PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FIFTH PARLIAMENT

FIRST SESSION

Wednesday, 10 August 2005

(extract from Book 1)

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By authority of the Victorian Government Printer

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JOHN LANDY, AC, MBE

The Lieutenant-Governor

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Drugs and Crime Prevention Committee — (*Council*): The Honourable S. M. Nguyen and Mr Scheffer. (*Assembly)*: Mr Cooper, Ms Marshall, Mr Maxfield, Dr Sykes and Mr Wells.

Economic Development Committee — (*Council*): The Honourables B. N. Atkinson and R. H. Bowden, and Mr Pullen. (*Assembly*): Mr Delahunty, Mr Jenkins, Ms Morand and Mr Robinson.

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Family and Community Development Committee — (*Council*): The Hon. D. McL. Davis and Mr Smith. (*Assembly*): Ms McTaggart, Ms Neville, Mrs Powell, Mrs Shardey and Mr Wilson.

House Committee — (*Council*): The President (*ex officio*), the Honourables B. N. Atkinson and Andrew Brideson, Ms Hadden and the Honourables J. M. McQuilten and S. M. Nguyen. (*Assembly*): The Speaker (*ex officio*), Mr Cooper, Mr Leighton, Mr Lockwood, Mr Maughan, Mr Savage and Mr Smith.

Law Reform Committee — (*Council*): The Honourables Richard Dalla-Riva, Ms Hadden and the Honourables Geoff Hilton and David Koch. (*Assembly*): Ms Beard, Ms Beattie, Mr Hudson, Mr Lupton and Mr Maughan.

Library Committee — (*Council*): The President, Ms Argondizzo and the Honourables Richard Dalla-Riva, Kaye Darveniza and C. A. Strong. (*Assembly*): The Speaker, Mr Carli, Mrs Powell, Mr Seitz and Mr Thompson.

Outer Suburban/Interface Services and Development Committee — (*Council*): Ms Argondizzo and Mr Somyurek. (*Assembly*): Mr Baillieu, Ms Buchanan, Mr Dixon, Mr Nardella and Mr Smith.

Public Accounts and Estimates Committee — (*Council*): The Honourables W. R. Baxter, Bill Forwood and G. K. Rich-Phillips, Ms Romanes and Mr Somyurek. (*Assembly*): Ms Campbell, Mr Clark, Ms Green and Mr Merlino.

Road Safety Committee — (*Council*): The Honourables B. W. Bishop, J. H. Eren and E. G. Stoney. (*Assembly*): Mr Harkness, Mr Langdon, Mr Mulder and Mr Trezise.

Rural and Regional Services and Development Committee — (*Council*): The Honourables J. M. McQuilten and R. G. Mitchell. (*Assembly*): Mr Crutchfield, Mr Hardman, Mr Ingram, Dr Napthine and Mr Walsh.

Scrutiny of Acts and Regulations Committee — (*Council*): Ms Argondizzo and the Honourable Andrew Brideson. (*Assembly*): Ms D'Ambrosio, Mr Jasper, Mr Leighton, Mr Lockwood, Mr McIntosh, Mr Perera and Mr Thompson.

Heads of parliamentary departments

Assembly — Clerk of the Parliaments and Clerk of the Legislative Assembly: Mr R. W. Purdey

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

Parliamentary Services — Secretary: Dr S. O'Kane

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FIFTY-FIFTH PARLIAMENT — FIRST SESSION

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The Hon. ANDREA COOTE

Leader of The Nationals:
The Hon. P. R. HALL

Deputy Leader of The Nationals:
The Hon. D. K. DRUM

Member	Province	Party	Member	Province	Party
Argondizzo, Ms Lidia	Templestowe	ALP	Jennings, Mr Gavin Wayne	Melbourne	ALP
Atkinson, Hon. Bruce Norman	Koonung	LP	Koch, Hon. David	Western	LP
Baxter, Hon. William Robert	North Eastern	Nats	Lenders, Mr John	Waverley	ALP
Bishop, Hon. Barry Wilfred	North Western	Nats	Lovell, Hon. Wendy Ann	North Eastern	LP
Bowden, Hon. Ronald Henry	South Eastern	LP	McQuilten, Hon. John Martin	Ballarat	ALP
Brideson, Hon. Andrew Ronald	Waverley	LP	Madden, Hon. Justin Mark	Doutta Galla	ALP
Broad, Ms Candy Celeste	Melbourne North	ALP	Mikakos, Ms Jenny	Jika Jika	ALP
Buckingham, Hon. Helen Elizabeth	Koonung	ALP	Mitchell, Hon. Robert George	Central Highlands	ALP
Carbines, Ms Elaine Cafferty	Geelong	ALP	Nguyen, Hon. Sang Minh	Melbourne West	ALP
Coote, Hon. Andrea	Monash	LP	Olexander, Hon. Andrew Phillip	Silvan	LP
Dalla-Riva, Hon. Richard	East Yarra	LP	Pullen, Mr Noel Francis	Higinbotham	ALP
Darveniza, Hon. Kaye	Melbourne West	ALP	Rich-Phillips, Hon. Gordon Kenneth	Eumemmerring	LP
Davis, Hon. David McLean	East Yarra	LP	Romanes, Ms Glenyys Dorothy	Melbourne	ALP
Davis, Hon. Philip Rivers	Gippsland	LP	Scheffer, Mr Johan Emiel	Monash	ALP
Drum, Hon. Damian Kevin	North Western	Nats	Smith, Mr Robert Frederick	Chelsea	ALP
Eren, Hon. John Hamdi	Geelong	ALP	Somyurek, Mr Adem	Eumemmerring	ALP
Forwood, Hon. Bill	Templestowe	LP	Stoney, Hon. Eadley Graeme	Central Highlands	LP
Gould, Hon. Monica Mary	Doutta Galla	ALP	Strong, Hon. Christopher Arthur	Higinbotham	LP
Hadden, Ms Dianne Gladys	Ballarat	Ind	Theophanous, Hon. Theo Charles	Jika Jika	ALP
Hall, Hon. Peter Ronald	Gippsland	Nats	Thomson, Hon. Marsha Rose	Melbourne North	ALP
Hilton, Hon. John Geoffrey	Western Port	ALP	Viney, Mr Matthew Shaw	Chelsea	ALP
Hirsh, Hon. Carolyn Dorothy	Silvan	Ind	Vogels, Hon. John Adrian	Western	LP

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WEDNESDAY, 10 AUGUST 2005

Wednesday, 10 August 2005

The PRESIDENT (Hon. M. M. Gould) took the chair at 9.37 a.m. and read the prayer.

BUSINESS OF THE HOUSE

Sound system

The PRESIDENT — Order! I wish to advise members that we have started a few minutes late because we are having some technical difficulties with the microphones. Instead of having the luxury of someone turning the microphones on and off for them members are asked to do it themselves. They should push the green button at the front of their desks to turn their microphone on and push it again to turn their microphone off when the next member is called. In the interim our technical people will be working to rectify this problem.

Honourable members interjecting.

The PRESIDENT — Order! Unless members get the call they should not push their buttons.

ACCIDENT COMPENSATION AND TRANSPORT ACCIDENT ACTS (OMBUDSMAN) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Mr LENDERS (Minister for WorkCover and the TAC).

PETITIONS

Schools: religious instruction

Hon. DAVID KOCH (Western) presented petition from certain citizens of Victoria requesting that the Legislative Council take steps to ensure that there is no change to legislation which would diminish the status of religious education in Victorian schools and, on the contrary, requires the government to provide additional funding for chaplaincy services in Victorian state schools (50 signatures).

Laid on table.

Hazardous waste: Nowingi

Ms HADDEN (Ballarat) presented petition from certain citizens of Victoria requesting that the Legislative Council abandon the proposal to place a toxic waste facility in the Mildura region (72 signatures).

Laid on table.

MEMBERS STATEMENTS

Moira: leadership program

Hon. W. A. LOVELL (North Eastern) — Last week I had the pleasure of attending the graduation dinner for the Moira shire community leadership program. The leadership program was jointly funded by the federal government and the Shire of Moira, and it has provided an opportunity for participants to develop their skills for the benefit of the community and at the same time establish networks that will benefit the community for many years to come.

Over the past six months the 17 participants have devoted their time to developing community projects to better the lives of residents in the Moira shire. The projects reflect the participants' desire to improve their community and to make Moira shire a better place to live. Each participant received guidance from a mentor and support from Moira shire staff to develop their project. Some of the projects throughout the shire included: a strategy to increase the number of childcare places and a plan to protect valuable historical archives in Nathalia; lobbying for mobile telephone coverage in a black spot area in Burramine; a program to use pets as part of a volunteer visiting program to care for elderly and disabled residents in Yarrawonga; lobbying to increase the number of disabled parking spaces and a project for an after-school care program in Cobram.

I congratulate Moira shire for its vision in running this program. The networks created through this program will play a pivotal role in providing sound community leadership in the Moira shire for many years to come and will ensure that the Moira shire will remain one of the best places in Australia to live, to visit, to work or in which to do business.

Tattersall's: awards

Mr PULLEN (Higinbotham) — I rise to congratulate Tattersall's on their enterprise and achievement award program. On 28 July, with a number of other members, I attended the award presentation lunch at the Park Hyatt Hotel. Twelve

monthly award winners were awarded $5000 each, and the organisations they represented were awarded $15 000. Also present at this 25th annual award day were some of the winners of past years. The overall winner was the Down Syndrome Association of Victoria, which received $75 000.

The nominees winner was Mrs Tony McDonald, who received $15 000. I am proud to say that I was introduced to Mrs McDonald a year ago by one of my wonderful constituents, Mrs Catherine Kennedy, whose son Francis has Down syndrome, and I subsequently joined the association. Mrs McDonald is a crusader for Down syndrome. Since her own son, Rowan, was diagnosed, Tony has worked tirelessly with many other families, supporting their needs and ensuring that there is adequate information available to anyone who needs it. Tony is a founding member of the Down Syndrome Association of Victoria and has been a member of the committee of management continuously for 24 years. She is often invited to speak to schoolteachers and child carers and at conferences as part of DSAV's community awareness and education programs. Congratulations to everyone involved.

Sheepvention

Hon. DAVID KOCH (Western) — The success of Hamilton's Sheepvention is again reflected in its being a major event for Victoria and Australia in promoting sheep and wool, which are major contributors to the Victorian economy. The two-day event was officially opened by the federal Treasurer, Peter Costello, who was delighted by the enthusiasm and commitment of sheep and wool producers and their willingness to adopt new and innovative ideas. The Treasurer was well received, especially when he drew a humorous parallel between the somewhat noisy baaing and braying of the nearby rams and the behaviour of the sheepish members of the federal opposition.

Sheepvention proved as popular as ever, with over 20 000 visitors taking in a wealth of innovation, fashion, entertainment, information, education, food and wine as well as the annual sheep show and ram sales, which achieved a top price of $8000 — an excellent result in a slow wool market.

The winner of the Australasian Young Designers Wool Award and the Handbury trophy, which is valued at $6000 with a two-week study tour of Milan, went to first-time entrant Ms Tracey Osborne from Cherokee, who is a second-year Kangan Batman TAFE fashion design student. This year the competition attracted a record number of entries. It is viewed by the industry as an ideal opportunity to promote fashionable woollen garments.

My congratulations to Sheepvention president, Verity Whitehead, and the Sheepvention team of volunteers for again presenting a very successful event on the rural calendar.

Liberal Party: donations

Mr SMITH (Chelsea) — Yesterday I read an article in the *Age* that confirms my long-held view that the hidden agenda of the Liberal Party is to free from scrutiny increased donations to the Liberals from their mates in big business. It is no secret that the Liberals are determined to repeal the Hawke government's legislation that prevents excessive soft money being channelled by their mates to the Liberal Party. We might ask: why? It is clear to me: they believe the Labor Party is advantaged with its support base of the union movement. Hence their real agenda in attempting to damage the union movement is to reduce the money and other resources that flow to the Labor Party.

They will fail. Let me remind members opposite that the union movement was there long before the Liberal Party — and we will be here to see you out!

Frankston Hospital: psychiatric beds

Hon. D. McL. DAVIS (East Yarra) — My contribution today concerns the psychiatric beds on the Mornington Peninsula at Frankston Hospital. Of the 29 beds, four have been closed by this government, adding to pressure on that hospital and the patients on the Mornington Peninsula. In the financial year 2003–04, 2160 mental health patients attended the emergency department at Frankston — almost 1 in 20 of the visits. Twenty per cent of the patients spent more than a day in the emergency department on a trolley waiting for a psychiatric bed. This government has closed psychiatric and hospital beds around the state. The fact is that this is harming patients on the peninsula. Mr Hilton knows this is a problem at the Frankston Hospital. Mr Viney should know this is a problem at Frankston Hospital.

Hon. R. G. Mitchell — You do not.

Hon. D. McL. DAVIS — I do know this is a problem at Frankston Hospital. People at the hospital have said this to me. I am very concerned about the impact this has on mentally ill patients on the peninsula. Those who are taken from the southern end of the peninsula need to get access to beds. That lack of beds will move them further from their families and support networks. This government is always about trying to

shift responsibility. This government never takes responsibility for its failures. It was warned about nurse work force problems in 2002. The minister should step in and fix this.

Commonwealth Games: baton relay

Hon. S. M. NGUYEN (Melbourne West) — Yesterday morning I attended the Melbourne 2006 Commonwealth Games Queen's baton relay, community runner nomination program at Brimbank City Council. The mayor of Brimbank, Cr Natalie Suleyman, and Christine Ryall, from Telstra's Melbourne West metropolitan area management, officiated at the proceedings. It was also good to see Duncan Armstrong, Telstra's Queen's baton relay ambassador, there, and he spoke briefly as well. The President, the Honourable Monica Gould, was there too.

I was also invited to attend the same proceedings at the Hobsons Bay City Council yesterday morning. Unfortunately, due to time constraints, I had to be an apology to this event. However, I am sure this event would have gone as well as the Brimbank launch.

The Queen's baton relay is an important event leading up to the start of the Melbourne Commonwealth Games. The criteria to gain one the 1925 spots are clearly a reward to Australian citizens who have contributed to their local community in a positive manner. The baton will travel 180 000 kilometres as it crisscrosses the globe before arriving at the opening ceremony on 15 March 2006. By this stage it will have travelled across the nation over a 50 day period visiting every state, territory and capital city. I am looking forward to seeing many members of the community carrying the baton as it makes its way to the Melbourne Cricket Ground for the opening ceremony.

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

Ice sports: national centre

Hon. B. N. ATKINSON (Koonung) — I attended an ice hockey match on Sunday at the Olympic ice skating rink in Oakleigh South. It is a facility that was built in the 1970s. It is the only metropolitan ice skating rink still in existence in Victoria; there is one other at Bendigo. It is the only facility that is supporting the sports of speed skating, figure skating, ice hockey and curling. It does not do a very good job with curling, unfortunately, because the quality of the ice is such that the curling enthusiasts in this state have to find expanses of linoleum on which to practise because they cannot practise on the ice.

The ice skating rink is only three-quarters Olympic size and is totally inadequate for ice skating matches, which feature Melbourne Ice which is our representative team, and for most of the other sports, including speed skating. The Bracks government promised to construct a new national ice sports centre. It is strangely silent regarding the progress of this particular project. I am concerned that in fact the sports people who are associated with all the ice sports in Victoria are severely disadvantaged compared to their competitors in other states, and that in fact their sports are being held back by the failure of this government to fulfil its promise from the last election. I urge the government to get on and build the national ice sports centre.

Gas: South Gippsland supply

Hon. J. G. HILTON (Western Port) — Last week the Bracks government announced a $50 million investment and an agreement with Multinet Gas which will see five South Gippsland towns connected to natural gas. Three of these towns, Inverloch, Lang Lang and Wonthaggi, are in my electorate of Western Port Province. The other two, Korumburra and Leongatha, are in the region which I look forward to representing after 2006.

The project will involve the laying of a 20 kilometre high pressure transmission pipeline, 57 kilometres of supply mains and over 182 kilometres of distribution mains passing approximately 10 000 dwellings in South Gippsland.

This project will deliver lower energy costs for residents and businesses and facilitate investment and jobs in the region. Average households could save between $600 and $1200 by converting from liquefied petroleum gas, and a medium-sized business could save $30 000. This program is part of the Bracks government's commitment to provincial Victoria ensuring those regions continue to thrive and grow.

Geelong: film and television production

Hon. J. H. EREN (Geelong) — Geelong is a fabulous place to live, work and play, and film producers are steadily discovering that it is also a location that is ideal for television and film production. That is why I was happy that the state government is backing Geelong's attempt to become one of Victoria's premier locations for television and film production through the provision of a grant of $20 000. Many films and television programs have been filmed in the

Geelong region, from *Sea Change* to *Blue Heelers* to *Mad Max* to the recent *Ghost Rider* with Nicolas Cage, and even way back into the 1950s with *On the Beach*. It is certainly a region that has a lot to offer.

Film and television has a lot to offer the Geelong region with the potential to deliver significant economic and social benefits. Productions showcasing its locations and landmarks could substantially increase tourism to the Geelong-Otway region, which already receives about 7 million tourists per year. With production budgets as high as $20 million, television series and feature films in the Geelong region would directly inject funds into the local economy. In addition a feature film or a television series can employ up to 250 people and use the services of local small businesses. With Bracks government support, the City of Greater Geelong has developed a three-year strategy to promote the region's television and filmmaking capabilities. I wish it every success.

Typo Station: graduate program

Hon. D. K. DRUM (North Western) — Last Tuesday I had the opportunity to attend the graduation presentation ceremony for Typo Station graduates. Typo Station is a not-for-profit organisation that looks after young men from around Victoria who have sometimes fallen foul of the law, who have sometimes fallen out of connection with the education system and who are encouraged to attend Typo Station in a two-year program, of which, inside that two years, they spend six weeks full time living and working at Typo Station in the north-east of the state. These young men were part of that graduation process. There are four intakes per year, so they are getting through about 200 young men per year from right around Victoria.

The member for Benalla in the other place, Dr Bill Sykes, who has taken a keen interest in Typo Station and its graduates, organised for the graduation ceremony to be held this year at Queen's Hall. The parents and the graduates were extremely appreciative of the work that has been done. Also, the organisers and the workers, including the youth workers and the team leaders from within Typo Station, were extremely appreciative of the work that Dr Sykes had put into Typo Station. He has developed a real relationship with each of the team leaders as well as the young men who have progressed and have graduated from Typo Station.

Industrial relations: federal changes

Ms MIKAKOS (Jika Jika) — I wish to condemn the Howard government's planned industrial relations changes. Although the final form of the legislation is not yet known, numerous public statements by John Howard, Kevin Andrews and Peter Costello have made it clear that the goal of the changes will be to undermine the rights and conditions of Australian workers and to destroy the ability for workers to collectively organise. The rights of 2 million Victorian workers in the private sector are under threat, particularly after the federal government's conflicting messages on whether their rights to long service leave, penalty rates, meal breaks and standard hours of work will be removed. Four million Australians who work in businesses that employ less than 100 employees will lose their unfair dismissal protection.

Peter Costello's comments on Thursday, 26 July, reveal that the Howard government would really like to remove unfair dismissal protections for all Australian workers. Clearly Mr Costello would like a situation where any worker can be sacked at any time for any reason without any recourse. I applaud Premier Bracks's announcement on Tuesday, 2 August, that the Victorian government will protect the current award condition and wages for the over 254 000 public sector workers, including their long service leave entitlements.

The Howard legislation is un-Australian and should be opposed by all Australians. Last week we saw Kevin Andrews, federal Minister for Employment and Workplace Relations, refuse to sign a guarantee that individual Australians will not be worse off under these proposed changes. I call on the state opposition to also oppose this attack on Victorian workers.

Rowville Primary School: upgrade

Hon. H. E. BUCKINGHAM (Koonung) — On Wednesday, 3 August, I was delighted to represent the Minister for Education and Training in the other place, Ms Kosky, at Rowville Primary School to open important upgrades to the school's facilities. The Bracks government contributed more than $260 000 towards the upgrading of the staffroom, library, sick bay and art room, with $600 000 being allocated by the federal government. The Bracks government also contributed $100 000 to the upgrading of student toilet facilities. The school community raised a further $7000 towards the toilet upgrade project. This contribution demonstrates the level of confidence the community has in Rowville Primary School. The money the Bracks government has put into this project is only one example of our substantial investment in building better schools across Victoria. Since 1999, 339 schools have had major renovations. In the 2005 budget we have allocated $145 million to modernise another 50 schools.

The new facilities and improvements will reinforce Rowville Primary School's reputation for excellence in education. Rowville students and staff are to be congratulated on their endeavours and their fine record of achievements in academic and sporting curricula fields. The programs offered by the school are very extensive and enable students to explore their talents.

I congratulate Anne Babich, principal of Rowville Primary School, and the school community for their commitment to the education and wellbeing of their children. I was very pleased to have the opportunity to visit the school on this important occasion.

ACCIDENT COMPENSATION (FURTHER AMENDMENT) BILL

Second reading

Debate resumed from 20 July; motion of Hon. BILL FORWOOD (Templestowe).

Mr LENDERS (Minister for WorkCover and the TAC) — I rise to oppose this private members bill introduced to the house by Mr Forwood and to explain the government's reasons for doing so. Mr Forwood's bill is a fairly simple proposition. It has two substantive clauses. We do not often get such short bills in this place, so I congratulate him on his succinct drafting.

Hon. Andrea Coote interjected.

Mr LENDERS — I take up Mrs Coote's interjection to take note. Bills that have some substance do require a fair amount of drafting and a fair amount of text. Bills that, in a sense, are purely a political stunt do not deserve to be as big and as long as other bills, and I say that sincerely. I read through Mr Forwood's second-reading speech with some interest. It was a good speech, and I probably agree with about 95 per cent of what he said in it. He went through a narration about third-party recoveries. He went through the history. He went through policy. He went through a lot of areas. It was a good contribution to the debate. The fundamental flaw in what Mr Forwood proposes in his bill is that in the end it does not address the core issues he goes to. I will go through them bit by bit.

