that has and is to come before this place, is inadequate. We have significant concerns that while the Office of Police Integrity can second investigators from Victoria Police, the director, police integrity, still must rely on the chief commissioner to determine the level of manpower and resources to be provided, so there is a compromise even in the investigative powers that are conferred upon the Ombudsman in this legislation.

Certainly there is a major concern about the adverse report of police corruption still having to be advised to the chief commissioner. This matter was touched on very significantly in this debate by the Honourable Richard Dalla-Riva. That is a position where the independence of this very role that is created by this legislation is brought into question, certainly in the

public's mind. Public confidence relies on this position being established, yet here we have the very position being responsible back to the chief officer of the very people they are likely to be investigating.

That has to be a matter of concern. It has to be a contradiction in terms of the legislation before us and the intent of the government. It really goes to the heart of this position of public relations (PR) spin over substance in terms of public policy development. There have certainly been inadequate details provided to the opposition, and I dare say to the public, with respect to who will be the special investigations monitor, the level of resources to be provided to that person, and whether or not that person will be truly independent in the context of this legislation.

We have heard the PR line from the Ms Mikakos, but this house ought to be far more persuaded by the position put by the Honourable Richard Dalla-Riva, and certainly the position put by the Honourable Bill Baxter, which demonstrated very clearly to the house that there is a contradiction in the position that is established in this legislation, that there is a very significant potential conflict of interest and that without a doubt we have, as I said earlier, a triumph of PR spin over substance in policy development. The government has resorted to this legislation to wallpaper over the cracks, and in this instance the cracks are very clearly the incompetence of the Minister for Police and Emergency Services in the other place, André Haermeyer. He is one of the most incompetent ministers that has ever come into this Parliament and taken a commission from Her Majesty. I say 'one of' — —

An honourable member — That is a big statement.

Hon. B. N. ATKINSON — It is a big statement. I was going to say 'the most' but I said 'one of the most', because the Minister for Transport in the other place, Peter Batchelor, now takes over after what he said about Scoresby today.

Hon. R. H. BOWDEN (South Eastern) — At the outset I would like to say that honourable members of this chamber do respect the Victoria Police. There is no question that the vast majority of Victorian police officers are professional, conscientious and hardworking. They do their very best to deal with the difficult circumstances and the hard work they are required to carry out. This legislation is not in any way a reflection on the integrity of the majority of serving officers of Victoria Police. It is unfortunate that from time to time there is an ultra-small minority of individuals who let the professionalism of Victoria Police down. This bill is intended to address some of the difficult circumstances where those situations have to be corrected.

In one way this is an opportunity lost. Other jurisdictions have addressed the same problem and faced similar circumstances within their police forces, and there has been a recognition that the ability to not only be truly independent but to also be seen to be independent is paramount in the minds of the public. This is an instance where Victoria could have taken the opportunity to introduce legislation to establish an independent crime commission with suitable powers. As our community and our legislative base get more complex the police have a certain role, and that is really the maintenance of law and order, the detection of crime and the prosecution of crime through the appropriate legislative avenues. However, the disciplinary aspects of our police force require an independent authority such as an independent commission or some legislative power that is in the minds of the public, not only in its perception, but in reality quite separate and distinct. It may have been appropriate in years gone by, and even up to the present time, for the disciplinary and investigative powers related to the performance of Victoria Police to be internal, but many opposition members feel that the time has perhaps come for that situation to change. It would certainly not be leading legislation because other models exist within Australia, and I suggest to honourable members that this is indeed an opportunity lost.

Many members of the opposition are concerned that this bill is complex; it could be described as cumbersome. It is certainly confusing, and presents to senior officers of Victoria Police, and perhaps other members of the judicial process, a very complex picture of who is responsible for what. Of course one can always say, 'Go and read the bill, go and look at the notes, do all that', but this bill is a very complex one to understand. For instance we have in this legislation a combination of the responsibilities of both the Ombudsman's position and the director, police integrity, in the hands of one person. There will be many circumstances where those responsibilities are quite distinct. I hope they will not be openly contradictory, but they are two distinct hats.

One of the unsettling aspects of this legislation is that there are certain statutory positions in this state that already enjoy strong public support. For example, the public is very supportive of the concept of and the carrying out of the responsibilities of the position of Auditor-General. The position of Solicitor-General also enjoys respect and wide community support, as do the

positions of police ombudsman and Ombudsman. The aspect of this bill the opposition is unhappy about is that whilst we certainly respect the individuals and their professionalism and so forth, there is an opportunity for that complexity in the combination of these two positions of Ombudsman and director, police integrity, to cause confusion in the minds of many members of the public. That would be unfortunate, but it is inevitable under the construction of this bill.

The bill itself changes at least three acts that were debated in months not long gone by. It may be that the government is thinking there needs to be a change, but this house considered the three acts mentioned by earlier contributors in depth. They are the Surveillance Devices (Amendment) Act 2004, the Crimes (Assumed Identities) Act 2004 and the Crimes (Controlled Operations) Act 2004. By the consideration and passing of this bill we are tonight amending those acts which were featured in this place only a relatively few months ago. That is not good. It suggests to the constituency in Victoria at large that the government is working on a program that is not clear, and that is the best way I could describe it.

The aspects of this bill that cause concern, apart from the confusion, are that while statements have been about the additional monies and funds that will be made available for the operation of these positions and the Office of Police Integrity, there is no guarantee of allocations of funding in future budgets. While it may be the good intention of the administration at this time to provide initial substantial money, extra funding is not guaranteed.

Another aspect that concerns the opposition is that no matter how diligent, professional or effective the director, police integrity, is there is a requirement that reports pertaining to the operations of individuals in Victoria Police must be reported both to the minister and the Chief Commissioner of Police. On one hand that is perfectly acceptable, logical and sound — if a critical report in relation to the performance of a member of Victoria Police is determined by the director, police integrity, one should expect that reports would be forwarded on. The difficulty with one aspect is that if you go through the cycle of funding, resource allocation and provision there is no clean-cut, clear line. The Office of Police Integrity, as I understand it, is dependent on Victoria Police itself for its budgeting arrangements and financing. That is not a reflection on any individual or any office-holder — it is just a circumstance which is not attractive and does not support the concept of independence.

I feel strongly that the time has come for Victoria to really address the opportunity of creating an effective, independent standing crime commission with the focused intention of addressing police integrity. I personally believe through my work as a member of Parliament that the members of Victoria Police I have come into contact with over several years now are people one can and should respect — they do a very good job — but in order to make sure that we as a total community have the resources to address the unfortunate circumstances that arise from time to time the public would be very supportive of a body that was totally independent of Victoria Police. I am disappointed that the government has not seen fit to encompass that in its basic consideration of the fundamental issue of potential police corruption here in Victoria.

The bill is useful in terms of its ability to provide redress for the community where circumstances require it. However, we need something better and certainly something much clearer and simpler in terms of perception, visibility and administrative practice. With those few words I conclude my contribution.

Hon. C. A. STRONG (Higinbotham) — I start by saying that the confidence and honesty with which the community views the police as the upholders of the rule of law is the very bedrock of our democracy. If we do not have confidence in the rule of law and in those who uphold the rule of law, we really have nothing. This is an extremely serious issue. If it were not so serious this piece of legislation would, frankly, be a laughing matter. I will quote from an email all members of Parliament would have received only this afternoon from the Department of Parliamentary Services highlighting the fact that we are in Community Safety Month. It gives some instructions to members.