Mr Forwood said in the second paragraph of his second-reading speech:

> This bill goes a very small way towards easing carer concerns about a recent trend by the Victorian WorkCover Authority (VWA) …

He said 'a very small way'. If we go to the absolute essence of what we are talking about here, it is the issue of third-party recoveries from the Victorian WorkCover Authority. I am sure neither Mr Forwood nor anyone else opposite would disagree with me that in the vast majority of cases they are appropriate. I do not think there would be any disagreement across the chamber on any of that.

We are talking of in the order of 500 times a year when the Victorian WorkCover Authority actually seeks a third-party recovery. Overwhelmingly that happens in cases where a labour hire firm or someone goes into premises and there is a third-party recovery. If we think of the exact case here, you will hire someone from a labour hire firm who will go on your behalf into a workplace. If that person is injured, the Victorian WorkCover Authority picks up the costs of dealing with the person's medical and wages expenses and other things, then the authority recovers because it is faced with employment effectively by the third party. Again there is no point arguing this other than for clarification. In the vast majority of cases that is the case.

Probably in about 1 in 20 cases there is not such a clear labour hire arrangement, and obviously this is all in the context of the misfortune that befell the Krupjak family in the Latrobe Valley. I will speak more about that as we go on and of other cases where it is not quite as clear cut and where discretion needs to be used. I think we in this place all agree it is fair to say that in probably 95 per cent of cases we are not particularly interested because it is fairly clear cut what the Victorian WorkCover Authority has done. There is some dispute over the last 5 per cent of cases as to what is the appropriate way for third-party recoveries to be pursued or whether there should be third-party recoveries at all.

What I think is cruel about Mr Forwood's proposal here is that it has raised enormous expectations essentially in, for want of a better term, the caring community that somehow or other this private members bill is going to fix the problem. While I am enormously flattered that Mr Forwood thinks I would be far more sensitive and appropriate in dealing with this as the minister, as the first clause of his bill proposes, than would the Victorian WorkCover Authority, I genuinely think this is a very cruel way to operate because it has raised enormous expectations that there is going to be some sort of fundamental change when realistically all this bill does is say that rather than the director or the chief executive officer of the Victorian WorkCover Authority ultimately making a decision based on the facts whether to proceed with the third-party recovery or not, it should be the Minister for WorkCover and the TAC.

There are some very fundamental issues here regarding ministerial responsibility. I do not shirk from those. We ministers are appointed to take responsibility for departments on a whole range of issues. I do not shirk from that, but what we have seen over time with the Victorian WorkCover Authority, whether under the stewardship of the Liberal Party and The Nationals or the Labor Party, is a move to have the individual decisions made by the independent statutory body. The minister sets the direction on general policy, and he sets the direction clearly on presenting legislation to the Parliament. The minister has an enormous range of macro decisions to make in those areas, but under no political persuasion of that authority — whether it be Labor or the Liberals and The Nationals, and I am happy to stand corrected — have we moved to decisions on individual cases actually being made by a politician, by a minister.

I realise that people are very distressed about what has happened. As I have said in this place in question time and as I have said before the Public Accounts and Estimates Committee, the Victorian WorkCover Authority did not cover itself with glory in its handling of the Krupjak family's case. There is no defence for it, and there is no doubt about it. Both the chief executive officer of WorkCover, Greg Tweedly, and I have said this is not good enough, and WorkCover is dealing with it. As I have responded in this house before, there are a series of procedures now in place in the Victorian WorkCover Authority for these discretionary decisions to be dealt with at a far more senior level. Guidelines have gone out to the carers sector, again for want of a better term. I am loath to use the term 'sector', because we seem to use it for everything, but for the people who specialise in this area of work there are guidelines that in the classic tradition of WorkSafe try to provide guidance and advice to say that hundreds of people have dealt with this, that this is serious and that these are sensible precautions to take. All of those steps have been taken.

With regard to the Krupjak family, the chief executive officer of WorkCover has assured me that he has informed them that the VWA is not pursuing them. There is an issue there as to whether the insurer can pursue them, but they will not be held accountable. But in some ways while it highlights the problems we have had with the system it also highlights the checks and balances that are in place. What it means is that the decisions that are made to prosecute and to recover are made on the basis of the facts in front of those making the decisions. It is a much more highly elevated level of advice than was the case previously. If we go back to the substance of the bill, we see that what Mr Forwood proposes is that rather than the chief executive officer of WorkCover making the decision we should let the minister make that decision. But will that in any way change the nature of the decision?

This is where I think it is a cruel hoax. As a minister I know of other areas, and I am sure that as a former minister in this place Mr Baxter will understand that very well. When a minister is asked to exercise a discretion no minister is going to start afresh. They seek expert advice from their department and then they make an informed decision. That is what a minister is required to do. But what would substantially change in any of the 500 cases that Mr Forwood's bill proposes that the Minister for WorkCover and the TAC make decisions on? The cases would be presented by the Victorian WorkCover Authority. The same people in the VWA would look at the case material, make an informed decision and write a brief. But rather than that material going to the chief executive officer for a decision, the CEO would make a decision and then make a recommendation to the minister. As a former consumer affairs minister I have made those sorts of decisions on many occasions on liquor licensing and a range of other issues. So a minister will take advice from the department, although he does not have to accept that advice, and he is probably more alert to any public policy issues that are raised.

But if Mr Forwood genuinely believes that any WorkCover minister and the authority are not now supersensitised to the issue after what has happened to the Krupjak family, I think he misunderstands the political processes. I may have some disagreements with Mr Forwood over time, but I think he well and truly knows that the checks and balances are de facto in place more than they would ever be through a piece of legislation because an injustice has been done to a family. They have been unnecessarily frightened by this and the VWA has assured them that there is no need for that.

The bill then goes to third-party recoveries. Decisions need to be made on the facts of a case. Despite the criticism it has been subjected to over the Krupjak case, the VWA often does not pursue a recovery in these third-party cases because of the facts of a case, and where a family does not have the means. It makes its own informed decisions in all those areas. We need to consider what happens, what Mr Forwood is proposing and whether it is a remedy. I say it is a cruel hoax because it raises enormous hopes and expectations that somehow or other it will change what is happening, when those changes are already in place through administrative decisions that have been made by the VWA. Decisions will never again be made by anyone other than the chief executive officer of the

organisation, at least through their reference, which is a quantitative change on where things were.

Mr Forwood's second-reading speech talks about the overzealous use of section 138 of the act. He also goes through a range of issues and states that over a five-year period VWA recoveries from third-party sources have gone up from $14 million to $64 million. But of course that hides the fact that this is not about the Krupjak family. These recoveries were in circumstances that I talked of before. The overwhelming majority of recoveries are concerned with the issue of labour hire and others. If it is doing its job properly you would expect the Victorian WorkCover Authority to make these third-party recoveries. The only issue here is its level of sensitivity in dealing with families like the Krupjaks.

If you look at the rhetoric of Mr Forwood's second-reading speech and some of the rhetoric that we have seen in debate here, and drawing two and two together — I am not trying to put words into Mr Forwood's mouth — the impression is that the VWA is getting $64 million from little people, from people without financial means and people who are vulnerable, some of whom are being bullied by a government agency. The overwhelming majority of this money comes from labour hire and other sources like it, where there is an unquestioned workplace and where an injury has occurred and people have previously avoided some of the costs, often through dubious employment arrangements, or sometimes just ones that have been effectively mitigated by tax lawyers.

I say to Mr Forwood, who represents a party that claims to be looking after small business, and I am fascinated with Mr Atkinson's view on this, that challenging the very legitimacy of third-party recovery is effectively saying that the $64 million, or the $50 million increase, should be spread over small businesses — people who do not use these different arrangements and who legitimately employ a person on their payroll — and that somehow or other they are then liable for this, and that because of this scare campaign we need to back off. I do not think Mr Forwood is saying that. I certainly would not expect him to, because I think he is far more responsible than that and is more respectful of the need for the Victorian WorkCover Authority to trade in the black. We need to be careful in this debate when we are talking of the $14 million to $64 million, because it is not recoveries from the Krupjak family but recoveries from labour hire firms that overwhelmingly we are talking of in these particular circumstances. We need to be absolutely focused on what this is about — this is about the 95 per cent. There is a separate debate about the 5 per cent, but let us not let the debate about the 5 obscure the 95 — and that is what some of this debate has been about. We need to be particularly cognisant of that.

That covers a lot of the areas that Mr Forwood raised in his second-reading speech. Again I go to some of the sensationalism raised in this debate. Towards its end Mr Forwood's speech talks about the 1.8 million households in Victoria that are all potential users of in-house care, and again the fear that somehow or other these houses being safe workplaces would seem to be under some threat. I go back to the absolute starting premise over a discretion being exercised well on where these third-party recoveries come from. I assert without reservation that it is legitimate for the VWA, where a person has insurance, to seek to recover from that insurance towards the costs of the VWA where there has been an injury off site which is a workplace by definition. I assert that unequivocally. Obviously there needs to be an agreed sensitivity with families who do not have levels of insurance and where in the circumstances of the case that sensitivity needs to be applied, as the VWA says it will do. As it has learnt from the Krupjak case, it needs to be more vigilant about this than it was in those particular circumstances.

The second clause in the bill requires the VWA in its annual report to provide full details of these 500 cases. The government does not support this clause, but the government, with the VWA, will see how it can report to the public in general terms on this. I do not think it will help to put the details of the 500 cases or more into the annual report. Mr Forwood is trying to find something to say to people who are looking to him for solutions that are not easy to find. I can assure the house that if the solutions were easy to find, or as easy as Mr Forwood thinks, the government would have seized on them a lot more quickly than Mr Forwood got his private members bill up. The government is aware that it needs to get the balance right, and if there were a quick and easy solution by amending the act, it would have beaten him to the mark.

The second point Mr Forwood has raised, again in the policy sense, shows that he is trying to find something to put into his bill so he can say to the community, 'We have passed the bill and the bill will force the government to do X, Y or Z'. I think he was trawling fairly deeply and widely to find something, and in desperation he found this particular clause to put those cases into the annual report of the Victorian WorkCover Authority. Full marks to Mr Forwood for trying to find something to flesh out his bill, but it has far less substance than the first point he makes, which is clearly one that we need to address with care and considerable sensitivity.

That in essence takes us through Mr Forwood's second-reading speech. It is very important in this place to reflect on what the problems and the solutions are and to try to strip out the politics in this issue. Third-party recovery is a serious issue. I think Mr Hall asked a question during question time about third-party recovery; I am sure Mr Hall will elaborate on that during this debate.

I refer to the request about exempting groups as a whole from third-party recovery. It is interesting that finally in Mr Forwood's legislation that exemption has gone. It says that the minister must exercise a discretion. In a sense that answers some of the debate in the community that you have to exempt worthy people and leave in unworthy people. I totally accept the premise that you exempt worthy people and do not exempt unworthy people, but the devil is in the detail. How on earth under a regime do you do that by either legislative enactment or any set of rules or guidelines do that?

I go back to the premise of whether it should be a minister of the Crown or an independent statutory body doing this. If we go back through the history of this state, I can recall not that long ago when either the Cain or Hamer government set up the Office of Public Prosecutions. The entire purpose of the office was that the independent statutory authority would make decisions on prosecutions rather than the Attorney-General. I go back to the fundamentals of what is the appropriate way to do it. Mr Forwood and those opposite will undoubtedly say that if I am being paid as a minister of the Crown — and I note that my WorkCover authority is without salary — it is my job to do this. Yes, it is my job to do this and to make any hard decisions required of government. But this is not shirking the job. It is a question of where it stops?

In the case of third-party recovery the opposition is saying, 'Do not leave it to the independent statutory authority but give it to a minister of the Crown'. That is effectively what the opposition is saying. I am not trying to score points here. I ask the question of Mr Forwood and those opposite who are supporting this bill: where does it stop with WorkCover? Are they actually saying that because it is sensitive and they are questioning the ability of the VWA to make decisions about WorkSafe a minister should start making decisions about prosecutions on occupational health and safety issues? If that were what we proposed I can imagine what Mr Forwood would be saying about us being beholden to our mates in the union movement. Are they actually saying that a minister should make decisions on individual claims amounts? Should we start usurping medical panels?

We can go through the fundamentals of the system that has been set up, and while we have had partisan stoushes on parts of this over time — and it is the royal 'we' as in the government versus the opposition; and on probably 10 per cent of issues or maybe even less there have been very fundamental partisan stoushes — on the basic principle of ministers not getting involved in day-to-day decisions I genuinely ask Mr Forwood in summing up, and I invite those who will contribute to this debate and support the motion, to start thinking about where they draw the line.

If the bill were to pass and I were required to deal with these 500 cases a year, I would get advice from the VWA and give consideration to each of these briefs — 1, 2 or 3 hours a week, whatever it would take to read through these very thick files. I would do that and undoubtedly I would find the time to do that because I would be obliged to do it, but that is not the issue I am concerned about. My issue genuinely is, if because there is dissatisfaction in the community about an individual decision that we come to Parliament and say that independent decision should be taken away from the independent statutory authority and given to the minister, it will never stop. It will be the thin edge of the wedge.

Hon. P. R. Hall — What about the planning minister; he deals with individual cases and has discretion?

Mr LENDERS — I take up the interjection by Mr Hall. He makes a valid point because in some areas ministers have discretion. I have said to the house before, when I was the Minister for Consumer Affairs I had multiple discretions to exercise on liquor licences. I assure the house that on those issues I would be very loathe to go against the recommendations of the director of liquor licensing because that is an independent statutory authority that was set up to give advice. With some planning issues there are specific things that occur over time, and it has never been disputed by either side of the house that there are some issues that are called in by the planning minister.

The fundamental difference with the Victorian WorkCover Authority is the same principle which we had when the director of public prosecutions was set up by a previous government and which has been enshrined by all governments since: I challenge people opposite to find an example where a government minister has an individual discretion on individual welfare benefit decisions. I genuinely say that we as a Parliament cannot accept the premise on this because there has been a media campaign. Understandably a media campaign is unsettling for members and the

human dimension is unsettling. I fully accept that. These are people who have been disadvantaged by a system and are seeking redress. I do not for one moment begrudge those people that, nor do I begrudge anyone to trying to find solutions. I genuinely accept that Mr Hall and Mr Forwood have been trying to find solutions, but I think by its very nature Mr Forwood's amendment in the end is a symbolic amendment only. That Mr Hall has not yet come up with an amendment probably supports my case that this is not easy.

I will not shirk from the fundamental policy question, but if we accept the premise that on these third-party recovery cases a department should not do it but a minister should accept legal responsibility, then I would say that in my six months as Minister for WorkCover and the TAC — and I am not exaggerating — on a daily basis I would probably be getting in the order of 10 to 20 requests to review decisions made by those independent statutory authorities. There is not a day when there are not a number of emails, let alone phone calls, in my ministerial or electorate office or home on some of these issues. So let us not kid ourselves. If we accept the premise that on welfare decisions a minister needs to make an individual decision, where do we draw the line? I welcome the debate.

There are tens of thousands of decisions made every year by the Victorian WorkCover Authority and the Transport Accident Commission on the basis of welfare decisions alone, let alone by the VWA on the basis of occupational health and safety issues, the licensing of inspectors and those sorts of issues. The fundamental point here is that if people opposite make a case that this is different, I will sit and listen with interest to the debate, but I do not expect to be convinced by the argument because it is exactly the discussion that I have in government seriously tried to pursue — that is, is there a way of separating one from the other? I do not think anyone will come up with an answer to that without fundamentally eating into the core of the independence of independent statutory bodies, and without questioning the absolute validity of the Department of Premier and Cabinet set-up and the absolute validity of the whole WorkCover and transport accident systems.

I have covered most of the issues, but I again refer the house to the root cause of the problem. The problem that has everybody energised is what happened to a particular family in Hazelwood in the Latrobe Valley. I think that family has now been fairly dealt with, but we want to stop what happened to that family happening to another family. That obviously is the issue that members of this place and the community are most focused on.

I have already announced in this house that the *Victorian Home Care Industry OHS Guide* hopefully does all the things you could expect an occupational health and safety guide to do. It documents the sorts of issues that people face if there are paid carers coming into the home. It is a workplace, of course, but obviously the people living there do not see it as a workplace. They see it as the place that they live and where they have children or members of the family in need. They see it as a place to which carers need to come to look after them. So their mindset is not on following workplace requirements, and that is a problem we have to address.

While every sympathy obviously goes to the Krupjak family and the problems it has had, we cannot ignore the fact that a worker came into that home site and was bitten by a dog, and the complications that arose from that dog bite have put that worker into absolute grief as well. Unless we get that balance right other small businesses in Victoria will be paying for that worker if we are not dealing with some form of third-party recovery. We need to get that right. We cannot put a third-party recovery in place if the discretion exercised by the VWA says it would be inappropriate in the family's case. Firstly, we need to equip those families, and this guide should assist them. Secondly, we need to equip the carers who go onto the site, and this guide should assist them. Thirdly, we need to equip the case managers who advise the families and carers, who supervise this and who would have a greater expectation of reading this sort of documentation than would a family that was simply trying to get someone to come to the house to look after a disabled member of the family.

By putting the home care occupational health and safety (OHS) guide in place we should hopefully address some of the causes of the problem so that they do not arise again. The VWA is acutely aware of that. This guide has been developed in conjunction with the Municipal Association of Victoria. Basically it has been a work in progress. It was started a long time before the case of the Krupjaks. It has been a work in progress to try and address these issues before they arise.

I want to say in this place that we are seeing workplace injuries coming down, and they are coming down for a number of reasons. The prime reason is that there is greater awareness in the community of the cause and effect of a safe workplace and injury. We obviously can reinforce that in a state sense primarily by providing information. It could be via a WorkSafe inspector providing information, not just saying, 'There is a problem, we will put a provisional improvement notice on it'. The inspector can actually say, 'This is how you

fix the problem'. That is part of the whole transformation of the organisation which has come out of the new act. Mr Forwood might say you might not need an act to do it, but it has come out of the act. That is the first part. The second part is that people are recognising that there is the option or a capacity to throw the book at someone under the rules. However, the first thing should be to get the workplace right. The changes are coming. Injuries are going down and premiums are going down as a consequence of that cultural change. The OHS guide that I have referred to is part of the cultural change and should address that.

But above and beyond that, going back to the two substantive clauses of the bill, getting the Minister for WorkCover and the TAC to sign off on these 500 cases is not going to change anything. It will mean that an individual will still make a decision. If the decision is wrong or inappropriate, that individual will be accountable. Obviously a minister being accountable is more embarrassing to the government than a chief executive officer of an organisation being accountable. I totally accept that. But you have to balance that point versus the one of where you go with individual welfare decisions being made by a minister of the Crown?

I think members opposite would be genuinely horrified if I, as the Minister for WorkCover and the TAC, were issuing perks for union representatives to go on to work sites. They would be horrified if I were the one making choices on prosecutions. Melbourne is a small town and Victoria is a small state where everybody knows everybody and there are connections. You want an independent body. I accept that Mr Forwood is between a rock and a hard place. Oppositions want to find solutions for people when governments are not finding them, and the opposition needed to come up with a bill. Again, I will be very interested in whether Mr Hall has any amendments to this bill and comes up with solutions other than the two very feeble solutions Mr Forwood is proposing. That is the substance to which I hope the debate comes.

I think I can paraphrase what people think about the debate. I cannot hack into their computers and read their speech notes, but I think I can predict what the debate will be from speakers opposite. It will be about an insensitive authority and about how a minister should make these decisions and not duck from them. Again and again it will be about a greedy authority and $40 million or $64 million and all the rest of it. But I know what the debate is going to be. I can assure Mr Forwood that I have not looked at his computer. I do not even know whether he has written these notes himself or whether they are computer notes. However, he goes — —

Hon. Andrea Coote — With all those staff he has got.

Mr LENDERS — That is right. I know what the debate is going to be, but I will listen with interest to how finely tuned it is going to be. I say genuinely to people opposite: find solutions to the discretionary effort of ministers getting involved in welfare decisions. If opposition members can find solutions on that, we are all ears as to how we can — —

Hon. P. R. Hall — That is a cop-out. Why don't you find solutions?

Mr LENDERS — I will take up Mr Hall's interjection. It is easy to say it is the role of government to find solutions. This government takes pride in a lot of solutions it has found, but I say genuinely to Mr Hall that my mind, the minds of my departmental staff and those of the staff in the Victorian WorkCover Authority have been acutely exercised on this for, shall we say, a considerable period of time. If Mr Hall thinks that I actually enjoy getting some of the correspondence that I am sure he has got, that Mrs Coote has got and that everybody opposite has had — —

Hon. P. R. Hall — If you cannot find a solution, don't knock Mr Forwood. It is not fair.

Mr LENDERS — I am acutely aware that the easiest thing possible would be to find a simple solution. It goes right back to some of the debates we have had about courts, during which people talked about mandatory sentences and a whole range of other things and said, 'It has got to be a statutory solution, one size fits all, and remove discretion'. In cases like this how you can have a piece of legislation that outlines 50 or 100 circumstances and says what is going to be the case without doing injustices? There is no doubt that discretion is the only way to go. I go back to the principles in this case.

Legislation has moved on over the last few decades under all governments. I think it probably started under the Hamer government or the Cain government. We have moved away from prescriptive answers to everything to general principles, which then either ministers, authorities or courts apply. We all know the cases. I have been at community cabinets when there has been a remedy proposed, when somebody has come with 15 pages of prescriptive solutions. Sometimes you try to explain that you try to use principles so that you can have greater flexibility. That can often be unsatisfactory because people do not accept that argument, but from a government perspective we need

to put principles in place in legislation and then have independent people apply them.

Mr Hall has asked why we have not found a solution. I think we have found a solution to this. In the Victorian WorkCover Authority at senior management level we have a greater focus on each of the third-party recovery cases. That is a change. We have now put guidance material out to people who are working in the area, and that is a change. The guidance material, as I said, started way before the Krupjak case, and the senior management involvement came after the case, so there is change in the way the VWA is administered. I think that change fits in with the principles I have enunciated — that is, that these decisions on welfare cases need to be made by an independent statutory body and not by a minister. We do not resile from that, so I will take up Mr Hall's point. I think one solution was in the pipeline and one came after the event. I think that answers it, and I genuinely welcome the debate, but I think the private members bill we have before us does not address the fundamental question of independence or in any way stop what would happen to a family such as the Krupjaks in the future. It does not stop it in any way. The only difference it makes is that Mr Forwood can say that he has done something in the Parliament and other members can say, 'We voted for it in the Parliament, but the government voted against it'. That is the only difference it makes.

What has happened is that the government has put new procedures in place to stop the unfairness aspect of it, or has given greater discretion to the VWA or put a greater focus on it being done in the VWA. I think that really sums it up. I could start going around in circles and repeating myself, but I will conclude. I will reiterate the question from my perspective. Firstly, to get the government's support opposition members would need to convince us why getting rid of the time-honoured discretion of ministers and having it done by independent bodies is good. Should it be confined to just this, or will the opposition say, 'But we will not call for anything else to happen'? Because members can rest assured that once this happens every interest group will want individual ministerial discretion. That question needs to be answered.

Secondly, will the wrong be redressed by the action already taken by the government? I think the answer is yes. The two actions I have mentioned will address that. My third point is the inclusion in the annual report. I will be very interested to hear whether Mr Forwood in summing up or Mrs Coote in leading the debate for the opposition will even try to defend the feeble nature of the second clause of Mr Forwood's private members bill.

For those reasons government members welcome the debate on these issues, but we will not be supporting Mr Forwood's motion because in the end we think it is symbolism that the opposition had to come up with. It does not fix any of the problems; in fact, it opens a Pandora's box of greater problems that we would not want to face.

Hon. W. R. BAXTER (North Eastern) — At the outset I advise the house that The Nationals will make available to Ms Hadden 5 minutes of our allocated time.

I want to commend Mr Forwood for bringing the bill before the house and my leader, Mr Hall, for raising the issue in the first instance on behalf of his constituents. There is no shadow of doubt whatsoever that a grave injustice was about to be visited upon a family who have already been dealt a very raw hand in any event. It is disquieting to think this could happen in our modern society with all the safeguards the minister has just regaled us with! He spoke about how independent authorities do these things and about how there is no need for ministerial interference or ministerial discretion. He said that the system is going to make these judgments. The fact is, and the minister did at least have the decency to acknowledge this, that the system got it wrong. The system did not work. The system was about to impose an enormous penalty upon this family, not only financially but emotionally and a weight of stress that you could not possibly measure.

I find it extraordinary that we have a Victorian WorkCover Authority that is so crass and insensitive that it can contract out to one of the big Collins Street law firms the powers it has under section 138 to go off and pursue people for third-party recoveries. Of course The Nationals and, no doubt, the opposition do not object to the principle of third-party recoveries. In appropriate cases that is obviously the way to go. I was going to suggest to Mr Forwood, for example, that he might care to consider an amendment to his bill to provide that the ministerial discretion he seeks be limited only to cases where the person or body being pursued is not an incorporated body. We have heard so much this morning about labour hire companies. Again it has been reiterated and confirmed how much Labor hates those firms, but let me not go off on that tangent.

I am surprised that if we are collecting $60 million a year on third-party recoveries — which we are, the annual report says so — there are only 500 cases a year. In fact I have done some figures and worked out that the average recovery, bearing in mind the Krupjak case was $14 600, might have been $25 000 a case. If it is $60 million a year, that is 2400 a year, 46 a week or 7 a

working day. That was the only point Mr Forwood and the minister needed to make. In a sense I am encouraged by the fact that it is only 500, but it does indicate that some of them are very, very large recoveries, given that it adds up to $60 million.

The fact is that here we have the VWA contracting out to one of Melbourne's biggest law firms the authority to issue notices under section 138. And what does that law firm do? It has some clerk working in the bowels who gets a hold of the files sent over to him from the VWA and sends off the sort of letter that was sent to the Krupjaks. It was the most insensitive and unhelpful communication that you would see in a day's march. It was absolutely calculated to scare the pants off that family and to have them perhaps pay up or go off and see a solicitor and engage in action that would incur a whole lot of other costs. Fortunately that family was in a network with the Gippsland Carers Association and Jean Tops and other skilled people who, when alerted to this, spoke to Mr Hall and Mr Forwood and others and something was done about it.

I invite members to imagine if that family had not had that network and had either paid up, having gone out and borrowed the money, or engaged a solicitor who said, 'Well, we'll have to fight this'. He would have got out the act and read section 138 which, dispensing with the surplusage, says:

> Where an injury… was caused under circumstances creating a legal liability in a third party to pay damages … the Authority is entitled to be indemnified by the third party …

The first thing he would have done would have been to try to find out whether they were liable. Was the dog owned by the family or was it owned by someone else? Did the person who was injured mistreat the dog? There would have been a whole range of issues before it got to judgment. There would have been costs running into thousands and thousands of dollars. There is no doubt about that. That was the potential in this case, because we have a VWA that is so insensitive that it does not believe that it should exercise discretion. It just gives a case to a big firm of solicitors and pays them a big, fat fee for sending such notices out to struggling families in country Victoria.

It is all right for the minister to come in here and say, 'Oh, because this has happened we have tightened up the administrative mechanisms and it is not going to happen'. If only members could have that sort of confidence! There are so many examples of bad public administration in this state under this government that I cannot possibly have that sort of confidence. Yes, it will work for a while — they will be careful for a while — but, as we have just seen in another case with the Office of Police Integrity, look what goes wrong when ministers take their eye off the ball or senior executives get too busy doing other things and the systems are not kept up to date. Those are the sorts of injustices that can be incurred.

Mr Forwood has done the house a service in bringing this bill before the chamber today. He probably acknowledges that it is not perfect and I have drawn attention to a couple of improvements that could be made to ring fence the areas where ministerial discretion would be exercised. I sometimes wonder what we have ministers for because they are increasingly duckshoving any sort of decision to someone else to make. It is all very well for the minister to say, 'Look at the Director of Public Prosecutions. No-one thinks that ministers should be making the decision as to whether we prosecute someone for a criminal offence'. Mr Forwood is not suggesting we do and nor am I. Clearly in the case of criminal prosecutions the decision needs to be made at arm's length and not as it was in the situation that applied in earlier days, which would be totally unfair to both the minister and the community. But in cases like this, where there are not a lot of them and we have evidence that the system is breaking down, I thought that was what we have ministers for.

The minister was kind enough — perhaps that is the right word, or perhaps he was endeavouring to rope me in in some way — to refer in his remarks to me and my previous ministerial experience. I did exercise ministerial discretion on a number of occasions, and I did decide to disregard or discount bureaucratic advice that I got on occasions. But I thought that was my job — that was what I thought the people elected me to do. I thought I was there to be that safeguard if the bureaucracy was about to impose upon someone or a group an action which I thought was unjust and unfair. That is what Mr Forwood's bill is asking today. It is saying: if we have a set of circumstances like this, let the minister look at it. Yes, he will get from the VWA a file a foot thick — there is no doubt about that — but so what? If he agrees with its decision, well and good. If he does not, at least democracy is working and the people's safeguard is retained.

I reject the minister's assertion that this bill is not an ideal solution. We are not claiming it is, but by Jove, it would have saved the Krupjaks from an awful lot of angst, and it would have saved a lot of carers around the countryside and a lot of families from an awful lot of angst. The minister says, 'Oh, Mr Forwood is exaggerating when he talks about 1.8 million households'. The fact of the matter is that under this government's encouragement and by the exercise of

people's own free will in more and more families both parents are working and they are getting domestic help into their homes. Presumably they are all concerned about the implications for them under that system. Frankly, I do not see much difference between engaging domestic help via some company which provides that sort of help and what the Krupjaks did in engaging a carer via an organisation which provided that sort of assistance. There is a commonality there, so no wonder more than just carers and their families are concerned about the Krupjak debacle. They have every reason to be so, and Mr Forwood has every reason to draw attention to that fact.

In terms of the bill, there is a case for making sure that there is ministerial oversight in examples such as this because we have had a system that has not worked. We have not received sufficient assurance that it is going to work without fail in the future. As I said, this family had a network and that network helped them but I do not want any other family to be put into that situation again. The fact that a minister will look at a case gives us some assurance. I do not accept that because the chief executive of VWA acknowledges that in this case things did not work as they should have it will not happen again. The evidence proves otherwise, when we look back over history.

I say to the minister: do not just brush off Mr Forwood's bill as some sort of political stunt. That is being unfair. Yes, I think Mr Forwood's bill can be improved and be made more practical and the reporting of 500 cases in the annual report is probably a bit over the top. We acknowledge all that. But let us work together as a Parliament to put in place a system that the people of Victoria can be confident is fail safe.

Hon. ANDREA COOTE (Monash) — This morning members have heard a debate of the calibre that I have not heard since this particular Parliament was constituted. I commend the minister for being in here and partaking in the debate. It gives strength and validity to the bill that Mr Forwood has brought forward. The people of Victoria in general and carers in Victoria in particular will welcome the bill as a positive step. I would like to hear more of debate of this calibre. It has created a new benchmark, and I would like to debate of that standard continue in this place.

At the outset, we must give credit to Mr Forwood for bringing this bill into the house. He did not just dream it up; it is not just a political stunt. It was done following very careful consideration by a whole range of people throughout this state, including members of Carers Victoria and the Gippsland Carers Association, Margaret Ryan and numerous other people throughout the state.

I am concerned this is actually reflecting on people in the state. At the end of the day that is what our job is all about. Our jobs are about reflecting on and making legislation that helps people like the Krupjaks, Jean Tops and Margaret Ryan. In fact I think it is important to read again the purpose of this bill to remind ourselves what this debate is about:

> The purpose of this Act is to amend the Accident Compensation Act 1985 to provide for the Minister to have the power to determine which cases to pursue a legal liability from a third party to pay damages, the prevention of delegation of that power and the reporting of such cases annually to the Parliament.

The Leader of the Government talked at great length about what was wrong with this bill and about the concerns he had about its fundamental flaws. He criticised it for being too small. However, as I reminded him by interjection, Mr Forwood has only one staff member. The government has an entire department. The government should be able to see what these issues are. It should be able to have a closer look. Through the President, the Leader of the Government flippantly said to Mr Hall that the opposition should come up with the solutions. The minister is part of the government. He should come up with the solutions. He should be looking at and determining what those discretionary powers should be and make certain that the situation of people such as the Krupjaks is alleviated.

The Leader of the Government admitted that the government had bungled the Krupjak issue. He admitted that the Victorian WorkCover Authority had not done a proper job. The minister also said he would have tighter controls. The underlying matter of this whole issue is that the minister is actually concerned about the political ramifications and the fallout of the politics of all of this. In fact he made several innuendos within his speech about the impact on his government. He said there had been letters, bad press and a whole range of issues. There were a number of quite cynical sidelines on the politics, but we are dealing with people's lives here.

Let us have a look at the types of people who are carers that we are talking about. There are 690 000 carers in this state. We are talking about a whole range of people. Some of the very callous comments that the minister came out with this morning dealt with these people and the concerns they have. Mr Baxter eloquently spoke about the Krupjaks and how concerned they were about receiving this type of treatment from WorkCover. I want to also talk about other people who are carers: a

young person who cares for a parent with mental illness — imagine the stress if they received such a letter; an older person who cares for their life partner who has dementia or incontinence — contemplate the sadness they live with; a young family in rural Victoria who has one teenage child who has normal needs, demands and challenges but is profoundly disabled and requires 24-hour, 7-day-a-week complex care; and a single mother in South Melbourne who has a full-time job and a severely disabled child. There are thousands of unpaid carers who just look after a loved one because they love them and they do not see themselves as carers.

The government's solution to this is to put out guidelines for these people and have their case managers look at guidelines. The government is actually not going to be talking about this and identifying it in its annual reports. That would be actually a bit too much scrutiny! The government is putting out guidelines. How is it effectively going to warn and alert 690 000 people — like the variety of people I have just spoken about — in this state as to what is happening?

We are talking here about the Krupjak family. I am going to read a letter in this chamber because it is salutary to hear what happened to this family as instigated by the minister's department. As Mr Baxter rightly said, it was probably some low-level clerk in a law firm. I would like to read this letter from Mrs Krupjak. It is dated 18 May:

> My husband and I have three sons, Joshua, 12, Sam, 8 and Dylan, 6. Joshua and Dylan both have physical and intellectual disabilities and attend the Traralgon Special Developmental School. Life is very difficult dealing with medical problems constantly, funding issues for equipment such as wheelchairs, standing frames, lifting equipment, continence supplies, and funding for in-home services including home care, personal care and respite.
>
> …
>
> On February last year we received a relief carer for a morning shift providing personal care for the boys. On leaving the property the carer informed her employer, Australian Home Care, that our collie dog had nipped her. I was not notified of the situation until later on that morning, approximately 10 to 20 minutes later. I received a phone call from my case manager at Co Care Gippsland. I was informed that the carer had gone to her GP for a tetanus shot and asked if I would tie the dog up each time I received care from a carer from any agency. Of course I agreed but had trouble believing the dog had bitten the carer.

It goes on:

> The following day I was informed by my case manager at Co Care that the carer had had a reaction from the tetanus shot and had gone on sick leave.
>
> …
>
> Yesterday being 17 May 2005, over 12 and 2 months later, I received hand-delivered documents stating that my husband and I were to be sued by WorkCover for the sum of $14 560, plus $678.50 for additional costs.
>
> WorkCover has never assessed the property for risks or safety, nor has either of the agencies. We were never told to restrain or confine any of our animals and had no reason to believe anyone would be at risk.
>
> WorkCover believes we are liable for the fact that the carer had a reaction to the tetanus shot which may have caused an injury to her arm.

The letter goes on to say:

> As this situation has occurred, how many other situations in clients' homes can occur and who will take responsibility …
>
> My husband and I are living on one income and barely survive as it is. WorkCover cannot expect us to pay out all this money. What about legal fees? What about general living costs for our family, food, medicine, doctor appointments et cetera?
>
> The disability industry has failed my family and will probably fail other families as well.

And it goes on.

I think it is important to understand what happened here. The minister was gracious enough to acknowledge that WorkCover had in fact not done justice to this particular case, and indeed I sincerely hope his department, under his guidance, will ensure this does not ever happen again. I welcome the guidelines, but I also put a codicil on this to make certain that the minister ensures that people such as the Krupjaks, who are under enormous pressure, can understand what this means. There is a theory that having a pet around disabled children and elderly people et cetera is a therapeutic measure. How do you balance that up with something like this? This may seem for a minister of the Crown to be well and truly above them, but this is what people's lives are all about.

The minister says that he cannot be making individual recommendations on individual cases. The minister outlined at great length how he does not wish, and does not in fact believe, it is his responsibility to look at each and every case. Indeed he outlined for us the process of how a ministerial brief gets to him and the decision that is made, usually on a recommendation from one of the officers within the department. But it is imperative to note, as I said at the outset, that we are dealing with real people's lives — people like the Krupjaks.

Jean Tops has been spoken about before in this debate. I would like to put on the record my praise of Mrs Jean Tops. She does the most extraordinary work. She has a

disabled daughter of her own, and she provides a network, as Mr Baxter outlined, for people with disabilities, which I have to say is first rate. She is an excellent lobbyist, and I know she has written to the minister on several occasions. I spoke to her about this bill and she said that she had tried to get Mr Lenders on frequent occasions. This was on 5 August. She said:

> I have tried to get Mr Lenders. Miraculously a letter arrived today.

This, I might add, was when the bill finally got into this house. She said:

> Basically Mr Lenders has no intention of doing anything at all.

She refers to a two-page letter that she said she got from the minister on 3 August, which states:

> By its nature the home care industry is difficult for statutory workplace injury schemes to deal with as the scheme is based on the traditional concept of a workplace and injuries that occur there.
>
> While I can report that we are making progress here in Victoria, your suggestion of placing recipients of home care services beyond the reach of the law is not a viable option.

Her reaction to that was that she had a whole range of things she particularly wanted me to get into this debate. She said:

> If the government which benefits so hugely from the unpaid carers contribution will not protect us from third-party WorkCover liability then we demand the government provide us with protection by ensuring all employers of paid home care workers issue families with a certificate of occupational health and safety compliance and we will advocate all families ask for this certificate before accepting service.

Jean Tops has said she believes the minister is trying to turn their homes into a workplace industry and that this is just not acceptable. She goes on to say that the current legislation by the Bracks government discriminates against unpaid carers, and she is particularly concerned about the pets therapy programs, which I spoke about before. She raises the issue of, 'What about aged care, and will the carers be forced to protect themselves and will they be forced to pay the increasingly expensive third-party WorkCover liability?'. Many of the carers simply cannot afford this, especially as they are often renting. She says — and I think it is said by other people as well — that Mr Lenders is intent on making every private home with a carer in it into a workplace, into an industrial setting. There are times when the minister is going to have to become a minister. The department has to realise that we are dealing with people, that we cannot just deal with everybody on a huge mass and lump them into one, that more care has to be taken. It cannot just be outsourced to a legal company, and in fact it can be looked at in a whole range of areas.

Carers Victoria also asked me to get onto the record their praise for this bill. I would like to read an email from Shirley Hynes, who said:

> Carers Victoria acknowledges that the Gippsland Carers Association, through their spokesperson, Jean Tops, seeks to have carer households completely exempted from third-party liability, and there is some sympathy with that argument. However, we believe that the opposition has presented a very workable alternative to that position, as it is important to present a proposed amendment that might be acceptable to the government in the forthcoming parliamentary debate …

I remind the minister again that indeed this is not a political stunt. It is about people's lives. It is about dealing with not just the people that are fraudulent about the system, about labour supply firms. The minister spoke about the labour firms, and I think there is some justification for the comments he made on that, but I think the entire debate by the minister forgot to look at the hidden people. In fact in the minister's attempt to make certain that the government discredited the bill brought here by Mr Forwood, saying it lacked depth and that he should have analysed things further, he has forgotten to realise, as indeed his government has forgotten to realise, that there are many thousands — in fact 690 000 carers out there — all watching and reading and understanding what in fact goes behind this bill, and I think it should be a salutary lesson to this government to have a closer look at what is affecting these people's lives. It is just not good enough to say that he as a minister, or indeed any minister, will not be able to look more carefully and more closely at what is affecting people's lives in Victoria.

Mr VINEY (Chelsea) — I rise to indicate, along with the minister, that the government is not intending to support the bill before the house proposed by Mr Forwood. I think the minister outlined very thoroughly a good and solid set of reasons why the government cannot support the proposition put by Mr Forwood.

At the outset can I commend the minister for the comments he made in relation to the Krupjak case, where he indicated that the performance of the Victorian WorkCover Authority in that particular case was significantly less than satisfactory. I think his words were that 'the VWA did not cover itself in glory', and the government, I think like all good governments, has learnt from the process and has put in place a couple of changes that the government believes will avoid those kinds of mistakes in the future.

The two particular policy changes relate to the need for senior management to make decisions in relation to all third-party recovery matters and the need for a higher level of information to be provided to people working in these kinds of sectors — for example, home care. They are good and practical propositions that have been put forward by the government. It is worth putting on record that those changes happened under this minister's watch, so it is incorrect for the Deputy Leader of the Opposition to suggest that the government has not been trying to find a solution to this matter.

I commend Mr Forwood and the opposition for putting forward a proposal to the house to try to find a solution. It is a good development in terms of the way this house should work that opposition parties put forward proposals and we have the opportunity to debate them. I also recognise that when opposition parties put forward propositions they do not have the opportunities and the resources, if you like, that governments have. I welcome this debate because it has been a positive development in the work of this house. At the same time, however, the government has to consider those propositions carefully in a policy context. It is absolutely correct for the minister to outline the issues associated with drawing the line on ministerial decision making in relation to individual matters that are concerned with WorkCover.

If you started down this path you could see situations where ministers could be asked to make decisions on a whole raft of individual matters with respect to — as I think the minister said — which union members would be appointed as occupational health and safety representatives. You could even go down the path — and I see the minister is starting to scribble some notes now — of making individual decisions, if you like, about freedom of information releases. That path could be taken for a whole raft of areas.

During the minister's contribution I picked up on Mr Hall's interjection in relation to the planning minister's power to make individual decisions. There is an important distinction between the power of the planning minister and what Mr Forwood is proposing in this bill. The distinction is that the planning minister has the power to call in a planning matter by exception. Mr Forwood is proposing that all cases — 500-odd cases at the moment — where there is a need for third-party recovery should be determined by the minister, and that is a significant difference.

Where there is a power to call in — and I am not sure Mr Forwood was proposing this — such as in the case of the planning minister, that very significant power automatically brings with it a high level of scrutiny. That high level of scrutiny is appropriate where there is an exceptional call-in. Of course we would argue on this side of the house that that call-in power was exercised far too much by a previous planning minister under the Kennett government, but that is perhaps for another debate. There is an important distinction between what has been proposed by Mr Forwood and what Mr Hall rightly pointed out was a power of the Minister for Planning.

If you went down this path in respect of individual decisions of the Victorian WorkCover Authority, you would start to go down that path for a whole range of other ministers. You would start to go down that path for the Minister for Housing in relation to individual decisions. You would start to go down that path for the Minister for Community Services or the Minister for Health. The Minister for Health would be involved in decisions about waiting lists and individuals. I do not think anyone in this house would seriously argue for those things, but the proposed bill opens up that issue. If one is to introduce a requirement for a minister to make individual decisions — that are essentially legal decisions — about third-party legal recovery in 500 instances, that would be a bad development.

I have been advised that third-party recoveries are becoming quite significant in the operation of the WorkCover scheme. Over the last five or six years there has been a increase in the quantum value of third-party recoveries from some $14 million to $64 million. We are talking about a significant amount of money and it is important that this issue be properly considered. It goes to the heart of some of the issues I raised in the debate yesterday when I commented on Mrs Coote's criticisms of a public servant. It is a fundamental tenet of a civil society that the public service exists to provide fearless and frank advice to the minister in relation to policy matters. Once a policy decision is made it is the responsibility of the public service to faithfully execute that policy.