The first of its three instructions is:

> Remove anything that blocks your view.

Surely this bill goes a long way towards obfuscating, confusing and blocking our view which is absolutely contrary to what good practice would be.

The second instruction in this community safety bulletin is:

> Remove anything that blocks an exit.

I am sure this bill is all about trying to create an exit for the Bracks government in case things go wrong. That is why government members have failed to do the right thing — that is, go straight to a royal commission to get to the very heart and nub of the problem and root out

police corruption. Why? Are government members afraid that police corruption will somehow lead back to them? Clearly they follow this bit of instruction — that is, to remove anything that would block your exit.

The third and last item in this community safety bulletin is:

> Take your duress pendant out of the drawer!

Surely today Mr Bracks has done that after he has been exposed as a liar and a cheat on Scoresby and after he has been exposed as one who has defrauded and gone out of his way to lie to the Victorian community, having put the whole question — —

Ms Romanes — On a point of order, President, it is not acceptable in this house for members to refer to members in the other place in such an offensive way. I ask the member to withdraw those remarks about the Premier.

Hon. C. A. STRONG — I am happy to withdraw those remarks and to go on to say that it is disgraceful that the Premier would have sought to mislead the public of Victoria by going to the polls with a clear position in the knowledge, as has been exposed by the evidence laid before the house today, that the government clearly had in mind tolling the Scoresby freeway. We now have a better understanding of why the government rushed to the polls after three years — the minimum possible time. Clearly it did so with a view of hiding that issue.

I now turn to some of the detailed provisions of the bill which should save a government member from getting up to make a point of order. Members of this house were here only months ago to deal with the Ombudsman Legislation (Police Ombudsman) Act 2004, and we were told that that piece of legislation was the solution to world hunger, would solve all the problems, would have powers akin to a royal commission, would be able to root out corruption and would get to the bottom of all the problems exposed by the media running through certain elements of the police force in this state. And here we are only a matter of months later! We are bringing in a new piece of legislation to establish the Office of Police Integrity, and in bringing it in the government is foreshadowing yet more legislation. So what we were told previously was clearly more of what was exposed to us today — that is, that there is a hidden agenda and a position that is not explained to the public, as we saw with the Scoresby information.

We now have an absolutely ludicrous situation where the Ombudsman, whose position is of enormous importance to this state, is being given another job as the director, police integrity. We are told in this bill that it will be a separate office. So the Ombudsman will be sitting in office 101 as the Ombudsman, but when he has some problem with police integrity he will say, 'Excuse me! I have to rush along the corridor to office 102 to deal with it'. After dealing with that problem he will then rush back down the corridor to office 101. What a ridiculous situation it is that we have the one person trying to do two important jobs! What does it mean?

Hon. J. M. McQuilten interjected.

Hon. C. A. STRONG — No wonder you people opposite do not like what I am saying. It is because you did not have the courage to go to a royal commission and deal with the matter properly. No, you had to put in this half-hearted — —

The PRESIDENT — Order! I ask Mr Strong to speak through the Chair!

Hon. C. A. STRONG — I apologise, President, but I was provoked by those members opposite who are quite clearly embarrassed by this piece of legislation, which fails to deal with this issue. It is a half-pie, half solution which in no way seeks to go to the core.

Honourable members interjecting.

Hon. C. A. STRONG — There they go again, President, catcalling because they are afraid to set up a royal commission — as was done in New South Wales and Queensland — to get to the issues to solve it. No, the government has to go to a situation where it gives the Ombudsman some sort of job to do, then it gives him the so-called powers of a police integrity commissioner.

It is absolutely ludicrous. Then government members have the gall to say, 'We want action, not a media circus'. As I explained when I started my contribution, we have had one bill after another, and another bill has already been foreshadowed, but what action are we getting? The only action is in this house not out there where we need to solve the problem. To solve the problem we are putting through legislation to try and fudge over the issues. I have to ask: why are government members doing it? And that is the question that the community of Victoria is starting to ask. How can you have an Ombudsman who has to do the job of Ombudsman, a very important job, and then give him another equally and hugely important job and expect him to do both jobs? Government members expect him to shuttle up and down the corridor from one office to another to do those jobs. I do not know why the

government does not give the job that has to be done to somebody to do it. It seems to me that the only reason government members do not do that is because they are fundamentally afraid.

Mr Pullen interjected.

Hon. C. A. STRONG — Mr Pullen said, 'Sit down', because he does not want to know the truth. This man has avoided the truth on every turn. He perverts and distorts the truth, fails to represent his constituency and does not want to know the truth. He said, 'Sit down!' because he does not want to know the truth.

I will try to return to some of the issues. This bill also seeks to give some of the powers of some of the recent legislation brought through this place — that is, the legislation concerning surveillance devices, assumed identities and controlled operations et cetera — to the director, police integrity. Having introduced those bills only a matter of months ago we are now amending them to give similar powers to that person. Not only are we giving those powers to him over and against the police commissioner, but we are also saying that because many of these pieces of legislation go across all jurisdictions, including the federal jurisdiction — in many cases they have not yet been introduced and are template legislation across all states — that we are going to jump over the start dates in those pieces of legislations and give them now.

Once again it is an absolute farce that these people do not get on and do the job properly. The ultimate farce and the ultimate joke — and if this were not such a serious issue going to the fundamentals, the very foundation of the rule of law that makes our society work you would die laughing — is that these enormously important powers of utilising surveillance devices, assuming identities and controlling operations cut across the normal course of law, and because of that we clearly need to have them oversighted to see that they are not abused. That oversight is the Ombudsman, and it is quite reasonable that the Ombudsman oversight those activities if they are done by the police.

But now we have given those same powers to the very same Ombudsman under the new name of director, police integrity. The Ombudsman cannot oversee his own activities, so we have to put a new person in place — a director, police integrity — who overviews how the Ombudsman uses these powers. The police are using the powers and the Ombudsman overviews them to see that they are not abusing them, but when the Ombudsman does that quite clearly he needs to be overviewed by somebody else to see that he is not abusing the powers. What a joke! When somebody else is using the powers the Ombudsman makes sure that they are not being abused, but when the Ombudsman uses them he has to be overseen by somebody else. Talk about the inconsistency of the whole thing! It is an absolute joke.

Hon. T. C. Theophanous interjected.

Hon. C. A. STRONG — Mr Theophanous makes a wisecrack. I know he is a relatively intelligent individual and he must be severely embarrassed by this legislation because it is cobbled together, inconsistent legislation aimed at doing one thing. Let us not back away from what it is doing. Its objective is to avoid a royal commission and to simply make it difficult for the government and the judiciary to go in and solve this problem. It is all about trying to avoid proper scrutiny. It is a disgrace and a pity. I and many people in my province of Higinbotham ask why the government is doing this. Why does the government not do as other states have done and have a royal commission and find out what the situation is? Why does the government not do that? Why does it want to avoid setting up an independent person to investigate this? We do not understand it. But today there was a glimmer of light because we have seen what the Premier has done. We saw it in those papers on the Scoresby freeway which showed that the government cannot tell the truth. What is it hiding? Today we saw the sort of thing that the government is hiding. Why does the government not have a royal commission to look at this in an independent way? The government talks about a waste of money, but it is all an excuse to hide things. Today the Victorian public has seen how the government tries to hide things. They have seen the dishonesty and the hypocrisy. They know that the government cannot be trusted. And if it cannot be trusted with the law and order of this state, it is a sorry day for democracy and a sorry day for Victoria.