What is important here is that it is the minister's responsibility to put in place the right policy agenda and the right policy mix to solve these kinds of issues. That is exactly what the minister has done. On advice from the authority and his department he has put in place some proposals that relate to the right policy mix to try to avoid instances such as the Krupjak case coming up again. It is a policy mix to ensure that there is a senior management decision in relation to third-party recoveries and that there is a significant improvement in communications about responsibilities of people providing services through labour hire companies where that company's employees are working in a

place which is not the contained workplace of the actual employer. There is a need to make sure that workers are always protected. The importance of this policy is to ensure that employers, workers and people who engage, contract or hire labour hire workers are aware of their obligations. That is the policy that the minister has put in place.

That is the proper way that government should work — the public service exists to give fearless and frank advice to the minister, the minister puts in place the policy mix and the public service implements that policy. Ultimately, if that policy fails and you get a continuation of cases such as the Krupjaks, then this minister will be responsible for having put in place an incorrect policy. That is the system we put in place. It is not a system where you expect the minister to make individual decisions. You expect the minister to put in place the policy framework and to make sure of it and be accountable for it. If the policy framework fails then the minister is accountable. If there is individual failure then that is the individual failure of the person who made that decision — in other words, if the public service does not carry out the policy framework then that is clearly where the responsibility lies.

That is the right approach to these matters, that there is a proper policy framework to the proper consideration of individual cases and it is the responsibility of the minister. In his contribution today the minister accepted that responsibility to put in place the right policy framework to try to minimise or avoid the occurrence of unfortunate cases such as the Krupjaks, which has been referred to on numerous occasions in this house. No-one believes that that instance was an appropriate or proper process. Clearly something went wrong. It is important, and I commend the minister for the position he has taken in relation to it.

I will finish by saying that it is important for the Victorian WorkCover Authority to have the capacity to pursue third-party recovery, not only because of the quantum involved but because of the basic principle that people who engage labour hire or contract employees, or even home carers, have some obligations. Whilst in the case of the Krupjaks it was clearly not an appropriate thing to be pursuing recovery, there may be other circumstances where it is perfectly proper to do so — for example, if a person has public liability indemnity or is wealthy or of such a position in society that they can afford to make a contribution for what would ultimately have to be some demonstrable negligence on their part. You can think of people who are very successful in their business life and who would in their retirement employ people to care for them. They have obligations and they would have the capacity to meet those obligations if as a result of their negligence a worker were injured.

It is an important principle to be able to give the Victorian WorkCover Authority the capacity to pursue third-party recoveries, and the policy framework the minister has put in place is an appropriate one. The minister invited opposition members to make further suggestions, if they can come up with some, and there was no attempt by the minister to wash his hands of that or of his obligation to find them himself. He merely said that there is the capacity to provide further solutions. The policy framework the minister has put in place is appropriate and therefore it is unnecessary to go down the quite dangerous path of the minister having responsibility for all these individual decisions.

Hon. P. R. HALL (Gippsland) — I welcome the opportunity to speak on what I think is a very important piece of legislation. I congratulate Mr Forwood on bringing it before the house today. It has long been the view of The Nationals ever since this particular issue was brought to our attention that something needed to be done to address this, and indeed the Leader of The Nationals, the member for Gippsland South in the other place, Peter Ryan, was quoted in the *Herald Sun* of 11 June this year saying that it was not enough for WorkCover simply to drop the claim against the Krupjaks. He said the problem must be fixed by amending the legislation or by ministerial direction to the Victorian WorkCover Authority (VWA). Clearly from day one it has been the view of The Nationals that something needed to be done to address this problem. We welcome the fact that today there is an attempt to do something, and I congratulate Mr Forwood for putting this bill up to the house for debate because at the very least we hope it prompts the government to take further action on the matter.

I want to start by saying that it is pleasing that we have the Minister for WorkCover and the TAC in the chamber today to respond to opposition business. I think this is the first time this government has actually had a responsible minister in here of a Wednesday morning to directly respond to the issue. So I thank Mr Lenders for that, and I hope he is setting an example for other ministers to be in here on a Wednesday morning to respond to issues relevant to their portfolio.

Having said that, let me comment on some of the remarks made by Mr Lenders in his response to contributions in this second-reading debate. It was unfortunate that in his opening comments he said this was a political stunt by Mr Forwood. He used those terms. It was very unwise of him to say that. It is far from a political stunt. I know for a fact that there are

300 000 unpaid voluntary family carers in Victoria who in no way regard this as a political stunt. Indeed, I think they would find those remarks offensive. Let me say this about all of those 300 000 unpaid voluntary carers. They are a section of our community that deserve the highest respect from all of us, and they certainly have it from me.

Talking to some of those people about their situation makes you understand that they need every bit of help they can get. I have the utmost admiration for people like Jean Tops who has had a lifetime of caring for a disabled family member. The Krupjaks have two severely disabled sons that they care for. These people do it out of love for their family members, but they undertake the task at great personal, financial and social expense. As I said, they do it out of love for their family member, but they need a bit of help from time to time. They need decent respite options. They need help in the home from time to time to provide some care for them. The last thing they want is potential legal liabilities hanging over their heads, as happened in the Krupjak's situation.

So this is not a political stunt. Rather it is a serious attempt to at least help some of those people who undertake a lifetime of unpaid voluntary care, and the Parliament is to be commended for being prepared to at least discuss it this morning and look for ways to help those people. So I do not think the term 'political stunt' that Mr Lender's used was at all wise.

He went on to speak about the issue of third-party recovery and commented that the Victorian WorkCover Authority should have some ability to seek third-party recovery of funds. Certainly all speakers in the debate so far this morning have indicated there is no objection to that. It is a legitimate power that we believe the VWA should have. Mr Lenders informed the house that something like 500 cases a year are referred for third-party recovery, of which about 1 in 20 or 5 per cent are controversial — or to paraphrase his description they are of a sensitive nature. That is about 25 cases a year. Certainly members of The Nationals do not believe it to be an onerous task for the minister of the day to have a personal involvement in 25 cases a year.

I want to go to the main defence offered by Mr Lenders when addressing this issue. He said it was inappropriate for a minister to deal with each of those 500 cases individually. He said the minister should not be involved in some of those administrative matters, and should ensure that there is no political influence in decision making, and while there is some merit in that argument, it needs further examination. As my colleague Mr Baxter said, we need to have a look at the role of the minister. Let us look at the 500 cases referred by the VWA for recovery of funds under section 138 of the act. The Nationals acknowledge that there needs to be some filtering system undertaken by the authority itself, rather than simply outsourcing the legal work for those 500 cases to a firm, as described by Mr Baxter — just throw them their way without any further comment and ask them to follow up. There at least needs to be a senior officer in the VWA who can make an assessment about which of those cases are legitimate and reasonable to be pursued by a legal company, and those which have some sensitivity associated with them. As a result of that filtering process I would think that only a small number of the 500 cases would come back to the minister for his personal consideration. By way of interjection, the minister claimed that ministers should not get involved in day-to-day decision making. What about the planning minister? The planning minister of the day frequently gets involved and calls in planning appeals and directly considers those matters himself. He takes that responsibility on his shoulders.

Hon. Andrea Coote — That's why the last one left.

Hon. P. R. HALL — Indeed. They do not always do it very well, Mrs Coote. But they do it very regularly. The planning minister makes important personal decisions which have direct influence and benefits for the people involved. In their day-to-day work ministers sign off hundreds of letters a week in response to us as members of Parliament, or indeed to other people, where they take personal responsibility for putting their signature to a letter which may contain information or convey a decision-making process. As Mr Baxter said in his contribution, 'What is the role of the minister?'. He thought it was the role of the minister to take some personal consequence for those sorts of decisions, and I believe it is too. For Mr Lenders to use an argument to suggest that neither he nor any other minister should be directly involved in these cases is simply a cop out. It is the minister's responsibility to be involved in those sorts of things.

Mr Lenders said that third-party recoveries were predominantly from labour hire firms, and that may be the case, but it adds further weight to the argument that we are putting from this side of the chamber that the number of cases which we believe the minister should have some personal discretion over is very small, and it is therefore not such an onerous task for him to be assigned some decision-making process in respect of those cases, as in the process described in the bill before the chamber today. I will come back to what

Mr Lenders said in Parliament on a previous occasion when I raised this matter with him.

What I found most disappointing in the minister's response was his lack of any comment about the simple fact that there was a cop out of the responsibility of the government to find an adequate solution to this particular problem. Rather he seemed to want to mock Mr Forwood's solutions or taunt The Nationals into trying to provide a solution when he as minister has the full resources of government behind him to find solutions to this particular problem — —

Mr Lenders — I came up with two!

Hon. P. R. HALL — I will come to the two that you mentioned. Certainly, I do not believe that the minister has embarked upon a process — certainly not a public process — that has engaged members of the public in trying to address this problem because since the matter was raised in Parliament by me on 14 July — and there may be one other occasion when it has been raised in Parliament — there has been precious little about what the government is looking to do to help people like the Krupjaks and people in similar situations in the future. He said that a quick and easy solution was not readily available; otherwise he would have acted, and I agree with that. He posed the question: how do you provide a legitimate exemption for a certain group of people? When the government was faced with the problem of addressing legal liability for volunteers in our community it found one by enacting legislation to protect that group of people from being sued in circumstances where they were carrying out voluntary work.

I say to Mr Lenders that when he is considering the case of unpaid volunteer carers he should put them in the same category. They are voluntarily undertaking a task that would otherwise cost the state of Victoria billions of dollars, yet they do it every day of the week free of charge. I think they are worth, at the very least, putting every bit of effort that we can into trying to find a solution for them. So when it suited the government to find a solution for volunteers on legal liability it found one, but as yet it has not made the effort, not been clever enough or not cared enough to find a solution for unpaid volunteer carers in our communities.

The minister went on to say he believed the government had done two things to address this problem. First of all the *Victorian Home Care OHS Guide* has been published. That was published some time ago, well before the Krupjaks case came to light, as the minister himself admitted. So obviously that message — —

Mr Lenders — Published after, but prepared during or before.

Hon. P. R. HALL — I accept the clarification, but just as the minister criticised this legislation for not guaranteeing protection in the future, I say nor does the publication of the occupational health and safety guide for carers in their home. That gives no guarantee at all. The minister said there were some changes with the Victorian WorkCover Authority procedures, and we welcome those. I do not think he spelt out to the house exactly what those changes were, but I do not think there is any comfort to the 300 000 unpaid voluntary carers looking for some assurance or assistance from the government on this very important matter.

I quickly turn to the issue I raised with the minister on 14 June in this chamber during question time when I asked about this particular matter and sought some assurance from the minister that the government would do something to address it. In his reply the minister spoke about the sensitivity of this issue and that there needed to be discretion in attending to this matter. This bill before the house today gives the minister that discretion that Mr Lenders mentioned in his answer to me on 14 June. This measure gives the minister discretion for signing off on any claims under section 138 of the Accident Compensation Act. It gives him the discretion that he said was needed in the answer he gave me on that occasion. In that answer he referred to the need to have balance in the decision-making process. Again, this method as proposed in this bill provides that balance. I also asked about volunteers. The minister said previously that the government had found a solution for volunteers, but it seems unwilling to put the same effort into finding a solution for carers.

I agree with some of the comments by both government and opposition members and my colleague Mr Baxter that this legislation may not be a perfect solution for the problem, but full credit to those who have put up a proposal to address this situation in part. I know the Leader of The Nationals in the other place, Mr Ryan, has made comments suggesting this is a suitable solution. Mr Forwood has put forward a part solution by way of this bill so at least the opposition and The Nationals cannot be criticised for not having a go. The same cannot be said of this government because it has let down Victoria's 300 000 unpaid carers, the Krupjaks and every other person who is concerned that potentially in the future they could cop a suit from a legal firm representing the VWA.

This government and the minister are clever enough to find a solution if they really want to put their minds to it. The fact that the minister has not done this to this stage does not reflect well upon him or his government. I close by commending the bill to the house, and if the government believes it can do better I implore it to do so and put an alternative solution on the table.

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — At the outset I say that the Liberal Party will give 10 minutes of its allocated time to Ms Hadden.

I support the bill introduced by Mr Forwood. This bill arises from a fairly simple set of circumstances, the Krupjak case, where we had a situation of an employed work carer who entered a client's home to provide care and while in that home the carer was bitten by a dog. As a consequence of that dog bite a WorkCover claim arose and due to complications the sums involved became substantial, up to $14 000. Some 12 months after this incident the client, the Krupjak family, received a demand from the Victorian WorkCover Authority for the $14 000 costs that had been awarded to the carer.

Although a lot of time has been devoted to this particular case this morning, it has significant implications for anybody who has any employee doing any sort of work in their home. As Mr Baxter said in his contribution, increasingly we are seeing people using a variety of services whether cleaning, gardening or home handyman services, and any of those services that use employees can create a third-party liability for the home owner. Therefore the implications of this case which gave rise to the bill today are far more significant than just applying to the home-care industry, but can be applied to any scenario where an individual householder has an employee enter their home. For that reason it is very significant that Mr Forwood has introduced this legislation into the house.

The legislation has a simple straightforward solution to this problem of the Victorian WorkCover Authority seeking third-party coverage in circumstances where it is inappropriate to do so. A mechanism has been proposed in the legislation that provides to insert a new provision, proposed section 138AA, which provides that any action brought under section 138 of the principal act to make a third-party recovery cannot be commenced without the prior approval of the minister. Proposed subsection 138AA(2) provides that the authority of the minister cannot be delegated, which prevents the circumstances of a rubber-stamp approval being put in place by a bureaucrat. This bill requires the minister to make the determination under proposed section 138AA(1). Proposed subsections (3) and (4) put in place a reporting mechanism. This government holds itself out to be open and accountable, but we learn time and time again that is not the case. This provision would require the minister to report ministerial interventions to the Parliament and the public by the mechanism of the annual report. I note there has been some criticism of that and I will come to that in due course.

The Minister for WorkCover and the TAC, Mr Lenders, said in his contribution that the bill will not make a difference and would not have made a difference to the Krupjak case. He went to say that the government had put in place guidelines and has changed the internal procedures of the Victorian WorkCover Authority. Those two measures have no permanence and do not address the issues that arose in the Krupjak case. Simply issuing guidelines on occupational health and safety will not address the situation of the Victorian WorkCover Authority making inappropriate attempts to make a third-party recovery. On that issue Mr Lenders spoke about a change in the philosophy that this Parliament has employed in terms of legislation.

Mr Lenders said that in the last 20 years Parliament had moved away from prescriptive solutions to articulating general principles. While I think that is true I do not think that is necessarily a good thing. Last week I had the opportunity of sitting down with a constituent who came to my office with a WorkCover issue. This constituent was seeking advice on how he could meet his obligations and, more importantly, how he could be sure that he had met his obligations of providing a safe workplace. At the end of the day about the only advice I could give this constituent in terms of the obligations is that he would know he had met his obligations if it was tested in court and they were found not liable.

The legislation simply articulates the principles and unless the actions you have taken are tested in court you are not going to know if you comply with the legislation. Having to go through litigation or criminal prosecution is a very expensive way to find out one way or the other whether you have met your obligations under the legislation. While Mr Lenders holds up the idea of articulating general principles of legislation as the way forward, I do not know that that is always the case because there are many grey areas and much uncertainty for people who are subject to the legislation. The point is that neither of the measures Mr Lenders spoke about this morning addresses the issue of third-party recovery and the inappropriate actions by the Victorian WorkCover Authority.

Mr Baxter in his contribution outlined how this process works. He spoke about the WorkCover Authority getting a big pile of files, sending them across to a Collins Street law firm, and having some junior clerk send out demanding letters to third parties seeking recovery of expenses. Like many people in this chamber I have friends in the legal profession, and I have no doubt as to how this profession works. There is no doubt in my mind that many of these letters sent out by these Collins Street firms on behalf of the WorkCover Authority are ambit claims. They are sent out to test the water, to see whether the third parties can simply be convinced to pay up. The path of least resistance is that, putting the Krupjak case aside, it is easier to pay a small bill of $2000, $3000 or $4000 than to contest it in court against the resources of the WorkCover Authority in the hopes of winning. In most cases people will say it is easier to pay a $2000 bill than to contest litigation. In my mind many of these claims made by the authority will be ambit claims simply designed to bring in as much revenue as possible.

The beauty of Mr Forwood's bill is that it will simply deter in the first instance many of these ambit claims. If the minister is required to make a determination on whether a claim could proceed or not, I think we will find that many of these minor ambit claims simply will not reach the minister's test. If cases have to be determined by a minister first, whether the decision is made by the Victorian WorkCover Authority or by the law firm, I think we will find in many instances these cases will not be brought because the firm or the authority would make the decision that it is not worth putting it on the minister's desk because it is not going any further. Perhaps the key benefit of Mr Forwood's legislation is that it will act as a deterrent to the ambit claims. Rather than the minister receiving the 500 claims for consideration, as was said this morning, we may in fact see that the number of third-party recovery claims falls once they are required to undergo some scrutiny before they are served on the third party.

Some criticism was made of the requirement that this bill imposes for disclosure in the annual report of the minister's decisions in respect of third-party actions. While it is fine for members of the government to criticise this disclosure mechanism and say that it would be voluminous and difficult to do in an annual report, we have to keep in mind that that has not stopped this government from putting other quite ridiculous requirements in annual reports. We only have to look at an annual report of any government agency to see the requirements of the Whistleblowers Protection Act, which run to pages and pages. Every annual report is required to disclose every agency's process every year under the whistleblowers act. That runs to literally dozens of pages in every annual report. For the minister to say that this requirement would be too voluminous for the WorkCover annual report flies in the face of what this government has done when it comes to its other hobbyhorse of putting reporting requirements in annual reports.

The key basis of the government's objection to this legislation hangs on the minister's comments that a minister should not get involved in individual decision making or individual welfare decisions, to use the term Mr Lenders used. He then went on to say — if not in his speech then by interjection — that this would be the thin end of the wedge. If we have the minister make decisions on this area, we will then have the Minister for Housing having to make decisions on 70 000 housing applications each year. This bill before the house today is not about the Minister for Housing. It is not about decisions in housing, planning or any other portfolio. It is about the very narrow scope of third-party recoveries by the Victorian WorkCover Authority, and it should be considered on its merit and not in the context of all the other portfolios. If legislation is brought forward in those areas, then of course those would be considered separately.

But it also raises a question both Mr Baxter and Mr Hall canvassed — that is, the role of the minister. Increasingly we see statutory authorities established to make decisions which properly should be the decisions of the minister. At the end of the day it is the minister who is supposed to be responsible to this Parliament and it is the minister who is supposedly responsible to the people of Victoria, but we increasingly see statutory bodies formed to take these decisions and effectively to take responsibility for them. Time and time again we have seen ministers in this house get up, in question time and other times in the proceedings, and attempt to say that a decision is the responsibility of the independent authority and it has nothing to do with them. They tell us to go and talk to the independent authority. We see the Minister for Commonwealth Games, the Honourable Justin Madden, do it a lot in the Commonwealth Games area where there is an independent authority, the Commonwealth Games Corporation. This happens time and time again.

At the end of the day ministers are commissioned and salaried to make decisions in their respective portfolios. It is not good enough for the Minister for Finance to say that this is an independent authority and he should not get involved. There are other instances where ministers make interventions. We are seeing fewer decisions made directly by ministers with more of them being put off to independent authorities. But at the end of the day the minister is responsible, and it is the minister who

should be making the decisions. Therefore I do not accept Mr Lenders's broad claim that this would open the floodgates into other areas. This is a very specific circumstance. To date we are talking about 500 applications to run. Given that many of the ambit claims would drop out as a consequence of this legislation, I suspect the number actually visited by the minister would be fewer. It is appropriate, given the sensitive nature of this matter, that the minister take responsibility for these decisions and not simply say whatever decision an independent party gives. In that sense I support the minister being involved in making these decisions. This legislation is a very simple mechanism that will provide a brake on the Victorian WorkCover Authority and on the law firms which are making inappropriate third-party recovery efforts. Given its simple operation and that there is no cost to the Victorian taxpayer to do it, I would urge the house to support this measure so that cases like the Krupjak case do not recur.

Mr SMITH (Chelsea) — I will start by saying that I have listened to the contribution of the Honourable Andrea Coote. I have to say that with regard to the contributions made by members opposite, for them to lecture us on social welfare issues is just laughable. I cannot believe the audacity of the opposition. Talk about shedding crocodile tears! If members opposite think I am joking, just reflect on their performance when they were last in government on these sorts of issues. I am not one to sit back and cop this without exposing them for what they are.

This government takes very seriously the issue of third-party recoveries. We understand that they are an important part of the WorkCover regime, not least because they are extremely important in maintaining the viability of the scheme. When I consider the state of the finances of the Victorian WorkCover Authority, I would have to say that the particular minister does quite an impressive job.

Ms Hadden — Do you want preselection, Mr Smith?

Mr SMITH — Don't worry about my preselection, Ms Hadden, worry about your own!

Currently the Victorian WorkCover Authority can and does recover costs where negligence is involved from third parties. Perhaps it has done this historically in the same way as previous governments have. Again, this is a very responsible and economical policy to pursue. It is worth noting that the small minority of cases relate to workers not injured on a work site — for example, postmen or meter readers who are bitten by dogs or who fall over. These are a small minority, but these things happen. The key to these issues has always been the discretion of the authority and commonsense. That should always — —

Hon. Bill Forwood — Outsource the whole thing to Wisewoulds!

Mr SMITH — Mr Forwood has suggested that it has all been outsourced. Does that mean that there is no commonsense outside this Parliament? I do not think so. I think a lot of people outside demonstrate commonsense, and I have great confidence in the department to deliver just that. In terms of the actual case that both The Nationals and the Liberals are jumping on, grandstanding about and shedding crocodile tears over, I want to remind the house that the minister has dealt with this issue and has set in train systems to improve the ways in which particular cases are handled. As I have just said, in my view both parties have shed crocodile tears on this particular issue. And the Nats! Talk about grasping at straws! They would do anything — —

Ms Hadden — On a point of order, Deputy President, the chamber has been advised ad nauseam by the President, most recently as yesterday, on the proper description of people and parties in this place, yet Mr Smith continues to refer to the opposition parties in this place as Libs and Nats. That is unparliamentary, and I ask you to ask him to refer to the parties by their proper terms.

The DEPUTY PRESIDENT — Order! The President has reminded members that individual members of both houses, and ministers in particular, should be referred to by their proper titles and full names, but I do not accept Ms Hadden's point of order on the use of collective descriptions of the political parties in this house, so I do not uphold the point of order.

Mr SMITH — Honourable members opposite are keen to have Ms Hadden jump to their defence. I will seek some advice from the Chair. Maybe the Chair could advise me of the correct title and correct name of the Nats. Are they the Victorian Nationals or the National Party? What are they this week? Who knows? It is very hard to keep up.

The suggestion that the minister should intervene in all of these cases is an absolute nonsense when you consider that something in the order of 500 cases a year would qualify in terms of review or be unusual. It is just an unnecessary use of the minister's time to personally both peruse and make decisions on these cases. I think

that is a nonsense argument being put forward by those opposite. In conclusion, Deputy President — —

Hon. J. A. Vogels — You have 8 minutes to go.

Mr SMITH — It will be a long, drawn-out conclusion. It is appropriate for the regulator to have discretion, as previous governments have had.

Commonsense should always prevail. The changes proposed by Mr Forwood are impractical and unworkable and therefore they will not be supported by this side of the house. The government rejects them. This government will do what it does best: work with employers, employees and families — all the relevant parties — in a consultative manner to provide a continuously improved model that ensures the best possible outcome for all Victorians. I reject Mr Forwood's proposals and I suggest the rest of the members of the house follow suit.

Hon. D. K. DRUM (North Western) — I follow my colleagues in alerting the house that The Nationals will be supporting the legislation before the house. We are pleased that Mr Forwood has taken the issue into his hands and has attempted to put in place a piece of legislation which will enhance the current situation. If this type of legislation will prevent a similar situation to what the Krupjaks were in arising again, that will be to the benefit of all Victorians. That is all that anybody involved with this fiasco has been saying: we need to try to fix this so that it does not happen again. The Victorian WorkCover Authority did, after extreme pressure was put on it, repeal the action it was taking and cease its cost-recovery proceedings. As it stands, in his own words this morning the minister said he will involve a more senior bureaucrat in the decision-making process. The Nationals do not consider that that is going quite far enough. The bill offers the minister an opportunity to take a much greater role in the cost-recovery process in each third-party case.

I acknowledge that, as the minister said, if he followed that path there would be a burden on him in terms of time. Therefore, the compromise put forward by the Honourable Bill Baxter earlier in the debate is commonsense. Maybe the bill should be limited to businesses that are not incorporated. The legislation could then be limited to apply to families, individuals and maybe not-for-profit organisations that may find themselves at the wrong end of a cost-recovery exercise by the Victorian WorkCover Authority. The minister made it very clear that at the very top of his priorities is that the VWA must trade in the black. That is a laudable aim, but if it permeates right down through the system, which it obviously will, then we will end up with the attitude in the VWA that for every accident that happens in Victoria somebody is to blame and somebody will have to cover the cost for WorkCover. That is the issue I will touch on.

WorkCover has developed an attitude of thuggery in the way that it has gone about recovering costs. That is the attitude shown by many of its authorised officers who speak to employers when a business is forced to lodge a claim because an employee has had an accident. Many of the accidents that occur on the average day in Victoria are due to the incompetence or carelessness of an employee. Members need to try to get WorkCover to understand that occasionally workers act in a foolish or totally careless manner and therefore in some accidents nobody but the individual is at fault. That philosophy is certainly not followed by WorkCover officers. Three employers in my area who were involved in accidents that were clearly the fault of the individual have been told clearly by WorkCover officers that they will see them in court for an extended period of time. They have been told, 'If you want to fight the deal — if you want to fight the whole case, then we'll just leave this case in court for four or even five days'.

Hon. Bill Forwood — And break you in the process.

Hon. D. K. DRUM — Exactly, Mr Forwood, 'We'll break you in the process, and if you happen to beat us we'll take you to appeal and we'll get you again'. That is the thuggery I referred to earlier in my contribution. The whole attitude from the top down needs to be changed. Sure, we need to make sure that WorkCover trades well. But if we are going to have cost recovery in every case and every example at any cost, then we will enshrine the attitude that is endemic in the department and the VWA at the moment. Unfortunately that is what led to the attitude that the Krupjak family faced. It has forced Mr Forwood to come up with that will give discretion to the minister so that it will hopefully not happen again.

The minister spoke about the fact that the VWA already has a discretion. It is interesting to note the minister's response to a question that Mr Hall asked in mid-June. The minister said that the VWA has a discretion and that it had been exercised in that case. We are asking that there be more discretion and that it be taken to the ministerial level. All that is being asked for is what the minister effectively said should happen when he replied to that question in mid-June. He also said in his answer to that question that if the operations of the VWA are to be changed, further discussions might need to be entered into between the minister and the opposition.

Since mid-June absolutely nothing has happened. The government has put this aside. It has made some minor changes to the bureaucratic structure of how these cases are dealt with and then nothing has happened. So the minister for WorkCover has effectively left it for the opposition parties to try to fix it by coming up with a solution. That is clearly not good enough.

Hon. P. R. Hall — A cop-out.

Hon. D. K. DRUM — It is a cop-out, as Mr Hall says. It is not good enough for the minister to come in here and say, 'The proposition put by the opposition and supported by The Nationals is not good enough. It's not exactly right so we're not going to enter into further discussion'. We have put up the legislation and two or three alternatives which could improve it. For the minister to simply say, 'We don't agree with it lock, stock and barrel and therefore we're going to dismiss it' is clearly not a responsible way for the minister to address this very trying situation.

We need to look at this issue very carefully, and not only section 138 of the act which Mr Forwood addresses in this bill. As Mr Baxter said in his contribution, this whole industry now is starting to grow where both parents are working and nannies are becoming a very important part of our society. A whole range of people are being employed by third parties to help with the domestic running of the daily lives of Victorians. This is a problem that will increase and not decrease. There are going to be a lot more of these cases unless the government substantially changes the way in which it tries to address the problems currently emanating from the Victorian WorkCover Authority.

I sincerely believe the government needs to look very closely at the attitude that is permeating from WorkCover. WorkCover officers are being recognised because they are moving into businesses and offering advice, assistance and solutions to help employers understand their occupational health and safety obligations. That might be warm and fuzzy, but according to people who have contacted my office that is not the norm. The norm is that after an accident WorkCover officers turn up after somebody's head, and they do not care whose head it is, whether it is a foreman who has supposedly not adequately handled his supervisory roles or whether it be the manager or owner of a business, WorkCover officers do not care whose head it is.

We need to have a much more collaborative approach. We need to work out ways to ensure employers right around Australia truly understand their obligations. There is a whole litany of situations in country Victoria at the moment where employers think that because they pay their premiums and are covered by WorkCover that they are in fact covered. What happens in reality is that every time there happens to be an unfortunate accident on a site we find that WorkCover moves in to try to pin the blame on somebody, whether the blame exists or not. Until we actually change that whole attitude of WorkCover we are going to continue to have these problems of insensitive cost-recovery groups trying to reclaim their costs from employers, families and organisations that are clearly not capable of paying for accidents that happen. We are going to continue to have problem after problem in this field. We think the minister needs to take note of the bill now before the house. Certain amendments have been proposed and we can look at them. But to dismiss it point blank — —

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

Hon. J. A. VOGELS (Western) — I would like to support the motion we are debating that was introduced by the Honourable Bill Forwood. Home and community care is probably one of the most important services that is delivered in Victoria. I am concerned that the Victorian WorkCover Authority lift its attitude to people who are injured. I have noticed there are not too many occasions where home and community care (HACC) workers are injured — the minister said there are about 500 in Victoria in a year, but that is still a concern.

Home and community care is a fantastic service for our frail and elderly people and young people with disabilities across Victoria. I find it interesting that funding for home and community care is basically still made up of 40 per commonwealth funding, 40 per cent state funding and 20 per cent local government funding. The budget papers say that in the funding for Victoria last year, $408 million came from the state and commonwealth governments and $70 million came from local government. When the Minister for Aged Care, Mr Jennings, reported to the Public Accounts and Estimates Committee, he said that the commonwealth funding to home and community care in Victoria last year was $214 million.

As to the state matched component, I thought 40 per cent matched would mean that the state put in $214 million, but according to the minister the state matched component is $143 million, which in my reckoning is $71 million short of what the commonwealth put in. The minister then went on to say that the government has put in $51 million unmatched. However, even if you add that unmatched amount to the matched amount — and I do not know how you

work all these figures out — that is $194 million, so it is still short of what the commonwealth put in if it put in $214 million. I fail to see how the Bracks government is living up to its commitment of funding 40 per cent of the home and community care budget, matched with the commonwealth. There is a $20 million shortfall no matter how you add the figures up.

Getting back to home and community care and what the service providers do, about 250 000 Victorians at the moment receive a service through the home and community care program. Over 80 000 clients have a carer, usually a spouse or a daughter. While there is some overlap, nevertheless 70 per cent of people receiving HACC are aged over 65. According to the Australian Institute of Health and Welfare the value of unpaid welfare services provided in households is $28.8 billion. This amount is over double the $13.7 billion spent annually on paid services in the welfare sector. The full-time equivalent work force providing informal care was estimated at $985 000 in 2000–01 or about five times the size of the paid work force in the community service industry.

Home and community care services across the state provide an excellent service. We have to understand that it is a very difficult area to work in for personal care attendants, because you go into people's homes and a lot of times you do not know until you get into a home what you are going to find there. A good friend of mine who is an excellent personal care attendant was bitten by a dog a couple of years ago. She visited regularly a frail elderly lady who was in a fair bit of strife. Her role a couple of times a week was to go and visit that lady, which she did. This frail elderly lady had a dog that liked to bite. It became very difficult because the dog was basically protecting this lady. The dog was not a vicious dog except when the personal care attendant came in to wash the lady and move her around. The lady moaned and groaned because she was in a bit of pain, and the dog no doubt thought that the personal care attendant was harming this lady so the dog one day badly bit this personal care attendant on the leg. There were consequences out of that but nobody sued anybody because the person who was bitten by this dog really cared for this lady and the lady was very sorry. The care attendant got a tetanus shot and nobody got too involved in it. That is probably what happens in most cases. People sort these things out, and you do not actually involve the Victorian WorkCover Authority. They usually sort themselves out because of the goodwill of all concerned.

It is a difficult area. As I have said, there are thousands and thousands of services a day being provided, and things will sometimes go wrong. I support the motion we are debating here today because I think the Victorian WorkCover Authority in many cases has no commonsense, and that is a pity. We need WorkCover authorities. They are there when people get injured — they should not but they regularly do for the very good reason of making sure that everything is hunky dory and people get paid what they are owed. But in home and community care it is a very difficult issue to deal with. I think the Victorian WorkCover Authority should recognise that. Jean Tops says:

> Isn't the cost of liability insurance the very reason that your government —

this is the Bracks government —

> passed specific legislation in 2002 and 2003 to exempt volunteers working for agencies from accident compensation personal liability?
>
> We ask you for nothing less for unpaid caring families and the disabled where care assistance is needed in the family home.

Hon. A. P. OLEXANDER (Silvan) — I welcome the opportunity to make a contribution to the debate on what I consider to be a very important and timely piece of legislation. It is unfortunate, however, that it is required because of the serious issues that it deals with and because these have not been otherwise dealt with by the minister or the government. I congratulate and pay tribute to my colleague Mr Forwood for bringing this to the Parliament's attention and giving us the opportunity as representatives and MPs in this place of supporting a practical measure which recognises the real role of a minister in our system of government of oversight of and responsibility for all areas under their control. This is particularly so when we have an unwieldy and often blind bureaucracy and a large government system that is not working properly, when a government and those responsible for implementing government policy are using very blunt instruments which hurt people, which are by no means fair and which create inequity in the system. That is exactly the position with the Victorian WorkCover Authority in this case. Mr Forwood's bill should be supported by this chamber because it potentially affects so many people in our community.

It has already been mentioned in this debate that there are potentially up to 1.8 million families that will have or might have a need potentially for some form of home help or care. It is a very serious issue for many people, and it is not just the elderly, the very young or the disabled. There are people with chronic illnesses. There are people in a whole range of circumstances in families, a very large number of whom need that sort of

assistance. This is a very salient and relevant response to their plight. We have heard there are also 690 000 carers in Victoria who are involved in providing services to people in need in our community.

I have personal experience of this issue because in my immediate family a loved one, my mum, has recently been diagnosed with a chronic illness for which there is no cure. This illness has had a severe impact on her ability to care for herself in her home, which of course she wants to continue to do, as do many people. It has had a serious impact on the way she can live her life without that care and intervention.

It is not just in the interests of good policy that I support this legislation, but I also have a very personal interest in protecting people who are engaging home help and care. In my mum's case she was diagnosed about 12 months ago with a condition called crest syndrome. She had been very healthy and mobile all her life and all of a sudden the mobility of her hands and legs and her ability to walk and care for herself were severely compromised. She is in a situation where even gripping a simple object in her own home is a great difficulty for her and often impossible because the condition is chronic, is not curable and it comes and goes. It is a very painful condition.

My sister and I are her closest relatives and we have decided to share the care of our mother, but we are simply, as are many families in Victoria, not able to spend the time and effort required to keep her independent in her own home through our own efforts, so we have engaged a range of services to help with her care. We have engaged home help, cleaning services within the home, help with washing and changing of beds — the normal day-to-day activities of life that she is not able to deal with personally. We have also engaged other services provided by volunteers — Meals on Wheels, for example, which are excellent. But the issue is that with the particular condition she has — and unlike the Krupjak family she does not have insurance — what would happen to her if her pet dog bit a carer or there was some other injury in the home? This is a very important issue for many people. It would create enormous stress and prevent our ability to keep caring for our mother in that way.

This bill only puts forward a couple of simple propositions and one of them is that in certain circumstances, as in cases such as the Krupjak family, the minister should take personal responsibility and use some discretion to intervene to ensure that injustices and unfairness of this type do not occur. The opposition has been criticised because it is a simple proposition in this bill, but that criticism is unjust. That principle of ministerial oversight and responsibility for cases is a fundamental principle in our democratic system. It is worthy of the support of all members of this Parliament and should be supported by them. Fair-minded people in the community support that principle. If the government is blind and lumbers along at the behest of civil servants and bureaucrats who have no responsibility to the people, what are we doing in Victoria in terms of our democratic system? It is absolutely fundamental that ministers take responsibility. This is not a political stunt; it is actually a political imperative. It seeks fairness and equity for people, but to date the Bracks government has unfortunately turned a blind eye to those principles.

The government is all at sea on this issue and it has used many contradictory arguments in this debate. One of the arguments used by the minister was that it would be too onerous to have to intervene in all cases that were similar to this one. He suggested that he would get too many emails; people would be calling him at home — all that sort of nonsense. The minister actually does have a department behind him and he has the ability to intervene in a whole range of areas, as do other ministers. It is a common principle enshrined in legislation right across portfolios that ministerial discretion and intervention is guaranteed and allowed for in certain circumstances.

Again, I refer to the example that was cited by the Gippsland Carers Association in its periodical, *Gippsland Carer*, volume 9, issue 2, in which it pointed out that the government passed legislation to exempt volunteers working for funded agencies from third-party liability in 2002 and 2003. There have been examples cited in the house of the Minister for Planning having similar discretion to call in projects and intervene directly.

I will cite another example. When Minister Lenders was Minister for Consumer Affairs he gave himself the power to intervene in contractual arrangements between consumers and businesses. He gave himself the power as minister to waive the requirement that businesses inform customers and consumers of their rights under the contract. He took that into his own hands and legislated so that he had that power under the Fair Trading Act. That legislation was not opposed by the opposition because opposition members understood that there might be businesses in Victoria that would be unfairly disadvantaged by that requirement and from time to time the minister might need to use his discretion. We asked — and we proposed an amendment at that time — that the minister use that discretion judiciously and place it before both houses of Parliament as a disallowable instrument. This meant

that either house of Parliament might be able to disallow it if they disagreed with the ministerial action or the minister's discretion. We had no problem with that and, indeed, Minister Lenders proposed it. It was his initiative to give himself that power and that discretion and he did not think that was too onerous at the time.

We are talking about another issue of fairness. It is not an issue that necessarily affects businesses, but it is an issue that affects families who require outside intervention to help care for their loved ones. It is a very important issue and we believe it is not good enough for the government to simply say, 'It is too hard, it is too onerous, it is not a simple situation, therefore we are not supporting this bill'.

In our view a legislative approach is not only justified in these circumstances; it is essential to uphold equity and fairness in a very troubled area and very troubled Victorian WorkCover Authority. We believe it is more than unfortunate that the minister and the Bracks Labor government are the only parties in this house that have not recognised this fact. They have politically decided to oppose this legislation because they do not want to give the Parliament its true role; they want to keep power in the hands of their executive. They do not want to recognise the contribution of this Parliament and de facto of other parties or the Independents in the Parliament. It all has to happen through them and they will not recognise an excellent initiative from the Honourable Bill Forwood and the Liberal Party to try and solve this issue — also supported by our friends and colleagues in The Nationals.

I understand that the only truly Independent member of this chamber will also be supporting this legislation, so the only party in this Parliament that will not recognise that fundamental problem is the Labor Party. The minister uses other excuses. He asks, 'Where does it stop? If ministerial intervention happens here it is going to happen everywhere'. Not only is that a terribly hypocritical argument for this minister — who has legislated to give himself ministerial discretion in other portfolios he has run — to use; it is a silly argument because he has said that these cases only arise very rarely. The minister said that to the Gippsland Carers Association in his letter to Jean Tops. I quote from that letter of 3 August:

> The home care industry poses significant issues for the VWA … paid carers who are injured —
>
> These cases are quite rare and require careful management.

He is talking of course about people who are injured while on residential premises where responsibility for the injury does not rest with their direct employer.

On the one hand the minister comes into this Parliament and tells us it is too hard and too onerous, that there are too many cases and he cannot possibly be involved. On the other hand he writes to the Gippsland carers and says it is rare and requires careful management. What more careful management can there be than the oversight by the responsible minister in the Westminster democratic system and in this Parliament? That is where the careful management should take place, and it is completely legitimate for that to happen. We say it is and that is what we do. The minister asks: where does it stop? We on this side of the chamber ask: where does ministerial responsibility start? That is our question to the government today. We will turn it around: where does ministerial responsibility begin, and where does responsible democracy start?

If this minister comes into the Parliament and tells us and all Victorians that he does not get involved in decisions because that is not his job, then basically he is washing his hands of the responsibility like Pontius Pilate, because he is totally walking away and abrogating his responsibility to manage his portfolio and to make sure that the innocent and the ordinary Victorians, who are already undergoing significant trouble and stress, do not get rolled over by a lumbering, unintelligent, blind government bureaucracy. If he is saying that he really cannot get involved when a bureaucracy does that, then he is playing Pontius Pilate in this place, and he should not be doing it because that is one of the fundamental Westminster principles. He is responsible for every decision that is made in every area within his department. Not only that, he is responsible for intervening when those decisions go wrong. It is a well-established principle and the minister acknowledged it by legislating to give himself that power when he ran the consumer affairs portfolio. If he is not prepared to fulfil his role in the process as a defender of fairness and justice, then he is not — —

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

Hon. D. McL. DAVIS (East Yarra) — I am pleased to make a contribution to this Accident Compensation (Further Amendment) Bill 2005 and compliment the Honourable Bill Forwood on bringing this important refinement to the Accident Compensation Act to the chamber.

The issues he has highlighted in this legislation are very important. Carers increasingly play a very important role in ensuring that people at home or in need of

assistance are able to get that assistance, and the community, through the state and federal governments, has repeatedly advanced additional assistance to carers. At the same time those who come to provide services for people at home who are convalescing or have longstanding illnesses or reduced abilities are very important too, and it is for this group that this legislation seeks to provide proper support.

I make the point that home owners and others who may be exposed by the third-party recovery provisions of the Accident Compensation Act do need the support this bill provides. As Mr Forwood has said in his second-reading speech:

> There is a legitimate and logical reason why the act —

That is, the Accident Compensation Act —

> contains the possibility for third-party recoveries under section 138.

Section 138 is the key section which this bill seeks to amend.

> The principle of enabling third-party recoveries where negligence has occurred must be supported in the interests of providing safe workplaces. But the capacity to sue for third-party recoveries must be used judiciously.

I agree with the substance and the sentiment behind that. It is true that there are occasions where third-party recovery is appropriate and ought to be supported, and for that reason section 138 exists in the Accident Compensation Act. However, as Mr Forwood has said, it needs to be used judiciously. It can be used harshly to recover capriciously from those who may well have great difficulty in meeting obligations that may be advanced under that section.

I recall days at university where I studied liability in accident compensation very closely. There are a number of models, of course, of how liability can be apportioned and how responsibility can in effect be meted out for accidents and injuries. In this context a home becomes a workplace of sorts, even if it is not a formal workplace in the way we might understand it. It is the workplace for carers and for nursing services that deliver care to people's homes. Of course, in such a workplace, as in all workplaces, there are in fact contributions of responsibility. People have the ability to affect outcomes in workplaces — that is, the prevention of illness or injury — within a workplace in a number of ways. Those people include not just employees and employers but others who may be in the workplace for various purposes.

The third-party recovery provisions in the Accident Compensation Act aim to ensure that those third parties are properly held to account, but as Mr Forwood has laid out in his contribution, the collections achieved by this government under the Accident Compensation Act provisions have grown massively and are now many millions of dollars. These collections can fall quite harshly on individuals who may not have the ability to pay and in all fairness may not be able to be held responsible for an incident or an injury that has occurred. So in a very clear-minded and simple fashion Mr Forwood's bill seeks to ensure that the minister must take — —

Mr Viney interjected.

Hon. D. McL. DAVIS — I take up Mr Viney's interjection. I do not believe that clarity and straightforward principles in this matter are a bad thing. This sort of clarity in legislation is good, and it will ensure that the minister takes responsibility for each of the occasions when that section is used to recover from a third party. He needs to ensure that it is fair and that he can be held to account. The reporting provisions in Mr Forwood's bill ensure that he will be held to account by this Parliament. Through Mr Forwood the opposition has advanced a very modest, moderate suggestion and I urge the government to look at it closely and fairly.