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — The Major Crime Legislation (Office of Police Integrity) Bill is the latest clumsy attempt by the Bracks government to put a positive spin on the police corruption issue. The opposition's position is very clear. Nothing short of an independent inquiry into police corruption and its links to organised crime will do. But what is the government's position? It is all over the place on this issue. It refuses point blank to have an independent inquiry into the issue of police corruption and its links to organised crime. The issue that needs to be canvassed is why the government's position has changed. It is interesting to look back at comments made by the then opposition leader, the Honourable John Brumby in the 1990s — —

Hon. T. C. Theophanous — Good man — great Treasurer!

Hon. G. K. RICH-PHILLIPS — Mr Theophanous says, 'Good man'. We can only reflect on Mr Theophanous's role in having him removed as Leader of the Opposition. As opposition leader Mr Brumby repeatedly called for a judicial inquiry into Victoria Police on the strength of issues at the time, such as the police window shutter issue, where relatively junior police officers were allegedly getting kickbacks for directing victims of crime to certain window shutter suppliers. At that time Mr Brumby thought the level of corruption was enough to justify a judicial inquiry. Yet if we jump forward to 2004 we have had no less than 25 gangland killings and allegations that they are linked to the police. There has been intimidation and threats towards police officers who are investigating these killings, and yet Mr Brumby and the government are now silent on the need for an independent inquiry into this issue. We have to ask why? Mr Strong asked it, and we have to conclude that it is because the government is concerned about what an independent inquiry will find. The government cannot control an independent inquiry, and this is a government that likes to control the message and the spin that comes out on this issue. If you set up an independent inquiry you very quickly lose control of what comes out and what the public has to deal with. For that reason we are seeing the government repeatedly refuse to set up an independent inquiry into this issue.

As Mr Dalla-Riva canvassed in his contribution on this legislation, we are seeing a piecemeal response from government. It is only a couple of months since we last passed legislation on this issue, and now we are seeing changes to the legislation again because this government is governing by press release. The Attorney-General and the Premier made the announcements late in the autumn sitting about a whole raft of changes to the structure to investigate police corruption, including an announcement of phone tapping powers, but because this is government by press release we did not even have the most basic research into what would be required for a Victorian agency to have those powers. There was no consultation with the commonwealth and no reference to the commonwealth Attorney-General. The Victorian government put out a press release saying, 'This is what we will do'. Of course it was very quickly on the back foot — —

Ms Romanes interjected.

Hon. G. K. RICH-PHILLIPS — Ms Romanes, the Victorian government should have spoken to the commonwealth before it announced that it would assume powers that the commonwealth had. It was very sloppy of the government and a demonstration that it is governing by press release. Why did it not do its homework on this issue? Why did it not work out what powers it needed from the commonwealth to pursue its preferred course of action instead of simply coming out with a press release saying what it was going to do and then finding that it did not have the power to do what it claimed it would do, and consequently it has been on the back foot. Is it any wonder that the Victorian public cannot have confidence in this government on this issue. The response has been piecemeal and all over the place. This legislation is just the latest, changing some of the provisions that were introduced in May. Earlier Ms Romanes said that there will be yet more legislation on this issue.

As most Victorians now know, this afternoon we had the farce of the Premier's position on the Scoresby freeway unravel in his face with the revelation that despite his claims to the electorate that he knew nothing about tolls, documents exist to show that it was in fact considered by cabinet a full 12 months before the Premier claimed to have first looked at it. So those lies have undermined the confidence of the Victorian public in the Premier and in this government.

Hon. T. C. Theophanous — On a point of order, President, I take exception to the member referring to comments made by the Premier as being lies, and I ask you to ask him to withdraw those comments.

The PRESIDENT — Order! The member finds those words offensive and I ask the honourable member to withdraw them.

Hon. G. K. RICH-PHILLIPS — I withdraw the words that the minister finds offensive. The words that the Premier has placed on the record so far as Scoresby is concerned have been shown to be false. The Premier has misrepresented that situation and there is no doubt — —

Hon. T. C. Theophanous — On a point of order, President, this is a bill about major crime legislation, it is not a bill in relation to the Scoresby freeway. The previous speaker sought to go down that track. This debate is in danger of becoming a debate about the Scoresby freeway rather than on the bill, which is about major crime legislation. I ask you, President, to bring the member back to the bill.

The PRESIDENT — Order! The member is not the lead speaker. Previously I have given latitude to the lead speaker, but the member is speaker no. 7 or 8, so I ask him to come back to the bill.

Hon. G. K. RICH-PHILLIPS — Thank you, President, for your ruling. The issue at hand is the credibility of the Premier and the government. We have seen that that credibility has been undermined on the Scoresby issue, and this legislation today and the government's response to the issue of organised crime and police corruption demonstrate why the Victorian public can have no confidence in the Bracks government on this issue.

Motion agreed to.

Read second time.

Third reading

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — By leave, I move:

That the bill be now read a third time.

In so doing I acknowledge comments made by members on the bill.

The PRESIDENT — Order! I am of the opinion that the third reading of the bill requires to be passed by an absolute majority. I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

The PRESIDENT — In order to ascertain that the required majority has been obtained, I ask those members who are in favour of the question to rise in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

Remaining stages

Passed remaining stages.

STATE SPORT CENTRES (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. J. M. MADDEN (Minister for Sport and Recreation).

EVIDENCE (WITNESS IDENTITY PROTECTION) BILL

Second reading

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

Hon. C. A. STRONG (Higinbotham) — In rising to speak on the Evidence (Witness Identity Protection) Bill I am happy to inform the house that the opposition will be supporting the bill, which is a necessary and important piece of legislation. The bill is the fourth of a suite of criminal bills that have been introduced, three of which were introduced in the last sitting. The bills relate to putting in place a system that will work across Australia for activities that are in place to mitigate and try to catch and punish major crime in the form of international crime, terrorism, drug smuggling and the like — major crime that crosses state and national boundaries.

The four pieces of legislation are extremely important because they go to the very heart of how society needs to deal much more effectively with terrorism and organised crime. The truth of the matter is that organised crime and terrorism are in most cases national in nature and in many cases international in nature. Although we have a system of law based on state jurisdictions, in many cases when faced with modern forms of criminal and terrorist activity clearly the state jurisdictions are no longer appropriate.

By way of background, and it is a background that was highlighted in debate on the three previous bills in this suite of legislation, these bills came out of work done between the states — by the attorneys-general of the various states and the federal Attorney-General — to try to put in place a process which would work across the nation. Although our jurisdiction might stop at the Murray River, criminals do not stop at the Murray River. The point needs to be made that crime is national in nature in many cases. We have seen that in many recent instances including one where a young child was kidnapped in Victoria and the publicity surrounding the parents resulted in the discovery that the child's father was wanted for drug offences in New South Wales. It is unfortunately too easy for criminals to move from one state to another in an attempt to avoid capture and the prominence that results from that. Therefore, it is

important that we work on these issues on a national basis.