I also note the steps that have been taken to support carers over the recent period, starting with the grant of $100 million by the Honourable Rob Knowles who was a former health minister in this state. I know that the President will remember the days when that first $100 million allocation was made to support carers in Victoria. Many of those initiatives were later picked up by the federal government. I welcome those initiatives including the recent announcement of $374 million by the federal government for older Australians and their carers, specifically to support older Australians to remain living in their own home. We cannot achieve those objectives unless there is a system that does not unfairly penalise carers, homeowners and others.

I also record my concerns about what is in effect a double, or sometimes a triple collecting system that operates here where homeowners through their home insurance are forced to pay premiums for the delivery of services whether it be the Hospital in the Home program or other service providers, which groups are also forced to carry insurance. In some cases there is an additional layer of insurance held by individual service deliverers whether they be nurses or otherwise. So this layering of financial contributions to insurance is becoming a significant problem and a significant cost.

A sensible, fair-minded examination of some of these issues might decide that at some future point a system could be found where that duplication of insurance contribution could be minimised, and that would make systems more straightforward but at the same time more cost effective.

In conclusion, I reiterate my point that this is a fair-minded attempt by Mr Forwood to ensure that responsibility is taken by the minister for attempts to recover under these third-party provisions of the Accident Compensation Act. I believe the minister should face up to those responsibilities. I do not believe it is satisfactory for the Victorian WorkCover Authority to recover in a capricious or harsh way from individuals who can ill afford it.

Ms HADDEN (Ballarat) — I rise to speak in support of this bill. It is a great shame that government member's are not also supporting it because it clearly represents a commonsense suggestion to improve the care of carer families in this state.

At the outset I want to thank the Liberal Party and The Nationals for giving up 15 minutes of their precious speaking time on this important bill. But for their good grace I would not have had the opportunity to speak in this place. As we know, for the first time since 1855 in this chamber, as an Independent member I am not recognised in certain aspects of our business, and certainly in this general business program this morning only political parties are represented. So I thank the Liberal Party and The Nationals for giving up their time.

I notice that the Minister for WorkCover and the TAC, who is also the Leader of the Government in this place, is not in the chamber. It is a shame that he is not sitting here being accountable and doing something for the enormous salary he is paid as a minister. As minister Mr Lenders is required to be accountable. He needs to be fair and humane and he needs to have a heart. In relation to the issue of the Krupjaks and carer families, I say to Mr Lenders that he has shown very clearly that he is cold and heartless. This government says it wants to have a fairer Victoria for all Victorians, and rattles on about treating all Victorians in a fair and just manner, but it clearly does not. This government needs to get its act together and have real and genuine empathy for carer families.

The slogan on our cars is 'Victoria — the place to be'. I am changing my vehicle at the moment, and I laughed when I saw it on the numberplate yet again. It is not the place to be if you have a mental illness. It is not the place to be if you live in the Mildura or Mallee area of this state where Minister Lenders wants to dump the toxic waste created in Melbourne. It is not the place to be if you live in the north east and you are a mountain cattleman or cattlewoman, and your livelihood has been slashed. It is not the place to be if you are a young, disabled adult languishing like Chris Nolan and Vicki Smith in aged-care nursing homes. It is not the place to be if you are on the public dental waiting list in Ballarat or any other major city in this state. It is not the place to be if you are a disabled person. So a fairer Victoria for everyone? No. The minister and his government have created a two-tier system, contrary to the garbage in his letter to Jean Tops, the president of the Gippsland Carers Association, and I will get to that shortly.

Carer families are volunteer carers and they are good Samaritans. I do not know why this government does not include them and give them protection from the risk of being sued by the Victorian WorkCover Authority (VWA) under the third-party recovery provisions of the Accident Compensation Act. It ought to; that would be the right thing to do. The Minister for Finance, who is also the Minister for WorkCover and the TAC and the Leader of the Government in this place, ought reflect on his media release published on 17 February where he rattles on, praises himself and gives himself lots of brownie points for the substantial reduction in the cost of public liability and professional indemnity insurance. He says it shows that the Victorian government's reforms are working. Tell that to the Krupjak family in Traralgon! It is not working, and they jolly well know it, and so does the government which ought to be ashamed of itself. It is only working for the public liability insurance companies because according to Mr Lenders, and I have not seen the figures yet, the public liability insurance premiums last year fell by 15 per cent. That does not help the Krupjaks.

Mr Lenders rattled on about the key insurance reforms. One of them was the protection of volunteers and good Samaritans from the risk of being sued. Well, he got that wrong. We only have to look at the debate on the bill today and the case of the Krupjaks. They are volunteers; they are good Samaritans. They are caring for their two disabled sons and they are trying to make ends meet on one income, and they are being sued. That summons is still extant: it is still on the court record. It has not been withdrawn by the VWA and it has not been withdrawn by Minister Lenders. They continue to be at risk, not only for damages and for pain and suffering, and damages for medical expenses which are claimed in the summons, but also for ongoing weekly payments and indemnity, and I will get to that shortly.

So those reforms were not the right thing to do for the Krupjaks and carer families in this state. The so-called

reforms passed by this government back in 2002 and 2003 in relation to shoring up public liability insurance company profits might have had a positive effect for them; they have not had a positive effect on the carer families in this state.

I heard one of the government members, I think it was Mr Viney, talk about the policy framework being right, fair and just and say that nothing was wrong with it. The policy framework has failed. If it was right, fair and just why did the Krupjaks fall through the cracks? The policy framework, whatever that might be, is skewed, unfair and unjust towards third-party recovery actions against carer families in this state. We have all received emails from Jean Tops of the Gippsland Carers Association. She has called on us to support her association and the Krupjaks and to vote for the bill. I did respond to Jean Tops and said I would support the bill. I received a lovely email in response. I would like to know how many of the government members on my left had the good courtesy to respond to her and tell her where they stood. I bet there were very, very few, if any at all.

The bill makes a pragmatic and commonsense proposal by amendments to the Accident Compensation Act to protect carer families in this state. It does so by inserting a new section 138AA in the bill for third-party recovery actions only with ministerial approval. There is nothing wrong with that. I wish the Minister for WorkCover and the TAC would get some good advice from lawyers because he is truly accountable under this legislation as the minister. Section 20C — —

The PRESIDENT — Order! Stop the clock. We are having some difficulty with the microphone. It is on again. I will give Ms Hadden an extra 20 seconds.

Ms HADDEN — The Victorian WorkCover Authority is subject to the general direction and control of the minister and is also subject to any specific written directions given to it by the minister in relation to a matter or class of matters. The minister could include in his very clear power carer families such as the Krupjaks. My opinion is that the minister has taken his eye off the ball, does not understand his portfolio and ought to visit it and start doing what he is paid to do.

In relation to section 138 of the principal act, the indemnity section, or what we now call the third-party recovery section, and subsection (4) of that section — Mr Baxter referred to this in his speech — the Krupjaks are in a difficult situation because they have been sued personally by the Victorian WorkCover Authority care of solicitors Wisewoulds, who were given the outsourced job of recovering money from the Krupjaks. The amount sought in the summons is weekly compensation and medical expenses of about $15 000 plus continuing payments. It is not just $15 000 but continuing payments to the alleged injured person. The plaintiff, the VWA, is also claiming an indemnity from the Krupjaks pursuant to section 138 of the act and requires a declaration from them that will indemnify the plaintiff with respect to future payments of compensation.

Section 138(4) of the Accident Compensation Act says that judgment against or settlement by a third-party in an action by a worker does not eliminate or diminish the right of indemnity. Clearly the Krupjaks are in a shocking situation. A simple oral apology from VWA, if they have given one, and a letter from the minister to Jean Tops of the Gippsland Carers Association, does nothing to protect the Krupjaks legally at the moment. Clearly the minister could, in my view, fix the situation if he did what he can do under section 20C of the act. He is not prepared to do that and has clearly said that. If the minister even looked at the bill and considered it, he would realise he should be supporting it because it gives him ministerial authority to stop actions against people like the Krupjaks who are carer families so that the harm is not done down the track. But the minister and the government are not prepared to do it. I do not think it is because they truly believe it is wrong but because they did not think of it first and therefore they will not vote for it. That might be just one explanation.

What really concerns me is that the WorkCover minister continues to call people political stunts — people in Victoria who dare to stand up and speak for themselves. These are people like Jean Tops, who is doing a fantastic job for the Gippsland Carers Association and the people in the Mallee and Mildura who are standing up and not wanting toxic waste dumped in their backyards. The government calls them a political stunt. I have been called a political stunt by Mr Lenders. Yesterday I was called 'She on his left', the 'she' meaning me on Mr Bishop's left! This issue would not be in the chamber now and being properly addressed or looked at by the government unless Mr Forwood and Mr Hall had raised it in the house, unless the media had got onto it and unless the Krupjaks had exposed their own family life publicly, because the government will not properly address it. That is hard to do.

An article on page 17 of the *Herald Sun* of 18 July written by Peter Mickelburough deals with this ordinary family that the government should be protecting and making a fair and just decision about when it is clearly not. It is being heartless and cruel. This family is not

out of hot water by any means. Why should it be exposed to seeking legal representation. The minister could fix this very simply, but he either does not want to do it or he has not been properly briefed by his department as to how he could do it. I do not know which, and perhaps he might like to tell the chamber.

The Gippsland Carers Association calls on the government to fix it. Jean Tops calls on the government to stop carer families being sued. It has to stop because the Krupjaks are a special case. It is not good enough for the government to come in here and say, as the minister said earlier in the debate, 'We will fix it; we will issue a guide for home care and occupational health and safety. That will be published soon'. Or, 'I have instructed the VWA to change its practices'. How will it do that? It has its bottom line to look at. It has doubled its profit on third-party recovery to $65 million. That is obscene. Clearly its practice is to rope in as much money from third-party recovery as it possibly can. That is too bad for the Krupjak family and other carer families in this state. The minister's response to Jean Tops on 3 August is a disgrace. He has created a two-tiered system, one for paid carers and one for carer families who are volunteers and good Samaritans. It is illogical — —

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

Hon. BILL FORWOOD (Templestowe) — At the outset I want to thank all honourable members who spoke on the bill. It has been an excellent debate covering a complex issue. I am very sorry that the government has chosen to oppose the legislation before the house. Despite accusations of this being a political stunt, I assure the house and the people of Victoria that we are serious in trying to find a way of providing some comfort to the thousands and thousands of Victorians who use in-home care in one form or another.

I am happy to accept the suggestions of both Mr Baxter and Mr Viney that there were ways to improve this bill by ring fencing the amount of cases that the minister would need to sign off on. I thought Mr Viney's suggestion of having a call-in capacity for cases that dealt with carers was a neat solution, as was Mr Baxter's, so I am very disappointed that the government decided that it would not support the bill because it believed the actions it had taken had already provided this assurance. I can assure the government and the house that there is still grave concern among carer communities about the prospect of third-party recoveries.

I suggest that the government, since it has not supported this piece of legislation, do more to assure the carer communities that the mechanisms it has put in place that it says will prevent people like the Krupjaks being on the receiving end, the blunt end, of a Wisewould's letter will work. It should assure those people of the mechanisms it has put in place so that they at least get some measure of comfort that way. I make the point that the guide which the minister had mentioned went on the web site two days ago — on 8 August. It is difficult to get a copy from the web site because it is pretty big, but I understand that I will get a copy soon and I will be interested to look at it. It is important that this information be made available widely, but the problem still remains that in circumstances like this we had an organisation which had completely outsourced the responsibility.

As I pointed out in my second-reading speech, the Victorian WorkCover Authority did not know that the letter had been sent to the Krupjaks seeking reimbursement of some $15 000. The minister says that this has been fixed, but he has yet to tell us how. I am sorry that someone did not say, 'The new system is that before we outsource it we look at it', or 'The outsourced lawyers now come back to us in these sorts of circumstances', or whatever. I make the point again that the ultimate responsibility in cases like this, particularly in cases where we are dealing with the less fortunate in our society, rests with the government.

The one thing that cannot be outsourced is responsibility. This is a circumstance where the minister could have accepted responsibility for ensuring that no Victorian family is sued by the Victorian WorkCover Authority when its home becomes a workplace in which an in-home carer of some sort comes to help. This does not seem to me to be a very onerous or difficult task. I reject completely the minister's assertion that this is the thin end of the wedge and that I will be wanting him to take responsibility for all sorts of other things. I would not and we would not do so. We understand that there is a difference in responsibilities, but in this case we believe without equivocation that the responsibility of the minister to ensure that the more vulnerable in our society are protected by the minister in this way is a principle that should be supported by all members of this house.

Jean Tops has done an immense amount of work, and I congratulate her on her contribution in keeping a number of us informed about many aspects of this case. She contacted each member of the Labor Party and requested that they support this bill. I add my words to

her request and ask all members of the house to support the bill before the house.

House divided on motion:

Ayes, 20

Atkinson, Mr	Forwood, Mr
Baxter, Mr	Hadden, Ms
Bishop, Mr	Hall, Mr
Bowden, Mr	Koch, Mr
Brideson, Mr	Lovell, Ms
Coote, Mrs	Olexander, Mr (*Teller*)
Dalla-Riva, Mr	Rich-Phillips, Mr (*Teller*)
Davis, Mr D. McL.	Stoney, Mr
Davis, Mr P. R.	Strong, Mr
Drum, Mr	Vogels, Mr

Noes, 20

Broad, Ms	Mitchell, Mr (*Teller*)
Buckingham, Mrs	Nguyen, Mr
Carbines, Ms	Pullen, Mr
Eren, Mr	Romanes, Ms
Hilton, Mr	Scheffer, Mr
Jennings, Mr	Smith, Mr
Lenders, Mr	Somyurek, Mr
McQuilten, Mr	Theophanous, Mr
Madden, Mr	Thomson, Ms
Mikakos, Ms (*Teller*)	Viney, Mr

The PRESIDENT — Order! The result of the division is ayes, 20, and noes, 20. Standing order 11.12 says that in the event of the numbers being equal the President will be required to give a casting vote. I cast my vote with the noes. The noes therefore have it.

Motion negatived.

Sitting suspended 1.09 p.m. until 2.12 p.m.

Hon. Bill Forwood — On a point of order, President, while standing orders do not mandate it, it has long been the practice of this chamber that when the President exercises a casting vote they explain to the house the reasons for either voting yea or nay. I invite the President to explain to the house and to the carers of Victoria why she chose to vote nay instead of yea.

Mr Lenders — On the point of order, President, it is clearly the practice in jurisdictions like the Senate, where the President has a deliberative vote and votes in every single division, and like the New Zealand House of Representatives and other legislatures in the Westminster system, for the presiding officer to cast a deciding vote. I think for Mr Forwood to be requesting of you, President, a reason for casting your vote one way or the other when that request is not made of any other member of Parliament who does not choose to enter into debate on their vote is inappropriate and should be ruled out of order.

Honourable members interjecting.

The PRESIDENT — Order! I am happy to hear all the points of order, but as I indicated at the beginning of today's sitting, Hansard does have problems with recording the proceedings. I was going to give members a timely reminder that Hansard staff are having difficulty in picking up what is being said. I remind members to turn their microphones on and to turn them off when they do not have the call — although I know members like to make sure their interjections get up — until the problem can be rectified.

Hon. Philip Davis — On the point of order, President, and to respond to the comments made by the Leader of the Government, he well knows that until November 2006 the rules that apply to the operation of this place are the rules that apply under the provisions of the standing orders and the conventions of this house, notwithstanding the changes which have been proposed for future parliaments.

I make the point that as a result of the arrangements which are in place in this Parliament and which have been in place in previous Parliaments where the Presiding Officer is, notionally at least, an independent Chair, the Presiding Officer does not have a deliberative vote. If the independent Chair, who does not as a matter of course exercise a deliberative vote, chooses to participate in the determinations of the house, then to preserve the independence of the Chair it has been convention that the Presiding Officer will explain to the house the reasons that justify the determination on any matter before a division.

My colleague's request under this point of order is reasonable. I do not believe the Leader of the Government has made a point of relevance in relation to the matter of the proceedings of the house being determined by the current constitution, electoral arrangements, standing orders and conventions of this place, none of which change before 25 November 2006.

Hon. T. C. Theophanous — On the point of order, President, in ruling on this, I ask you to consider what the standing orders actually say and also to consider custom and practice in this house. The honourable member has sought to use custom and practice in relation to this issue but of course the situation is that for the whole time until very recently when changes were made to the standing orders of the Parliament the right to give a casting vote was not exercised by the President. So in terms of the precedent, it is a very recent — —

Hon. Philip Davis — What precedent?

Hon. T. C. Theophanous — Exactly — what precedent? In terms of conventions, I do not believe there is any convention that has the President giving a casting vote and having to give reasons. I refer you to standing order 11.12, under the heading 'President's casting vote', which states:

> In the case of an equality of votes, the President will give a casting vote …

It goes on:

> … and any reasons stated by him or her will be entered in the minutes of the proceedings.

It does not say that the President is required to give reasons. It says that if the President wishes to do so, he or she can give reasons, and that if he or she does give reasons, they are entered into the minutes. I put it to you that the standing orders give the President the right to make a statement if he or she wishes to do so. It is not a matter of the Parliament requiring the President to make such a statement; it is a matter of a right. In this case the President has exercised her right in not making a statement.

Hon. Bill Forwood — Further on the point of order — —

The PRESIDENT — Order! I am on my feet. If Mr Forwood wants to raise something, he can do so afterwards.

With respect to the division held just before lunch, I indicated to the house the result of the division based on the numbers that were counted. I referred the house to standing order 11.12, which says:

> In the case of an equality of votes, the President will give a casting vote …

I have given my casting vote. I indicated to the house which way I would vote and, as a result, what the outcome of the division was. I stand by my ruling. As the Chair, I do not expect members of this house to reflect on my rulings. I refer again to the standing order which, as the Minister for Energy Industries and Resources stated, goes on to say:

> … and any reasons stated by him or her will be entered in the minutes of the proceedings.

Having made my ruling and an announcement to the house as to which way I would cast my vote, I did not give any reasons. Therefore, they cannot be entered in the minutes. There is no requirement for the President to do that. I remind members that recently when my deputy was in the chair she gave a casting vote and did not give a reason. That is how the standing orders apply. As the President I am not required to explain the reasons for voting in a particular way.

QUESTIONS WITHOUT NOTICE

Minister for Finance: conduct

Hon. PHILIP DAVIS (Gippsland) — I direct a question without notice to the Minister for Finance. Why did the minister direct the Independent member for Silvan Province, Ms Hirsh, to leave the chamber and not vote when she indicated to him that she wished to support the opposition's Accident Compensation (Further Amendment) Bill?

The PRESIDENT — Order! The Minister for Finance, if it is within his portfolio.

Mr LENDERS (Minister for Finance) — President, the question raised by the Leader of the Opposition does not fall within my portfolio, and I will not grace it with an answer that it does not deserve.

Supplementary question

Hon. PHILIP DAVIS (Gippsland) — I thank the Leader of the Government for his response. It probably does explain it, and I ask therefore: is this the reason — that is, that the government simply wants to exercise its control in this chamber absolutely — that she, being a member for Silvan Province, Ms Hirsh, has a perfect record of voting with the government, notwithstanding her claims to be an Independent member?

Honourable members interjecting.

The PRESIDENT — Order! I enjoy a robust question time but, as I indicated earlier, if we want to have this robust question time on the record we need to have a semblance of order to allow Hansard to record it. I remind honourable members that when I am on my feet they should sit down to allow me to be heard in silence. I think at one point we had the Minister for Energy Industries and Resources on his feet to make a point of order.

Hon. T. C. Theophanous — On a point of order, President, the Leader of the Government has indicated that the original question — and I put to you also the supplementary question — is not related in any way, shape or form to his portfolio area. It is simply an attempt by the Leader of the Opposition to cast aspersions without — —

The PRESIDENT — Order! The minister should not debate the point of order.

Hon. T. C. Theophanous — They have no foundation whatsoever. If he wants to make a claim about the behaviour of the Leader of the Government or any other minister or other person in this house, he knows that the rules of the house are that he must do so by substantive motion and not by way of a sneaky question, as he has attempted to do here.

Hon. Philip Davis — On the point of order, President, I simply respond that the minister has asserted that this is not the responsibility of the Minister for Finance. I point out that the Minister for Finance is also responsible for WorkCover and this matter under discussion relates to the Accident Compensation (Further Amendment) Bill, which was discussed in this place at an earlier time.

The PRESIDENT — Order! The supplementary question asked by the Leader of the Opposition did not refer to government business. I have no option but to rule it out of order on that basis. However, because I am in a generous mood today, I will give the Leader of the Opposition an opportunity to rephrase his question but, as he is well aware from previous rulings I have given in this house, it must relate to the minister's portfolio responsibilities and the supplementary question must relate to the answer given to the original question.

Aboriginals: family programs

Hon. H. E. BUCKINGHAM (Koonung) — My question is to the Minister for Aboriginal Affairs. Can the minister advise the house how the Bracks government is continuing to make Victoria a great place to raise a family through programs to improve health and tackle disadvantage in Victoria's indigenous community?

Mr GAVIN JENNINGS (Minister for Aboriginal Affairs) — I thank the member for her question and her concern to ensure that Victoria is a great place for all Victorian families to raise children, particularly Aboriginal families who experience ongoing disadvantage. To this date some members of the Aboriginal community may still doubt Victoria is a great place to raise a family, but we are committed to provide the degree of support and encouragement to try and achieve that. We did that in part through the current budget of the Bracks government, where we invested over $45 million in programs to provide support to Aboriginal families and communities throughout the state of Victoria. There is a range of programs for social and economic development and critical support programs to support the development of community organisations and, importantly, in the area of child and family support.

The budget included over $16 million worth of initiatives designed to try and support the capacity of Aboriginal families, to create a quality of life for children, to add to the capacity of parenting skills in Aboriginal families and to provide the wherewithal of foster families when Aboriginal children come into their care to ensure there is a better connectedness between all Aboriginal children, regardless of where they live in Victoria. We want to provide the support service network that is crucial to ensure there is appropriate early childhood development so that Aboriginal communities have the best connection with kindergartens and schools. Indeed at this moment in Australia we are being visited by a British expert. It has been reported in today's media and has some prominence. He has come here in relation to a program called Sure Start that has been rolled out throughout the United Kingdom. The program has been embarked upon by the British government to try and ensure there are early intervention programs and a one-stop shop created for all families throughout Britain.

I am pleased to say that in Victoria we have a similar program that has been in existence for a number of years called Best Start. We are happy to share the knowledge and expertise with those from the United Kingdom and those from elsewhere regarding the way we try to provide the best start for children in this community. Part of the $16 million allocated to support Aboriginal families in the budget this year is to increase the number of Best Start projects. In fact we are introducing seven Best Start programs throughout Victorian Aboriginal communities.

It is very important to provide early intervention to ensure that Aboriginal children have their hearing and eyesight tested and that their early childhood is monitored and supported to ensure they meet all those benchmarks of top-quality care. Time and time again we hear of advice and studies from around the world which indicate that a whole range of chronic conditions that may occur in later life, quality of emotional wellbeing and certainly the attainment of education, are predicated on the degree of the quality of life at its early stages.

There is a very high correlation between poor outcomes for children in those early years and a whole range of indicators of their quality of life in later life. We recognise that. It is the reason why an essential building block of our programs is to support Aboriginal families. It adds to other services that will make families

stronger. It makes sure we build on our programs to support those families who have had to endure the rigours of family violence. There are healing and time-out centres to provide that degree of support. We believe in the holistic approach to early intervention to support the quality of life for all Aboriginal children.

Gas: regional supply

Hon. PHILIP DAVIS (Gippsland) — I direct my question without notice to the Minister for Energy Industries and Resources. South Gippsland has welcomed the government's announcement that a number of towns in the region will receive reticulated gas by 2010. As part of that announcement the government has announced that its natural gas extension program is now fully committed. Will the minister advise what is to become of the many towns where the government made commitments before the 2002 election but which are not now included in the 34 towns to which the government has now fully committed the gas extension program?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries and Resources) — I welcome the question from the Leader of the Opposition because again it gives me an opportunity to talk not about the 29 towns, but the 34 towns. The last time I spoke about the towns in the Parliament I talked about 29, and of course now, as the Leader of the Opposition has indicated, we are talking about 34 towns. For the information of honourable members, that is 34 towns more than were ever done by the opposition. Those 34 towns have welcomed the government's program because they know how important it is for those communities. It is a program which will provide gas to as many as 70 000 Victorians, and perhaps more, depending upon the number that connect in those country regions. Up to 100 000 potential additional customers could be added to the grid as a result of this particular program.

That is not just about the fact that there are potentially 100 000 Victorians who are going to benefit. I will explain to Mr Davis how they are going to benefit. These small businesses and homes in country Victoria will finish up between $600 and $1000 better off as a result of connecting gas in regional Victoria — that is, $600 to $1000. If Mr Davis wants to work out the sums, if 70 000 people get connected and they make that level of savings, there is the potential to have injected into these country Victorian towns, every year in terms of savings, money that does not have to be paid for other forms of energy. It has the potential to inject up to $50 million every single year in savings to regional Victorians. That is what we are talking about. That is why this has been described as one of the great infrastructure deliveries of this government, and it will go down as one of the great initiatives of this government. The $70 million has already geared off significant amounts of money from the providers and from the distribution companies as well, and those moneys together mean that we are talking about a very significant program.

We are mindful of the fact that there will be some towns where we will not be able to connect gas, but we never pretended that we would connect to every single town.

Hon. Bill Forwood — Yes, you did. You promised them.

Hon. T. C. THEOPHANOUS — Mr Forwood knows perfectly well that we never ever pretended that we would connect to every single town.

Hon. Bill Forwood — You liar!

The PRESIDENT — Order! That language is unparliamentary, and I ask Mr Forwood to withdraw.

Hon. Bill Forwood — I withdraw.

Hon. T. C. THEOPHANOUS — As I have indicated before to the house, we are looking at other strategies in terms of local reticulation or other ways of delivering gas in regional areas where we cannot get gas through our program. It is easy to harp on about the negatives, but the fact is that there are 34 towns which will have natural gas as a result of the initiatives of this government.

Supplementary question

Hon. PHILIP DAVIS (Gippsland) — The supplementary question I direct to the minister is that given the government made commitments to Heywood, Terang, Smythesdale, Myrtleford, Bright, Beechworth, Nathalia, Yea, Bonnie Doon, Alexandra, Avoca and Wandong prior to the 2002 election, yet none of these towns has been included in the 34 listed by the government, and given that the government has admitted that Terang, Avoca and Wandong will not receive reticulated gas, will the minister confirm that the government is breaking its promise to the remaining towns, including Heywood, Smythesdale, Myrtleford, Bright, Beechworth, Nathalia, Yea, Bonnie Doon and Alexandra where the government did make commitments prior to the 2002 election?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries and Resources) — Perhaps I should start by saying that the premise of the Leader of the

Opposition's question is wrong. In fact insofar as the list that he has provided, or the list of country towns that he has read out, and claims made by the government relating to them, it was always in the context that those towns would be considered, and they were considered. They were considered along with all the other towns in regional Victoria. As I said, we are very pleased to be able to deliver a program to 34 regional towns which is more than the previous government ever did.

Libraries: funding

Mr PULLEN (Higinbotham) — My question is addressed to the Minister for Local Government, Ms Broad. Can the minister outline to the house the action that the government is taking to make Victoria a great place to raise a family by improving access in the local communities to public library facilities?

Ms BROAD (Minister for Local Government) — I thank the member for his question and for his recognition of the vital role that public libraries play in making Victoria a great place to raise a family. The Bracks government is helping to improve access by local communities and families to our great public libraries.

Earlier this year I was delighted to announce the funding of 14 new projects. Recently I was delighted to release guidelines for yet another new round of funding for our public libraries. These guidelines are now available from the Department for Victorian Communities. Applications are open and submissions close on 30 September. This new funding round will allow councils in outer metropolitan and regional and rural areas of Victoria to apply for grants to build new libraries and to upgrade their existing library facilities. Grants of up to $500 000 will assist councils in our outer metropolitan growth corridors to build new libraries for their communities and to upgrade existing facilities. As well as that, grants of up to $250 000 will assist councils in rural and regional Victoria to replace, upgrade or expand their library buildings and to assist them with their mobile library services.

Through this new funding the Bracks government is continuing to work in partnership with local government to provide library facilities in our rapidly growing communities, including communities like Caroline Springs and Sydenham, as well as in regional and rural areas such as Wangaratta, Nagambie and Nathalia. This new funding, through the Living Libraries program, recognises just how important our public libraries are to families and to Victorian communities right across Victoria. The renewal of library buildings and mobile libraries will improve access to library facilities for more Victorians.

Between 2000 and 2002 the Bracks government allocated $12 million under the Living Libraries program to improve public library buildings throughout Victoria. Thirty-six of these projects have now been completed, and there are five new projects well under way.

Communities and families across Victoria are already benefiting from public library buildings that have been refurbished, extended or completely replaced. As a result of partnerships between the Bracks government and local government I look forward to more of them in the future. I look forward to informing this house of even more public library projects in the future as a result of this submission process and further funding allocated by the Bracks government to our very important public libraries which will help make Victoria an even better place to raise a family.

Commonwealth Games: budget

Hon. D. K. DRUM (North Western) — My question is to the Minister for Commonwealth Games, the Honourable Justin Madden. Now that security for the Commonwealth Games will no longer be funded from within the games budget, can the minister explain why there will not be a reduction in the overall games budget commensurate with the amount originally set aside for security?

Hon. J. M. MADDEN (Minister for Commonwealth Games) — I welcome the member's question about and interest in the Commonwealth Games, particularly because of the significant investment by the government and the involvement of all the Victorian community, particularly the regional areas that I know are close to the member's heart. As I have made clear on a number of occasions — I made it clear at the Public Accounts and Estimates Committee while a number of members of this chamber were present and also made it clear in the media — we have taken the advice of the relevant agencies on security and we continue to take that advice. We will continue to take that advice in relation to any security operations issue in the lead-up to the games.

The Treasurer, Mr Brumby, announced in his budget speech or around budget time that the government was contributing substantially more funds to security in the Commonwealth Games budget, and it has done that. We have taken the advice of the relevant agencies not to declare the expenditure on security until after the games. I understand that has been the advice of the

Victoria Police and it also follows the course of arrangements put in place for the Commonwealth Games in Manchester and the Olympic Games in Sydney — that is, not to declare the expenditure on security until after the games. The reason we are doing that, as I have stated on many occasions, is that declaring our expenditure prior to the games gives an indication to those who should not receive that information because they might be a security threat to the games, the quantum, the extent and the scale of the security operation at the time of the games.

We have made it quite clear that we have capped the amount allocated for the games and that cap stays in place. I suspect that we will not necessarily need to spend that money, but we are not going to change those figures from time to time. We have always been and still are committed to that cap, but we are also committed to maintaining and delivering a safe, secure, harmonious games and to ensuring that in March 2006 we deliver the best Commonwealth Games ever.

Supplementary question

Hon. D. K. DRUM (North Western) — I will not thank the minister for that response. There must have been a set amount — whether it be $30 million, to pluck a figure out of the air — in the budget originally to cover security. Now that the security arrangements are not being funded from within that budget it should be reduced by a similar amount; or there will have been some other items added to games expenditure that were previously not involved in the overall games budget. Can the minister explain why there has not been a reduction commensurate with the amount that was originally allocated — which is the first question he refused to answer — or can he add to his answer by saying what items that were outside the allocation for the games originally are now going to be included in the games budget?

Hon. J. M. MADDEN (Minister for Commonwealth Games) — Again, I welcome the member's interest, especially his interest in security issues around the games because we cannot underestimate the importance of security in and around games time, particularly in making these games the most safe and secure games that are practically possible. We are committed to doing that. But I also appreciate the gist of the member's question. The question is not entirely clear, but I do get the gist of what he is trying to convey in asking his question. I can understand the member's logic when he says that maybe we might want to declare how much we are spending on security or what we have committed, but again I say that to declare the quantum and scale of that expenditure in any shape or form would undermine the security of the games and thereby undermine the safety of the Victorian and international public.

Gas: South Gippsland supply

Hon. J. G. HILTON (Western Port) — My question is directed to the Minister for Energy Industries and Resources, the Honourable Theo Theophanous. Can the minister advise the house of recent developments in the Bracks government's natural gas extension program and how this will make Victoria a great place to raise a family, particularly in South Gippsland?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries and Resources) — I thank the honourable member for his question, particularly as it relates to the South Gippsland region. It was a great pleasure for the Minister for State and Regional Development in the other place, John Brumby, and I to go down to South Gippsland and announce what will be a $50 million investment in extending natural gas into that region. It is a program that is being run in partnership with Multinet Gas and it will see five South Gippsland towns connected to natural gas. Those towns are Inverloch, Korumburra, Lang Lang, Leongatha and Wonthaggi. When we went down to South Gippsland to make this announcement it was received by the people in those areas very enthusiastically. I can advise the house that work will begin on the project in 2007.

The announcement by the government is great news for South Gippsland. It is great news for the three councils in the region, the Cardinia shire, the South Gippsland shire and Bass Coast shire, which have been trying to get natural gas to the region for many years. They had absolutely no success under the previous government, I can tell you that. Indeed the mayors of South Gippsland and Bass Coast shires said at the opening that it was a great boost for the region, whilst the Cardinia shire representative went even further and described it as probably the most important decision in the region's history. In fact the mayor of the Bass Coast shire came out again this morning reiterating his council's support for this fantastic investment in provincial Victoria.

Despite all the positive feelings in the area and the understanding that it will involve the connection to gas of up to 10 000 people, businesses and homes in that region, there is always going to be one person who can be relied upon to talk things down someone who is going to be negative, carping, and a whinger; someone who described the project as 'nothing but a load of hot air'. Guess who that somebody is. That somebody is the Honourable Philip Davis! Everyone in that region,

including the mayors, the councils and the people, are enthusiastic about the project, except for the Honourable Philip Davis — everyone except grumpy old Phil. Even the member for Gippsland South in the other place, Peter Ryan, came out in support of the project but not grumpy old Phil. He did not want to support the project.

An honourable member — Did Peter Hall support the project?

Hon. T. C. THEOPHANOUS — I am a bit surprised that the Honourable Peter Hall was not at the function. We would have welcomed him at the project, but I am pleased to hear that the member for Gippsland South supports the project and I therefore expect that Mr Hall also supports it. But I do not know about the Liberal Party. Rural and regional Victorians, who overwhelmingly support this investment, are all at odds with that grumpy old man, Phil Davis, who thinks he represents the people of Gippsland. He was part of a government that regarded rural and regional Victorians as — —

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

Questions interrupted.

DISTINGUISHED VISITOR

The PRESIDENT — Order! I wish to acknowledge the presence in the gallery of a former minister of this chamber, the Honourable Geoff Craige.

Questions resumed.

Docklands: film and television studio

Hon. PHILIP DAVIS (Gippsland) — I too would like to acknowledge the Honourable Geoff Craige in the gallery.

I direct my question without notice to the Minister for Major Projects. I refer to a report in the *Herald Sun* this morning that the budget for the Docklands studio has blown out again by nearly $700 000. Will the minister confirm that the total cost of the blow-out for this project now totals $7.5 million, nearly 20 per cent above the original budget?

Mr LENDERS (Minister for Major Projects) — I welcome the question, but I will take it on notice for the responsible minister, the Minister for State and Regional Development and Minister for Innovation in the Legislative Assembly, Mr John Brumby.

Consumer affairs: school program

Mr SMITH (Chelsea) — My question is addressed to the Minister for Consumer Affairs. Will the minister advise the house of any initiatives the government is undertaking to make Victoria a great place to raise a family and in particular making sure that young people are made aware of their consumer rights?

Hon. M. R. THOMSON (Minister for Consumer Affairs) — I thank the member for his question. I know how concerned he is that young consumers be aware of their rights and responsibilities. Members will be aware that there is increasing pressure on young people through marketing techniques directing marketing towards them. Young people have more income with which to buy goods and services, and they do that, so it is very important that we make them aware as consumers of the things they need to look out for. The sooner we do that the better armed they will be for life in looking out for scams, in checking out contracts and in properly assessing the value of what they are purchasing.

It is with great pleasure that I have been embarking on a program of visiting schools, discussing with them and hearing from them about consumer issues that they confront. We have been talking about the ways in which we protect them, not just through our legislation but through our education program. I know it was of great value to the former Minister for Consumer Affairs, Mr Lenders, who initiated the program of visiting schools and talking with young consumers. There are great benefits for them in our running the program in schools but also for us as those who legislate to protect them in understanding the issues they confront. We have spoken to students about mobile phone debt, which is a very important issue, and about accessories and ring tones. I have to say how pleasing it has been that the majority of young students we have been talking to are now converting their mobile phone away from paid contracts on usage to prepaid contracts. That is a vitally important issue for young people because it is often a considerable amount of their debt.

I have visited a number of schools over the last three months with their parliamentary representatives — Wellington Secondary College in Mulgrave and Lilydale Heights College with the member for Evelyn in the other place, Heather McTaggart; Sunbury high school with the member for Gisborne in the other place, Joanne Duncan; and Croydon Secondary College and Banksia Secondary College with the member for Ivanhoe in the other place, Craig Langdon. We will continue to visit local schools to discuss those issues.

We have a program around consumer issues running in schools, and we produce Consumer Stuff!, which is a teaching resource, and Z-cards to assist students as they go out shopping.

I look forward to continuing to provide a real program for young people to ensure that they are aware and confident consumers, preparing them for their future and ensuring that they are able to purchase with confidence and awareness, and to reduce the number of issues that come before Consumer Affairs Victoria.

Electricity: interval meters

Hon. BILL FORWOOD (Templestowe) — My question without notice is to the Minister for Energy Industries and Resources. I refer to the Charles River Associates and Impaq advanced interval meter communications study and in particular to clause 4.4 of the recently released paper, which says in part:

> … for the purposes of this study the responsibility for the supply, installation and maintenance of meters and communications devices remains with the distributors.

Is it government policy that the interval meter rollout business be reserved for the distribution companies or will small, innovative, independent hi-tech companies be allowed to compete in this area?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries and Resources) — I thank the honourable member for his question relating to clause 4.4 of the advanced interval meter study which he referred to. As has been indicated by the member's reading of clause 4.4, nothing in that clause in the said study indicates that the government has any intention of excluding any company or companies from involvement in the potential rollout of interval meters. However, a whole range of decisions are yet to be made in relation to the prospective rollout. As a government we would be very keen that the costs of the rollout are not borne by individual consumers. We are very keen to ensure that this rollout takes place in a way which means that individual consumers are not charged a huge amount for these so-called new smart meters.

The focus of my examination in this area, and my attempt to get this program off the ground is to look at ways in which the distributors themselves can form a part of the funding for the rollout of interval meters. I think the principal questions we need to address are about what type of interval meter we should put into play and how advanced it should be. We should be trying to ensure that the meters that are rolled out at some point in the future are in a sense future proof — that is, that they can be added on to with other technology and other IT attached to them and so forth so that we can get absolutely the maximum benefit from this proposed rollout.

But a lot of work is required in the interim in relation to this rollout, and I am certainly not in a position to rule out contributions by any companies, whether they be Australian or overseas-based companies. This government has set about trying to establish the best possible competitive environment in the electricity industry through the way it has managed new retailers coming onto the scene. If we can get interval meters as part of that competitive framework then consumers will get even more choices than they have had in the past. For instance, they will be able to make choices with a financial benefit if they are able to reduce their electricity consumption during peak times.

This is an exciting new era. To my knowledge it is not even being looked at in any other state or territory, but is something that we in Victoria are keen to try to progress.

Supplementary question

Hon. BILL FORWOOD (Templestowe) — I thank the minister for his comprehensive answer. I agree with him that this is an important issue. I understand the distributors sit on the steering committee for the study and are contributing half the cost of the study, an amount of $50 000, with government contributing the rest. Given the distributors desire to have a monopoly over the supply, installation and maintenance of interval metering, is this not a gross conflict of interest, particularly when the study is asking small, innovative companies to disclose their own patented technical information?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries and Resources) — It would not be possible to have a rollout of interval meters without involving the distribution companies. As part of the study it is appropriate to have those distribution companies involved right at the beginning of this process. We really need to get them on side in terms of the type of technology we want to put in place. The balancing act is to make sure that it is the best technology available, and so the study is looking at what types of technology are available around the world.

I do not think the distribution companies have their own technology, so it is about looking at what technology is the most appropriate to use, and I think it is appropriate to use the distribution companies as part of this study in that context.

Sport and recreation: women

Ms ROMANES (Melbourne) — My question is directed to the Minister for Sport and Recreation. Will the minister inform the house how the Bracks government is making Victoria a great place to raise a family through its initiatives and strategies to assist and increase women's participation in sport, on and off the field?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — We have a great culture of women's participation in sport in this state. That was recently reinforced to me when I attended the Victorian Women's Cricket Association's centenary celebrations. While our elite female sportspeople are very successful, it is not to say that there are not challenges in increasing the broader participation base of women in Victoria. At the recent annual Active Girls Breakfast I was able to see the huge popularity of women's cricket. The Australian women's cricket team captain, Belinda Clark, was there as a role model for the young women.

We know that while we have strong participation rates in sport right across the state there are challenges in female participation, and we have targeted an array of groups to try to increase that participation. We have made strategic investments in a range of areas, not only in terms of participation on the field but also off the field, whether it be in decision making, leadership roles off the field or just coaching, officiating or club administration. All those areas present challenges.

The Bracks Labor government has made a strategic investment of $1.2 million over four years to soccer, cricket and basketball to increase female participation. As well as that, seven projects have been funded through the state sporting association support grants program to the tune of $140 000. As well as that we have seen investment in elite athletes through the funding of women's scholarships through the Victorian Institute of Sport. We have also seen the Active Girls Breakfast program in Melbourne and across Victoria; over 30 have now been conducted, with over 5000 young Victorian females attending and being inspired at those breakfasts. It is a pity some members of the chamber have not been inspired by attending those.

We have seen the Women in Sport leadership program, under which grants have been allocated and workshops conducted to increase the administrator base in sport, with 20 women being supported and benefiting through that programs. As well we have seen investment in research through a number of educational institutions, including Deakin University through a program called Revolutions for Women, which is about getting more women to cycle. We have a fantastic participation of women cycling, particularly on a Sunday morning, with people of our age group. This is designed to get more women in the community cycling and participating. There is also a research project called Count Us In that is being undertaken with Victoria University to look at a framework to attract more sustainable use of facilities, particularly with women's participation increased in those facilities.

Whether it is in the pools, on the courts, on bikes or in the community, the Bracks government is leading the way and is making a commitment to female participation in sport, which stands in direct contrast to the opposition, which has virtually no policy statements. When it comes to any commitment, we have seen just the Roy Orbison, the Big O, when it comes to any commitment. The government is leading the way and making Victoria a better place to live, particularly through investment in sport and recreation.

QUESTIONS ON NOTICE

Answers

Mr LENDERS (Minister for Finance) — I have answers to the following questions on notice: 4125, 4372, 4373, 4451, 4599, 4608, 4627, 4690, 4715, 4823, 4881, 4915, 4917, 4920, 4922, 4930, 4946 4982, 5069, 5219.

PLANNING AND ENVIRONMENT (WILLIAMSTOWN SHIPYARD) BILL

Second reading

Debate resumed from 9 August; motion of Hon. J. M. MADDEN (Minister for Sport and Recreation).

Hon. D. McL. DAVIS (East Yarra) — I am pleased to make a contribution to the Planning and Environment (Williamstown Shipyard) Bill. I am sure Mr Smith, as an old sailor, will be making a contribution to the debate. The opposition does not oppose the bill but is bemused by aspects of it, given the government's failure to secure the ships project for this state — the tragic failure of the government to secure that important set of contracts and arrangements. This will damage Victoria's industry for decades to come. It was one of those moments when all Victorians stood and watched the television news that night — —

Mr Smith interjected.