In this regard it is worth commenting on what has been said about the issue of terrorism, which, I hasten to point out, is dealt with by this bill. Much has been made in this federal election campaign, and frankly much has been made incorrectly, that somehow if we concentrate on terrorism 'in our own area' we will be able to deal with the issue. That is clearly a nonsense. Terrorism is international. In terms of its training, funding and motivation, terrorism is international in nature. To think that we can, as the federal Leader of the Opposition, Mr Latham, would assert, wipe out terrorism in Australia simply by concentrating on Indonesia is a total nonsense. Terrorism and those who fund it, train it, motivate and inspire it come from throughout the world. Like criminals they will go wherever it is easy for them to carry out their trade. If we seek to wipe out terrorism, we need to think on an international basis, just as we need to think on a national basis to wipe out crime. It is a nonsense to think that terrorism which takes place in Australia is not funded, trained or inspired by areas in the northern hemisphere. Quite clearly it is. It is just another Labor lie to the Australian community to tell people we can solve our problems simply by concentrating on antiterrorist activities in Indonesia. We cannot. By its very existence this bill is an acknowledgment by the Bracks government that Mark Latham is not telling the whole truth.

As I said, this bill comes from a meeting of attorneys-general and law officers from around Australia who acknowledged the necessity of some national coordination and some reciprocity of rules and regulations so that if particular activities are taking place to counter terrorism and major crime in New South Wales, those activities can seamlessly cross the border and take place in Victoria, Queensland or South Australia. This is what this bill seeks to do in the area of witness protection.

The meeting that took place and provided the genesis of these bills highlighted the need for a nationally coordinated approach to law enforcement. Commonwealth, state and territory leaders met in 2002 for a summit on terrorism and multinational crime and undertook to establish a set of model laws to apply to all Australian jurisdictions. These model laws have since been developed by a national joint working group established under the Standing Committee of Attorneys-General and the Australian Police Ministers Council. This work culminated in the publication in November 2003 of the *Cross-border Investigative Powers of Law Enforcement Report*. It laid out the issues and proposed model laws. This bill deals with one of those insofar as it deals with witness protection.

This legislation will be replicated in other states. The suite of bills I referred to before is based on the fundamental principle that if an authority in one state has carriage of an operation and a warrant, activity or whatever is issued or takes place in one state, it will be recognised as valid in all participating jurisdictions. Through this agreement these activities against organised crime and terrorism can be conducted by various state police on an Australia-wide basis without stopping at the old colonial boundaries.

The three bills we have already dealt with were touched on in debate on the previous piece of legislation. They are the Crimes (Assumed Identities) Act, the Crimes (Controlled Operations) Act and the Surveillance Devices (Amendment) Act. This bill is the final in this suite of legislation. It allows people who are in a witness protection program or have an assumed identity to give evidence in court in any Australian jurisdiction and to conceal their identity from those who would seek to damage or harm them or stop them from giving evidence if their real identity was known. It allows them to give evidence in court without disclosing their true name and address. The reasons for this are pretty clear — if they are giving evidence in an organised crime case, if they are working undercover, or if they have decided to turn Queen's evidence, they may well be in danger if their real identities were exposed to the full light of day, as would be their families and relations because those involved in organised crime and terrorism will stop at nothing to protect themselves.

So where we have a case where somebody has an assumed identity or is an undercover operative that person can now be a witness in any case against a terrorist or organised crime activity anywhere in Australia. That is known as a witness identity protection certificate. In other words, if somebody is an undercover operative or is in a witness protection program in New South Wales and if there is a court case here in Victoria where they need to give evidence to bring about a conviction, a witness protection certificate can be issued in New South Wales and the witness identity protection certificate will be recognised by the Victorian courts. That person can give evidence without exposing their true identity and so avoid all the dangers and risks involved in that.

There are some important twists and turns in this which I will lay out. The first is that Victorian common law does currently recognise that a judge or magistrate has the discretion to allow a witness to give evidence without revealing their true identity in what are deemed

as appropriate circumstances. We can all imagine what they are. In a case which is home grown — it involves somebody who is giving evidence in a Victorian court where the crime has taken place in Victoria and it is being carried out in a Victorian jurisdiction — then the Victorian law will rule. Although this is not made particularly clear in the bill, because there is no reason for it to be made clear, one presumes that the same sorts of conditions would apply in New South Wales and other states where there are undoubtedly similar common-law provisions about a magistrate or a judge's discretion to not reveal the identity of witnesses in certain circumstances. But where it is a cross-border case, then these witness identity protection certificates come into play.

What the bill does is amend the Evidence Act 1958 to state that when a witness identity protection certificate has been issued, then that witness need not expose their identity. However, when one thinks about it there are certain potential problems, because when a witness whose identity is not known gives evidence in a particular case it is potentially quite difficult to go to the credibility of that witness. If one does not know who he or she is, it is difficult to then get a fix on their credibility, their prior involvement in crime, the courts and so on, to test their validity. In particular in cases where a witness might want to keep their identity secret but may well have been involved in criminal activities in the past, or where the question may be asked, 'Why are they giving evidence in this particular case and is their evidence credible given the background of their past, their previous dealings with crime and with the law et cetera?', there needs to be clearly an ability in the hearing of the case to question the credibility and the background of the witness while at the same time protecting their identity.

This is necessary but clearly creates some challenges. Somebody whose witness identity is protected is still required to disclose information about their past — any aliases and prior convictions they may have had; any findings of guilt that may have been established against them; their outstanding charges; any professional misconduct; allegations or false representations et cetera. In other words, they do not have to expose their name and address but they are required to expose their full legal and criminal history so that their credibility can be tested in any case. It could be a miscarriage of justice if that were not allowed to happen.

By way of a safeguard in cases of that nature the bill provides that a party may apply to the court for leave to ask a witness to answer questions and make a statement that may reveal their true identity. In other words, there is the first fall-back position that somebody whose identity is protected is nevertheless required to give their full history so that their credibility as a witness can be tested. The next situation is that such a witness may also be asked questions and required to give their identity to further test and allow the credibility of their evidence to be tested, but if that happens, then that evidence must be held in the absence of a jury and in a closed court. Although the witness's identity in that circumstance may be known it is not something that can be made public.

The third situation is that the court may also grant leave to ask questions if there is evidence that would call into question the credibility of the witness. As a further safeguard, the presiding officer or judge can require an interstate operative to disclose their true identity to the presiding officer or judge. The very important sanctions surround all that to protect the identity of the individual, but nevertheless the presiding officer can determine to seek that detailed information to ensure that there is no miscarriage of justice in terms of anything misleading that may take place by an individual not exposing their true identity.

Further the bill establishes two major offences which one would expect. One is recklessly exposing the identity of somebody who is protected by a witness protection certificate, and the second is deliberately exposing the identity of somebody who is protected by a witness protection certificate. As one would understand there are fairly significant penalties for that because there is the potential for a very real danger to life and limb for somebody if their real identity is exposed. This bill will come into effect on proclamation, although the point is made that it is uncertain as to exactly when that will be because similar legislation will be taking place in other jurisdictions to ensure that these witness protection notices — the similar procedures — will exist in all jurisdictions to make the system work as a mechanism that crosses all jurisdictional boundaries. So it will come into full effect when all jurisdictions have enacted similar legislation.

The bill also includes the intention to alter or vary section 85 of the Constitution Act 1975. We normally do not like these amendments to the constitution which the government is bringing in seemingly at the drop of a hat, but in this particular case the amendment is of importance because what it does — and this is one of the reasons why I mention it — is to make these witness protection certificates unappealable at the Supreme Court. If somebody was issued with a witness protection certificate and that could be appealed in the Supreme Court and the witness's identity was exposed

by virtue of that, it would rather render the whole system ineffective. Of all the constitutional changes that seem to have been brought in by this government at the drop of a hat, I must say that we see some justification in this particular amendment. So with those few comments, I commend the bill to the house.

Hon. W. R. BAXTER (North Eastern) — I do not propose to dwell at any length on this legislation. The Nationals are supporting it. It goes to the issue of witness protection which the house dealt with at some length not so long ago, and I contributed to that debate. As Mr Strong has set out, this further amendment extends the provision of witness protection to interstate cases, either interstate witnesses giving evidence in this state or vice versa. It is going to rely on companion legislation being passed in other jurisdictions and one would expect and hope other jurisdictions are getting on with that.

Clearly crime is increasingly of a national and international nature and it has to be admitted that a witness protection act which stops at the Murray River is of precious little use. It seems to me that increasingly in the future with a whole range of laws, but particularly laws that relate to crime, state boundaries are going to become more and more a hindrance, if anything. We will be looking more and more to national legislation, either by handing over powers to the commonwealth to legislate for that particular power, or making sure that the states all have parallel legislation.

It is just a fact of life that communications, the ability to travel quickly and move around the country speedily mean that state boundaries become more and more irrelevant. I think we as a state Parliament need to acknowledge that and also acknowledge that in the future our neighbourhood is going to become increasingly small compared with what is going to be required on the national scene. This legislation seems to have sufficient safeguards. I think it has been well put together, and I have no hesitation in supporting it.

Ms MIKAKOS (Jika Jika) — This bill is the final part of the major crime and terrorism package which is a major achievement of the Bracks government. The package implements reforms agreed to at the 2002 leaders summit on tourism and multijurisdictional crime to enhance arrangements for dealing with cross-border crime. At the summit the Premier committed to introduce model laws for a national set of powers for cross-border investigations covering controlled operations, assumed identities, surveillance devices and witness identity protection.

The four model laws were developed by a national joint working group established by the Standing Committee of Attorneys-General and the Australasian Police Ministers Council. The Victorian Parliament enacted the first three of these model laws in the Autumn 2004 sitting, being the Crime (Assumed Identities) Act, the Crimes (Controlled Operations) Act and the Surveillance Devices (Amendment) Act; and I will not comment further on those, because we have already referred to those three acts in an earlier debate today.

This bill implements the model laws for witness identity protection. Witness identity protection is the process by which undercover operatives can give evidence in court using an assumed name. This is because the safety of operatives and effective conduct of investigations can be jeopardised if the operative's true name and address are revealed in the course of a hearing.

As I mentioned, this bill is part of a national scheme. When the other jurisdictions have passed the model provisions, the bill allows these to be prescribed as corresponding laws with certificates issued in each jurisdiction then being recognised in the courts of the other. Given this bill only applies to cross-border situations, it will not have a practical effect until the other jurisdiction introduces the model law and that law is prescribed as corresponding. Therefore our passing the bill will not have any immediate effect. However, Victoria is taking an important step towards achieving nationally consistent laws dealing with witness identity protection for undercover operatives.

It is important to note that this bill differs from the other three model laws in that it applies only to cross-border situations. A cross-border situation arises where a Victorian operative working under cover pursuant to Victorian law is giving evidence in another jurisdiction. Such a situation may also arise where a witness from interstate working under cover pursuant to the law of another jurisdiction is giving evidence in Victoria.

The principle that an accused person has a right to know their witness is an important one in our legal system. It is right and proper that any limiting of that principle by the introduction of witness anonymity is specifically limited to situations where it is absolutely necessary.

The common law as it currently exists will be retained for situations in which Victorian undercover operatives give evidence in Victorian courts. Under the common law the courts apply a public interest immunity test to determine whether the identity of a witness will be protected. The means by which a local or interstate

operative's identity is protected at trial is through the issuing of a witness identity protection certificate. The bill provides that the decision whether to issue a witness identity protection certificate rests with a law enforcement agency. The decision can only be made by a chief officer of a law enforcement agency. In the case of Victoria Police this means the chief commissioner or a deputy commissioner. In the case of the Australian Crime Commission this means the chief executive officer; the director, international operations; or the general manager, national operations. This decision is not reviewable by the courts because it is based on highly sensitive operational information, and the process of review could result in disclosure of the operative's name or address. However, it is important to note that although the initial decision of protection is made within the law enforcement agency, the court contains an overriding power to grant leave to reveal the identity of an operative if it is needed for fair trial.

The bill sets out detailed requirements for the issuing of a witness identity protection certificate to a local operative in relation to interstate court proceedings. Certificates for interstate operatives appearing in court proceedings are issued by the relevant law enforcement authority of that operative's home state. Another set of provisions in the bill deals with interstate certificates, and I will come to those in a moment.

Local witness identity protection certificates can only be given if the chief law officer is satisfied that disclosing the operative's identity or address would endanger the safety of a local operative or someone else or prejudice an investigation. A local undercover operative must make a statutory declaration about a range of matters before a witness identity protection certificate may be issued. These matters include prior convictions and findings of guilt, pending or outstanding charges, proven and outstanding allegations of professional misconduct, adverse court comments about his or her credibility, false representations and other particulars relevant to his or her credibility.

The certificate itself must contain certain information, including the local operative's assumed name and similar details regarding criminal history and credibility as required for the statutory declaration. The information included on the certificate will allow parties to the proceeding, including the accused in criminal trials, to challenge the credibility of the operative without disclosing their identity. A witness identity protection certificate must be cancelled by a chief officer if they believe it is no longer necessary or appropriate to prevent the disclosure of the local operative's identity or address.

If an interstate operative has been issued with a witness identity protection certificate for proceedings occurring in Victoria, certain filing and notification requirements must be filled prior to them giving evidence. Where an interstate certificate has been properly filed and notified under the terms of the bill with the relevant Victorian court the interstate operative may give evidence under an assumed or court name.

Unless permission is granted by the court, no witness including operatives may be asked questions or required to answer questions, give evidence or provide information that discloses or may disclose the interstate operative's identity or address. A person involved in a proceeding is also prevented from making statements that may disclose this information.

To protect the health and safety of operatives or to assist the effective conduct of undercover operations the bill creates a number of offences. These relate to the disclosure of a local or interstate operative's identity or address where they have been given a witness identity protection certificate.

The right of an accused to know the identity of witnesses against them is a fundamental one under our legal system which goes back all the way to Roman times. That is why the bill contains important provisions to safeguard the interests of parties to court proceedings, in particular defendants in criminal trials. These safeguards will ensure that defendants are not disadvantaged by not knowing a witness's true name.

I note that I have already commented on some of the safeguards contained under the terms of the bill, in particular the provisions relating to information required to be included in a witness identity protection certificate and the obligations of an undercover operative to provide a statutory declaration. However, another safeguard provided by the bill is the power of a judge to require an undercover operative to disclose their identity to the judge. This may be done by requiring the operative to show photographic identification to the judge. Although the bill does not mandate any particular method of disclosure, Victoria Police and the courts have agreed to develop protocols dealing with the way Victorian courts will implement this provision.

In conclusion, I am pleased to say that by passing this bill Victoria will fulfil its obligation to implement model laws as part of the major crime and terrorism package. Coordination of this national project has been a major task and one in which Victoria has played a leading role. I congratulate the staff of the Department

of Justice for their hard work in bringing this legislation forward for our consideration.

The Bracks government is committed to implementing national law reform initiatives which tackle serious crime across state and territory borders. This legislation, along with the other elements of the model laws package, forms an important part of that commitment. I commend the bill to the house.

Hon. RICHARD DALLA-RIVA (East Yarra) — I have pleasure in making a contribution to this debate and in doing so will be supporting it as my colleagues indicated. However, I must take up a couple of the matters raised by Ms Mikakos. She alludes to the fact that this is a national model and that we are moving forward. She commended the government for doing all those wonderful things. But we just had the previous bill in relation to the Office of Police Integrity, which was nothing but a sham in respect of having national uniformity. On the one hand we have a bill before the house that has us moving towards a national model and on the other hand we have just debated a bill that does not provide for national coordination.

In fact when you compare Victoria to the rest of the states that have independent crime commissions we stand out like a sore thumb. It is interesting that when you have the federal government taking the lead in these matters you have a uniform approach to fighting corruption at the highest level, but when you have the state involved — and in particular the mob on the other side of the chamber — in trying to manage things of a national importance the wheels fall off. It is like the red wagon with the wonky wheel — no matter how many times you bash that wheel it can never be straightened up. Those on the other side speak with forked tongues because on the one hand they say that they have a national model and they support this bill — and we support it — but on the other side of the ledger we have other state legislation that has been brought in by the government which is an absolute disgrace.

Ms Mikakos interjected.

Hon. RICHARD DALLA-RIVA — Ms Mikakos says, 'After Saturday'. It is a brave person in this house who would declare where things are going. At the end of the day we look forward to coming back here next Tuesday and seeing who it actually is because you would need to be a braver person than Ms Mikakos to make that assertion. I would certainly not be bold enough to make that assertion given what we know.

This is a bill of national importance. It is a bill that goes in the right direction. It is a bill that again demonstrates that where you have the federal government taking the lead it delivers a proper and coherent outcome, unlike what we see on the other side of this house — bits and pieces of legislation that do not really have any uniform, strategic, long-term direction.

Hon. Philip Davis interjected.

Hon. RICHARD DALLA-RIVA — Mr Davis says it is like a dog's breakfast, although I do not think that even a dog would eat the breakfast they serve up here because it is unpalatable. What they produce is clearly not suitable.

This is an important bill, because the consequences for witnesses who assume identity protection that is breached are absolutely catastrophic. I am not making any assertions about particular matters that may be before investigators or before the courts, but in my electorate of East Yarra Province we had a matter involving two persons who were murdered in our area and there was some allegation that their murders related to the fact that their details may have been disclosed in a more broad sense. This is information provided in the media and the like; it is not something that is unique to my knowledge. It makes it very clear that when you have witnesses or persons who are giving evidence that may involve the possibility of their life being at risk, then this is an appropriate piece of legislation. That is the reason why, unlike the situation with the previous bill, the Liberal Party and The Nationals will be supporting this legislation.

The other important aspect of this bill is that whilst it creates a witness identity protection certificate that will allow people to give evidence interstate, it has been developed as part of a national model and therefore one would assume it will be replicated across all state boundaries. I support the fact that the bill creates two new offences dealing with witness identity protection certificates. They are, firstly, where someone intentionally, recklessly or knowingly discloses information leading to the disclosure of an operative, that would be punishable with an imprisonment period of two-years jail; and secondly, where it endangers the health and safety of an operative or prejudices the effective conduct of an investigation — and in a roundabout way that would be similar to the administration of justice type of offences — that would be punishable by somewhere in the vicinity of 10-years jail. They are significant penalties that are imposed by this legislation. They are appropriate where the risks to witnesses who have their identity revealed would undoubtedly lead to their potential murder or less serious activities against them. It is interesting that the delegation of power from the chief commissioner to

issue a witness identity protection certificate can only be to a deputy commissioner.

I also note that a section 85 statement has been made in respect of this bill. Although I am critical of the fact that the government made it very clear before the 1999 election that it would be reducing the number of section 85 statements but has not done so, there is the odd occasion where it is necessary, and this is one of them. There have been many other bills before the house in relation to which the need for a section 85 amendment was questionable, but in this case I support it, given that it makes a decision of a senior officer final and unreviewable.

The important thing to note about this legislation is that it will provide a level of protection to interstate witnesses giving evidence interstate. It sets up a framework nationally that affords those persons some protection, with overriding penalties for those who disclose their identities of up to 10 years in jail. It demonstrates that nationally the federal government is committed to law enforcement, to undermining corruption, to undermining gangland killings and to undermining lawless societies that cannot be controlled. The federal government is leading by example. This is another demonstration of why people heading to the polling booths on Saturday will realise how strong and coherent the Howard government is. This bill is a stark contrast to the previous bill we debated that was instigated by the Bracks government. As indicated earlier, that bill was a dog's breakfast. On that basis the opposition will be supporting this bill, and I wish it a speedy passage.

Motion agreed to.

Read second time; by leave, proceeded to third reading.

Third reading

The DEPUTY PRESIDENT — Order! I am of the opinion that the third reading of this bill requires to be passed by an absolute majority. I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

The PRESIDENT — In order that I may ascertain that the required majority has been obtained I ask those members who are in favour of the question to stand where they are.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

Remaining stages

Passed remaining stages.

ADJOURNMENT

Mr LENDERS (Minister for Finance) — I move:

That the house do now adjourn.

Western Port Highway, Lyndhurst: traffic control

Hon. R. H. BOWDEN (South Eastern) — I request that the Minister for Transport in the other place take urgent action by requesting VicRoads to cease support for the installation of traffic lights and require their removal on the Western Port Highway at Lyndhurst in the City of Casey. I bring to the attention of honourable members an article published on the front page of the *Cranbourne News* of 30 September headed 'Casey arrogant, selfish, says MP'. I am very pleased to be the source of that quote because the City of Casey is being arrogant and selfish. Quite frankly, the continued construction of subdivisions of land adjacent to the Western Port Highway, the plans of which the City of Casey and earlier VicRoads have approved, is causing tremendous concern and great disruption to traffic. The situation is getting much worse. The City of Casey has to understand that it can and should require new subdivisions to be redesigned to avoid dumping suburban traffic onto this important highway. The Western Port Highway is not a road for the free use by the council or developers. We need to maintain its efficiency because it is an important regional road. There are very limited options for nearby alternative routes. There is growing concern about the mismanagement of the Western Port Highway and subdivision issue by the City of Casey. The intersection at Thompsons Road where it meets the Western Port Highway is of great concern because of the increasing volumes of traffic.

I am particularly worried and have said so on many occasions in this chamber — and I will continue to do so — that the City of Casey and VicRoads must take urgent action to prevent the installation of traffic lights that are not necessary. The City of Casey must be responsive by requiring these subdivisions to be redesigned when they have not already been constructed. There are many hundreds of constituents already starting to be aware of this issue and I would

say thousands of motorists in the next few months will be very vocal about their decreasing satisfaction with the way this road is being handled. My request is that the Minister for Transport take urgent steps to remove the traffic lights on the Western Port Highway that have not already been commissioned and urgently work with his ministerial colleague the Minister for Local Government to prevent the City of Casey from further damaging the Western Port Highway by the reckless construction of suburban street access directly onto this vital regional highway.

Rail: Hampton crossings

Mr PULLEN (Higinbotham) — My adjournment matter is also for the Minister for Transport in the other place. I congratulate the government for improving pedestrian rail crossings in my electorate, such as at Grenville Street in Hampton. I also note that work at two other crossings at Crisp and Holyrood streets in Hampton has not yet been completed and the automatic gates are not yet working.

The Crisp Street crossing is used by a number of people as a shortcut to the busy Hampton Street shopping centre. Holyrood Street is a very busy crossing used by members and patrons of the Hampton RSL and students at St Mary's Primary School, both of which are in Holyrood Street. St Mary's is a wonderful school and has produced many fine citizens — including me! It is very difficult to see trains approaching both these crossings as the trains come around corners. Can the minister advise when works at the two crossings I mentioned will be completed?

Aged care: funding

Hon. ANDREA COOTE (Monash) — I raise a matter for the attention of the Minister for Aged Care, Mr Gavin Jennings. By way of background I will paint a picture of the federal coalition's policy on aged care. It states:

> The coalition strongly believes in recognising the contribution that older Australians have made, and will continue to ensure older Australians are able to access income support, health and other benefits to enable them to maintain the lifestyles they deserve.

It also states:

> A re-elected coalition government will provide more help for carers looking after family members and loved ones at home, with a $148 million package over four years that assists carers with financial help and more respite.
>
> If re-elected, the coalition will also exempt accommodation bonds paid for hostel care from the social security assets test. This will provide peace of mind for elderly Australians moving from their own homes into residential care.

On the other hand, the Labor policy on aged care released by Mark Latham, the federal Leader of the Opposition, promises a scheme that would create 3000 residential and occasional aged care beds. He said he would restore public confidence in the residential aged care industry. I think the state Minister for Aged Care has a bit of a problem because I have to make the observation that it is obvious that Mr Latham does not believe Victoria is doing a good enough job with its aged care. It seems that there is no confidence in the sector here in Victoria. If you read what Mr Latham says, he believes it is only Mr Latham who will be able to fix this and that he is the only one who can restore confidence in the industry. But it is not only Mr Latham who does not have faith in the Victorian aged care sector. Honourable members only have to look at press releases that were put out by the Victorian Association of Health and Extended Care to see that there is a lack of confidence in Victoria and in the Labor Party's policy. An article entitled 'Frail elderly let down by Latham: aged care' which appeared in the 28 September edition of the *VAHEC Bulletin* states:

> According to the Victorian Association of Health and Extended Care ... the ALP's policy speech all but ignored the growing nationwide problem of providing adequate residential and community care for frail elderly Australians.

Mr Latham has said that a federal government would provide interest-free loans to build more residential and respite facilities. Under these circumstances how would the Minister for Aged Care, as the state minister, staff these additional beds?

Planning: Parkside Gardens, Shepparton

Hon. W. A. LOVELL (North Eastern) — I raise a matter with the Premier in his capacity as Minister for Multicultural Affairs. On 15 September I raised in this place the inappropriate actions of the Minister for Planning in the other place, Mary Delahunty, in gazetting and tabling amendment C40 to the Greater Shepparton planning scheme. Amendment C40 rezones 21 hectares of much-loved public parkland known as Parkside Gardens to allow for a 150-lot housing estate. Many Shepparton residents strongly object to City of Greater Shepparton's proposal to develop this park into a housing estate.

When amendment C40 went on public exhibition some 478 submissions were received. Only 3 supported the housing development and 475 were against it. Parkside Gardens is the site of the former Shepparton International Village, an area of significant importance to many residents of Shepparton, and particularly to the

multicultural community. The Shepparton International Village was a project begun in the 1970s to celebrate the cultural diversity of the Shepparton region. Many hours of voluntary service went into developing the village, and buildings and exhibitions were established to represent the different cultures. Two of these buildings — the Bangerang Keeping Place and the Philippine House — remain in operation today. Other facilities that remain at the site include a children's playground, barbecue facilities, waterways and magnificent parklands. Many other buildings and exhibitions have either been destroyed or removed by the city council.

Parkside Gardens is so loved by the Shepparton community that it was recently named the north-east regional winner of the My Favourite Place award in the Year of the Built Environment. At the time of tabling the amendment Parkside Gardens was the subject of an appeal hearing by Victoria's Heritage Council. The result of that appeal is now known, and the Heritage Council has reinforced the original recommendation that Heritage Victoria gave — that is, that Parkside Gardens is historically and socially significant and should be protected under the City of Greater Shepparton's local planning scheme. As the minister responsible for heritage the Minister for Planning should have shown more respect to the Heritage Council and waited for its decision before tabling the amendment.

The minister clearly has a conflict of interest between her two portfolios — that is, planning and heritage — in regard to this matter. I call on the Premier as the Minister for Multicultural Affairs to protect Parkside Gardens by supporting the residents of Shepparton, the Friends of Parkside Gardens and Shepparton's multicultural groups in their quest to preserve what is left of a project that celebrates the cultural diversity of the Shepparton region by stepping in to sort out yet another mess created by the Minister for Planning's incompetence.

South Gippsland Highway–Pound Road, Dandenong South: traffic control

Mr SOMYUREK (Eumemmerring) — I raise a matter for the attention of the Minister for Transport in another place. The matter concerns the roundabout at Pound Road and South Gippsland Highway in the Hampton Park and Dandenong South area. This roundabout has to be one of the worst anywhere in Australia or the world.

Honourable members interjecting.

Mr SOMYUREK — It certainly is pretty bad. Mr Bowden will know what I am talking about! The situation will improve when the Mitcham–Frankston freeway is built in 2008. That freeway is precipitating some investment in Dandenong South. I am informed that there has been a 27 per cent increase in demand for industrial land in Dandenong, which helps with employment in the local area and in the region. About 70 000 people travel to Dandenong for employment. People from the City of Casey also travel to the City of Greater Dandenong. The City of Casey is the third-fastest growing municipality in Australia, and there has been a demographic shift from white-collar workers to blue-collar workers. Many blue-collar workers are travelling to Dandenong for employment, and this exacerbates the situation in South Dandenong.

Trucks are always using this area, and that does not help the situation when getting onto the Monash Freeway. Once the Mitcham–Frankston freeway is built, it will help. In the meantime we need a solution to this problem. For example, it took me about 25 minutes to travel a stretch of road when normally it should have taken about 10 minutes. I ask the Minister for Transport to have a look at this problem and to fix the situation at the roundabout.

Podiatrists: registration

Hon. D. McL. DAVIS (East Yarra) — I raise a matter concerning a loophole in the Podiatrists Registration Act that may threaten public safety and the purposes of that act.

The PRESIDENT — Order! I assume the matter is for the attention of the Minister for Health.

Hon. D. McL. DAVIS — Indeed, President. I make the point that East Gippsland TAFE has indicated that it will provide certificates III and IV courses on foot and hand care. It is not clear exactly what trajectory these courses will undertake and what niche in the market they will fill. It appears also that the Department of Human Services may have subtly, or perhaps not too subtly, openly encouraged the development of these courses at East Gippsland TAFE.

There is nothing wrong with the training of podiatry assistants, who could perform work under the direction of registered podiatrists, and there is nothing wrong with the training of certain foot and hand assistants who might undertake work that is not within the scope of the Podiatrists Registration Act, but I indicate that there is concern that setting up independent therapists could be risky to the community and create confusion. After all, podiatrists undertake not only diagnostic processes and

the appropriate referral that is undertaken by primary contact practitioners but in particular they also use sharp instruments and undertake procedures that are a risk to public safety and therefore to public health if improperly carried out.

The Australian Podiatry Association has indicated its opposition to the development of these foot and hand courses, in particular to the certificate IV courses. It has less opposition to the certificate III courses. I know concerns have been expressed by the Podiatrists Registration Board of Victoria. Podiatrists undertake a diagnostic process that does not appear in the course outline that I have seen listed on the web site for the East Gippsland Institute of TAFE. There appear to be insufficient diagnostic processes listed to make me comfortable about the safety of practitioners who may graduate from that course.

In New South Wales there are clear regulations under clause 10AH of the relevant legislation that more clearly spell out what can be provided by registered and unregistered practitioners than is the case in Victoria. Tonight I want to express my concern that this course at East Gippsland TAFE may not be graduating practitioners whose niche is clear, and the community may be confused. I ask the minister to investigate that, to report and to ensure that safety is protected.

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

Traralgon Secondary College: east campus

Hon. P. R. HALL (Gippsland) — Tonight I direct a matter to the attention of the Minister for Education Services in the other place. It concerns the rebuilding of the Traralgon Secondary College east campus. The government has acknowledged the urgent need to completely rebuild that campus, and I note the recent triennial review, which said:

> The standard of college facilities is very poor and ranks with the worst this reviewer has seen. The quality of the building clearly affects the workplace climate for staff and students as staff and parental feedback indicates.

It is clearly acknowledged that the whole campus needs rebuilding. I am pleased to say that stage 1 of the rebuilding program is well under way now and is expected to be completed in March next year. It has been a 12-month building program. Rebuilding is taking place on the current school site. It is a small site and having been a teacher there myself I acknowledge its limitations. It accommodates 700 students, so with a major rebuilding program taking place there is very little recreational space for the students at the school. It was hoped that the rebuilding would be undertaken in three stages over three consecutive years to minimise disruption to the programs at the school. However, it now appears that due to delays in funding for planning purposes the next stage will not be considered for funding in the 2005 budget. If that pattern continues it is likely that building for the second stage will not commence until at least 2007, and if that pattern continues it could well be 2010 or 2011 before the final stage is completed. That is a far from satisfactory situation given that the school will have been a construction site for a period of almost eight or nine years.

The minister is well aware of this situation, with the school council president having written to her on 2 December last year. Tonight I call on the minister to give the Traralgon school community an assurance that funding for stage 2 will be allocated in the 2005 budget and further that the final stage funding will follow in the next budget of 2006. That will mean the school will be able to complete the construction program in a reasonable time and will not be disrupted for eight or nine years. I urgently request the minister to consider this as a matter of priority and make available the funding to enable that rebuilding to be completed as soon as possible.

Palliative care: Sunraysia

Hon. B. W. BISHOP (North Western) — My adjournment issue is directed to the Minister for Health in the other place. On Tuesday, 28 September, I took part in a well-attended discussion group in Mildura of interested people and professionals on the sometimes difficult and emotive issue of palliative care. It was an excellent discussion from a wide-ranging group of people. It soon became apparent that the community's needs into the future were not clear. The discussion ranged from having a physical presence such as we have at Robinvale with a building attached to the hospital; hiring or renting a unit; having more complete services in the home; or having more flexible bed assessment in our hospitals. Should it be a social model such as the daily hospice being piloted in Bendigo, or should it be one specifically modelled on the Sunraysia area, which has different requirements such as cross-border service issues?

The requirement for a local focus that is well researched was drawn out of the discussion paper put out by the Department of Human Services in May 2004. We understand we will have a ministerial response from the Minister for Health in November. The discussion paper talks about a scoping study, forming consortia and getting together an advisory

group. The Sunraysia meeting decided to immediately form an advisory group. From that was formed a working group to identify the various issues in the Sunraysia area relative to palliative care.

Given that the advisory group believed a study of the Loddon-Mallee region as a whole would not provide an accurate assessment of the needs of the Sunraysia area, a proposal to assess the region in sections was seen as the best way to achieve an accurate blueprint for the future. Locally focused studies would complement the call for a new region to be formed in the north-west. Given the growth of the area and the different requirements, that is quickly becoming a major issue for community services, health and education.

The local working group is already under way assessing the community needs and future structures for palliative care. It is capable of providing terms of reference for a consultant to complete the task. Given that the Department of Human Services discussion paper talks about research to seek out the correct structures — and I hope funding for palliative care — I request that the minister provide her response as soon as possible and ensure that adequate resources are allocated for local studies to fully assess and respond to the various requirements of different areas such as Sunraysia.

Responses

Ms BROAD (Minister for Local Government) — The Honourable Ron Bowden raised a matter for the Minister for Transport in the other place regarding the Western Port Highway and the impact of subdivisions, and I will refer that matter to the minister.

Mr Pullen raised a matter also for the Minister for Transport in the other place regarding pedestrian rail crossings in his electorate, and I will refer that matter to the minister.

The Honourable Andrea Coote raised a matter for the Minister for Aged Care regarding additional beds, and I will refer that matter to the minister.

The Honourable Wendy Lovell raised a matter for the Minister for Multicultural Affairs in the other place regarding Parkside Gardens in Shepparton in her electorate, and I will refer that to the minister.

Mr Somyurek raised a matter for the Minister for Transport in the other place regarding a roundabout in Hampton Park in his electorate, and I will refer that matter to the minister.

The Honourable David Davis raised a matter for the Minister for Health in the other place regarding training of certain health professionals at the East Gippsland Institute of TAFE, and I will refer that matter to the minister.

The Honourable Peter Hall raised a matter for the Minister for Education Services in the other place regarding funding for the Traralgon Secondary College east campus, and I will refer that matter to the minister.

Finally, the Honourable Barry Bishop raised a matter for the Minister for Health in the other place regarding assessments of palliative care needs in the Sunraysia area and other districts in his electorate, and I will refer that matter to the minister.

Motion agreed to.

House adjourned 10.05 p.m.