Hon. D. McL. DAVIS — Bill Shorten had it — all those characters on the other side were trying to provide justification and excuses for what was a total failure by the Bracks government to secure what was a very important contract for Victoria. This will strike hard at Victorian industry; it will strike hard at the future of employment in Victoria and it will strike hard at the technology and scientific industries in which Victoria should be leaping ahead. I have no doubt my colleague the Honourable Ron Bowden will say a lot about the ships themselves, and that my colleague the Honourable Gordon Rich-Phillips will say a great deal about the impact on manufacturing industry in this state.

The bill amends the Planning and Environment Act to ensure the continued use of the Williamstown shipyard site for industrial and marine engineering and ancillary purposes. That is a very broad definition, and I am curious to see what the future of the site will be, given the government's failure to obtain those important contracts for Victoria. In theory the bill protects the site, but the definitions in the bill are very broad. Marine engineering is defined broadly as ship building, ship repair and maintenance, oil and gas construction, fabrication, electrical and other trades, systems engineering, systems operation, integrated logistics, engineering design, training and education and associated accommodation, research and new technologies, supplying and warehousing, and ancillary activities. I have to say that not many things are not able to be incorporated in that long list of activities.

The phrase 'ancillary purposes' fills me with a measure of fear for the future of the shipyard, because it is possible the government will allow residential development at some future point. I would be concerned that we will see a winding back in the specific purposes for which the shipyard has been designated.

Mr Smith — We are protecting it; do not worry about that.

Hon. D. McL. DAVIS — It is not clear to me that you are, Mr Smith. The definitions are so wide that you could put almost any industry known to man on the site. With ancillary housing accommodation, shops would be ancillary to the other activities. It is a very broad list of things.

Mr Smith — What about the pub across the road?

Hon. D. McL. DAVIS — There is a pub across the road. I have frequented that and I am sure you have, but I cannot remember its name.

Mr Smith interjected.

Hon. D. McL. DAVIS — I accept your guidance on that. You may have visited it more often than I have. I certainly have had a drink at that hotel.

This bill inserts a new part 3D into the act to process the implementation of the site strategy planning. The preparation and implementation of the strategy plan is an interesting process in itself. It will have to come back to the Parliament and will require the assent of both houses. The bill provides that the minister may at any time prepare a strategy plan that must be approved by Parliament. Any further amendments to that strategy plan must also be approved by Parliament.

The key point is that the government's planning processes seem not to have anticipated the tragic consequences of the ships contract not being obtained for Victoria and that massive amount of work having gone interstate. It is true to say that South Australians are all laughing at Victoria. I do not like to see that and I do not think many members of this house would like to see that.

Mr Lenders interjected.

Hon. D. McL. DAVIS — I advise Mr Lenders that I have spoken to a number of people. It is true that my primary responsibility is for health, but I know our planning people and others would have assisted in any way they could to obtain those shipping contracts for Victoria. It is an issue almost beyond politics but the government has clearly been unable to prepare a sufficiently attractive plan to entice the contract here — —

Mr Lenders interjected.

Hon. D. McL. DAVIS — The government's lead-up time and approach was not satisfactory, and that is clearly the case. I am disappointed that the government could not achieve this. The truth is this was a serious task for this government. You only had to look at Premier Bracks and Treasurer Brumby on the day the decision was announced to get a clear understanding of the gravity of the situation. Both of them looked shell-shocked. For some reason it seemed not to have occurred to them that we could lose those contracts. I have to say there seemed to be a cockiness in the government in the last couple of weeks before the announcement. I suggest that cockiness is a risky mode or risky pose for a government in these circumstances.

I have outlined the issues around this: the actual future of the site, the question of the definitions, which seem to me very broad, and the question of why the

government lost these important contracts. I wish the bill a speedy passage.

Hon. P. R. HALL (Gippsland) — I am pleased to present a contribution on behalf of The Nationals to the debate on the Planning and Environment (Williamstown Shipyard) Bill. This bill facilitates the implementation of the Williamstown shipyard strategy plan. Clearly it is giving powers to the minister to prepare such a strategy plan. It is interesting they use the term 'may' prepare a strategy plan; it is not required to do so by the law, but simply it may prepare a strategy plan. In doing that the minister must have regard to new part 3D of the Planning and Environment Act whose purpose is going to be described in new section 46Z, which states:

> The purpose of this Part is to ensure that the Williamstown Shipyard Site continues to be used for industrial and marine engineering purposes and ancillary purposes.

I listened to some of the comments of Mr Davis and his interpretation of what ancillary purposes might be. It will be interesting to see how the minister interprets that part of that definition. The second-reading speech and those words make it fairly clear that the government's intent in respect of this is to ensure that the Williamstown shipyard site is preserved predominantly for the use of industrial and marine engineering purposes.

The issue of the strategy plan is not totally uncommon. There are three or four other instances where strategy plans are developed under the Planning and Environment Act — for example, in the areas of the airport environment and also, I think, the Yarra Ranges there is a requirement to develop strategy plans. I think there is one other but I cannot recall it at the moment. This will be either the third or the fourth strategy planning mechanism under the Planning and Environment Act. Under these strategy plans it is a requirement that the Parliament actually approve the strategy plan prepared by the minister. Any amendment to those plans in the future must also be approved by the Parliament.

It is not a large bill and, given events since this bill was first introduced into the Parliament, the view of The Nationals is that we are not sure whether this is now necessary. In the minister's second-reading speech the second paragraph clearly says that the intent of the legislation when first introduced was:

> The Victorian government with this bill is taking a further step to show its support for the Tenix-Williamstown naval shipyard bid for the Department of Defence air warfare destroyer project …

That was the intent of the bill. Time has elapsed since then and we all know, regrettably, that Victoria did not win that bid. Therefore we in The Nationals have questioned the need for this particular piece of legislation given that its prime intent was to improve the bid for that particular warfare destroyer project.

I acknowledge that projects of that size would have been a great economic boost to Victoria. As the minister also said in the second-reading speech, it was a $3 billion project which potentially would have created 1600 new jobs. That would have been great for the local community around Williamstown, but it also would have had some significant flow-on events throughout Victoria. I can well imagine, for example, some of the engineering expertise in the Latrobe Valley being used to assist with projects of that particular magnitude. It is a shame that that project has not been won in this instance. It is a tragedy. I am disappointed that Victoria was not successful in its bid to win that project. But we move on from there. It is important that we make the best of that situation because no doubt there will be opportunities again in the future of shipbuilding contracts. I would hope the government would again play an active role in attracting any new shipbuilding projects to that particular site.

I also make note of the fact that the successful organisation that won the contract in South Australia has indicated that 70 per cent of the module construction will be subcontracted to other shipyards around Australia, so therein lie some further opportunities for the Williamstown shipyard to be involved with those module contracts. I would hope the government has a plan to work with Tenix in attracting those projects to be constructed here in Victoria in Williamstown. Maybe the government speakers would like to respond and inform the house to what extent the government is prepared to get involved and what proactive work it will undertake to ensure that Victoria at least gets some of that module construction work which is going to be subcontracted to other shipyards around Australia.

One interesting aspect of this legislation is the government's claim that this will better protect the shipbuilding industry at the Williamstown site. I am aware that that is a prime coastal site, and no doubt from some quarters there would be pressures for commercial or residential development. I wonder whether handing the planning authority from the local council to the Parliament — when I say the Parliament I mean virtually to the minister, because while the government controls clearly both houses of Parliament it is the minister who will have total planning control — achieves what the government says it will, which is to

better protect the shipbuilding industry at the Williamstown site. I am sure the local council through its planning processes is just as capable as is the minister of preparing planning scheme amendments if they are required to protect that site for shipbuilding purposes. In one sense to me this reflects a lack of confidence in the local council at Williamstown by the Minister for Planning in that he believes, or the government believes, the council is not capable of doing the planning work required to protect that area. This government, which often claims that it holds local government in Victoria in high regard, is overruling and showing a lack of confidence in the local council to undertake its planning abilities.

I think it was in the *Sunday Age* at the weekend that I read of how the Minister for Planning was going to interfere in some of the local council planning decisions in coastal developments around Victoria. He used the term 'hillbilly councillors' or some similar term to describe some of the potential planning decisions being undertaken by councils around the coast of Victoria. I do not know if that altogether reflects so well on this government — that is, the fact that it does not have confidence in local councils to undertake important planning processes. I ask the question: why do we need to change the processes, as is proposed in this bill? Planning scheme amendments can actually come before this Parliament. Indeed Parliament now has the right to reject a planning scheme amendment if it so chooses.

I noticed that some 21 amendments to planning schemes submitted by 14 different planning authorities — 14 different local governments — were tabled in the Parliament just yesterday. If anybody — any members of Parliament or we as a Parliament — decided that those planning scheme amendments were inappropriate, Parliament has the ability to prevent those planning scheme amendments going through and can require them to be modified. To one extent Parliament already has the power to exercise responsibility over planning scheme amendments, so one wonders why we need this process of developing particular strategies to deal with planning matters when we as a Parliament already have those powers.

Also, I think the development of these strategies in some way implies that we, as MPs, are better able to deal with planning scheme amendments. I am not sure if that is the case. I often think local councillors who are close to the action understand the local situation far better than we can hope to, especially with the size of the electorates that we are asked to cover. I wonder whether we are in a better position than local council to have full knowledge about planning scheme amendments and to be able to adjudicate on them. I do not know if it is such a wise step to transfer that ability as of right to the Parliament of Victoria.

I also want to make another point — that is, that if this strategy planning mechanism as employed in this bill is all about protecting existing uses of coastal land, what about applying those principles in rural coastal land areas as well? This house would be well aware that I have jumped up and down a fair few times about wind farm planning, for example, in sensitive rural coastal land. I would love the minister to support farming as an as-of-right use for rural coastal land. If that were so, any industrial development, which would include industrial generators as wind farms, would have to gain a special permit from local councils or communities before it could replace agricultural purposes as the traditional and accepted use of that rural coastal land.

Sadly, local councils and the Parliament have no say whatsoever on the issue of wind farm planning. The minister has the total say in how things operate in that respect. If the minister is applying a principle here to protect the Williamstown shipyard site, what about applying that same principle to the protection of some of our sensitive rural coastal land from inappropriate industrial development? I say it cuts both ways. Country Victoria is coming to accept that that is the way of the Bracks government — that is, its members are happy to protect existing uses in their electorates and their support base in the densely populated areas around Melbourne, but they show little attention or care for us in country Victoria. The response by country Victorians at the next election will be telling!

In conclusion, I indicate that this bill is not totally necessary given the situation and the change of events since it was originally introduced into Parliament. It is not a process that The Nationals would adopt if we had total say in terms of this particular planning matter. On balance it will have little, if any, impact on the planning decisions which take place at the Williamstown shipyard. However, it is not our practice to stand in the way of legislation unless we believe it will have a dramatic impact on the people who we represent, predominantly in rural Victoria. This bill does not fall into that category, so I indicate to the house that The Nationals will not be opposing it.

Ms CARBINES (Geelong) — I am very pleased to speak on behalf of the government this afternoon in support of the Planning and Environment (Williamstown Shipyard) Bill. The Williamstown shipyard is Victoria's only significant shipyard. Other ports around the state have facilities for maintenance and repair, but Williamstown obviously is where the

ships are built. None of the other ports have the marine-engineering capacity of Williamstown.

The bill inserts into the Planning and Environment Act 1987 a new part 3D, which introduces a process for the preparation of the Williamstown shipyard site strategy plan. The bill also requires that the approved strategy plan be laid before each house of Parliament for its approval. A key issue in relation to the planning for the continuation of an industrial and marine engineering site at Williamstown is the ability for members of the public to be able to use specified areas of the site, including the car park and the waters around the piers. That will need to be taken into account when the strategy plan is being developed.

Once the plan has parliamentary approval and therefore has come into effect, all relevant planning schemes will be required to be amended to ensure that they conform with the strategy plan. The bill ensures that the relevant authorities, including the Victorian Civil and Administrative Tribunal, will take into account the strategy plan when considering any future permit applications.

The Williamstown shipyard is vital to the economy of our state and particularly the western suburbs. It is Victoria's only premier shipbuilding facility. The Bracks government is delivering support, certainty and streamlined planning processes for the Williamstown shipyard. I commend the bill before the house and wish it a speedy passage.

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — The Planning and Environment (Williamstown Shipyard) Bill is too little, too late. This is the government's attempt to portray to the community that it was interested in securing the contract for the air warfare destroyers. The C4000 contract let by the Department of Defence for the construction of three air warfare destroyers (AWDs) is the single largest defence procurement contract to be available to Victorian companies for a very long time. The contract requires the construction of three AWDs over the period 2007 to 2017 — that is, a 10-year construction time frame — with the three vessels to enter service between 2013 and 2017. The value of the contract has been estimated to be somewhere between $4.5 billion and $6 billion, so it is a very significant defence procurement contract and one which Victoria had a very good chance of securing.

Four bids were made for this major contract: two from South Australia, one from Victoria, and an international bid from Northrop Grumman, which did not disclose the location of the construction activities. The bid from Victoria, using the Williamstown shipyard, was put together by Tenix. Tenix also submitted a bid to use the Osborne shipyards in Adelaide, as did the Australian Submarine Corporation (ASC).

It has been interesting to hear members of the government, Mr Smith by interjection and Ms Carbines in her contribution, say that the decision to award the contract to the Australian Submarine Corporation in Adelaide was a political decision. The reality is that nothing could be further from the truth. As the Minister for Defence stated when the decision was announced at the end of May, the decision to go with the Adelaide-Australian Submarine Corporation bid was the result of a unanimous recommendation to federal cabinet by the defence source selection evaluation board. It was not a decision made at the federal cabinet table; it was a decision made by bureaucrats in the Department of Defence and independent members of the defence source selection evaluation board to recommend that Adelaide bid. It was only a case of that bid being endorsed by the federal cabinet that resulted in Adelaide securing the contract. So for Ms Carbines to say there was political interference is absolute nonsense.

I point out that the bid was also subject to two independent probity audits, one by KPMG and the second by Sir Laurence Street. So the process was completely above board. The endorsement by the federal cabinet was an endorsement of a unanimous recommendation from the Department of Defence bureaucracy. The government can in no way say that it was subject to political interference.

I also note the interjection from Mr Smith earlier, when he asked what the federal Treasurer did. I find that ironic given the debate we had this morning, when the Minister for Finance said that ministers should not be involved in making such decisions, that they should be made independently. In this case we have members of the government saying that despite a unanimous recommendation from members of the defence source selection evaluation board to go with the Adelaide bid the federal cabinet should have interfered and chosen the Melbourne bid.

That brings me to my second point in this debate — that is, the role the Victorian government played. The bill, which is a token measure by the government to demonstrate support for the Tenix-Williamstown bid, is a bit like the response of a deer in headlights. On this contract, the Victorian government — the Premier, the Treasurer and the Minister for Manufacturing and Export — did not know what to do with this bid. The Premier of South Australia, Mike Rann, was out — —

Hon. S. M. Nguyen — Good man.

Hon. G. K. RICH-PHILLIPS — Mr Nguyen says he is a good man, and he is because he was out two years ago, lobbying the federal government and the defence industry to secure this bid for Adelaide. Where was the Premier, Steve Bracks? Nowhere to be seen.

Hon. Andrea Coote — Letting down his own electorate.

Hon. G. K. RICH-PHILLIPS — Letting down his own electorate. It appears that the Premier was not even aware that the contract was up for grabs in a contest between Adelaide and Melbourne. The entry by the Victorian government in putting together a package to assist in the bid came relatively late in the process. I do not think the Premier made a public statement about the air warfare destroyer contract until early this year. The Premier of South Australia had been out a full 18 months ahead of the Victorian government, lobbying on half of ASC and the Osborne site in Adelaide. It is fine for the Victorian government now to claim there was political interference when the reality is that the process was transparent and subject to a parallel probity process.

The fact is that the Victorian government did not come on board with this bid from Williamstown until the very end of the process. The Treasurer, the Premier and the Minister for Manufacturing and Export were nowhere to be seen. The Premier of South Australia was out there for 18 months pushing for Adelaide, putting in place a package for the redevelopment of the Osborne shipyards but we did not see or hear anything from the Victorian government until the last months of the bidding process. To see the surprise on the faces of the Premier and the Treasurer when the bid was announced was astonishing. Frankly, given the lack of involvement of the Victorian government, they had no reason to expect a different result.

At the end of the day, with a contract the size of the AWD contract, packages and support offered by government will not be the deciding factor. The defence source selection evaluation board, in considering the pricing of the two bids — I reiterate their unanimous conclusion was that the Adelaide bid was superior value for money — will look at the environment in which the contract will be undertaken. The reality is that over the past few years South Australia has had a much healthier industrial relations environment than has Victoria. The state government needs to accept some responsibility for that. It is no good coming in at the last minute with packages to support such contracts if the fundamental business environment, created and influenced by the state government, is not sound.

The reality is that up to 70 per cent of the contract work will be subcontracted, so it will not all be done by ASC in Adelaide. There are a great many opportunities in Victoria for Tenix as well as for numerous other defence contractors. There are an enormous number of defence subcontractors in Victoria which are smaller operators, including manufacturers in my own electorate in Dandenong, and which will be eligible to bid for work under this contract. But if they are to have more success in securing subcontract work than Victoria had in securing the primary contract, we have to have a positive business environment. It is no good putting out brochures that state how good things are in Victoria if the statistics indicate otherwise. We have seen that in regard to the industrial relations situation in this state, the level of industrial disputation and working days lost compared to South Australia; and we have seen it in the drop off in investment in manufacturing in Victoria over the life of this government. When this government came to power in 1999 Victoria had attracted $1 in every $3 of new manufacturing investment. It now attracts only $1 in every $4. Over the life of this government we have seen manufacturing employment fall by nearly 40 000 people. The environment for manufacturing in this state under this government has not been positive. Frankly, if Victoria is going to secure this subcontract work, we need to see a turnaround in the basic business environment of the state.

As I said, the bill before the house is a token measure by the government to indicate support for this bid. It is relatively harmless. It is not something the opposition will oppose but it also does not create any great benefit for the bid other than sending a message of token support from this government. While the opposition will not oppose this legislation it notes that the failure of the government to get on board with the bid for the air warfare destroyer until the last minute may have had a significant impact on the outcome. If the Victorian government had shown as much commitment to this bid as the South Australian government did, we may have seen a better result. While the government likes token measures like this bill, it needs to realise that getting the fundamentals of the business environment right will do a lot more for Victoria's chance of securing contracts like the air warfare destroyer.

Mr SMITH (Chelsea) — As a former sailor I am very familiar with the history of the Williamstown dockyard, or the Williamstown naval dockyard as it was known in its previous life. The first ship I joined was being repaired at Williamstown. It was called the

Anzac. It was the old *Anzac*. I would like to explain the background to this, because it will lead into other things I want to talk on about the history of the place. When I first joined the *Anzac* the conditions were pretty ordinary. The work practices were appalling. The amount of rorting that went on by the work force was just extraordinary. Half of the time you could not get into the compartments because all the dockies would be asleep in them during the day instead of working. The cost blowout of refitting ships in Australia was extraordinary. There were demarcation issues. There were multiple unions in the dockyard — I think there were 18. Almost nothing could be done without major disputation or negotiation.

I recall the first time I did a major refit in the naval dockyard in Long Beach, California. At that time I was on the *Perth*. I was told that we would have the *Perth* docked at a certain date and that it would be out 10 months later to the day. We all laughed at that. We thought we would be in California for three years. Blow me down if we did not get out 10 months to the date, which was right on time. It emphasised the differences that existed between their work practices and the Williamstown dockyard. The Garden Island dockyard in Sydney is very much the same. Obviously this could not continue. As a result of intervention by the federal government, the Australian Council of Trade Unions and Victorian Trades Hall Council a much more cooperative approach was designed, which meant the removal of a significant number of unions. Three unions remained and the dockyard took off.

The dockyard got into a position where it was quite functional. It was performing very well, and then it was privatised. The end result of all this was that the dockyard started building world-class ships. Make no mistake — they are world-class ships. I recall being a guest at the launch of the *Newcastle*, one of the Anzac class destroyers, when an American admiral, a shipbuilder from the Seattle naval dockyard, said to me, 'I do not know what you guys are doing, but let me tell you, you are building the best ships I have ever seen. The quality of your welding, your electrical fitting et cetera, is without peer.'.

Hon. S. M. Nguyen — World standard.

Mr SMITH — It was not just world standard, Mr Nguyen, it was world best practice, and that reputation that flowed right through the work force. Everyone was extremely proud to be associated with the quality work that was being completed at the dockyard, including the outsourcing of IT industries and other resources that came from businesses outside. I have heard from previous speakers that the Victorian government just simply did not do enough to retain the dockyard. I will refrain from going as hard as I would like to go on that. I will just say I am appalled at that. They did enough all right — make no mistake. The bid in Victoria came in in the order of approximately $600 million less than South Australia. If that is not enough, what would have been enough; build the ships for nothing? It seems to me no matter what Victoria did, it was never going to get that contract. A year out people were very worried about what was going on — that is, the political fix was in. The feds were looking after their mates in South Australia who were just desperate for some major industry, given Mitsubishi was all but ready to fold. They desperately needed to get heavy industry into South Australia. How could it be that a bid that was $600 million better was lost to the premium shipbuilder in the country to a state that does not even have a dockyard? Give me a break!

That is compounded by this fact: South Australia does a little bit of shipbuilding. It has a submarine corporation — and did it not do a great job on that? What a class act it turned out to be. Mistake, blunder, mistake, blunder — bang — and it won this massive contract! It would have nothing to do with the federal caucus members from South Australia lobbying as hard as they did. Of course not! That would be too much to believe. The fact is they did Victoria over. What was Peter Costello doing to protect the interests of Victoria — the economy, the industry, all those jobs, the job creation? He did nothing — and he should not think the people of Victoria will forget it. They will not; we will not let them. It is absolutely disgraceful what they have done to that dockyard and how they have put its future at risk. Hence the need for this bill, because we are not going to allow it at some future date to be sold off to some of the rich mates of the Liberal Party and their backers. It is staying in the hands of governments and will be and will remain industrial. It is already continuing to demonstrate its viability. It will win work in the future, but no-one knows the extent it could have.

I cannot believe that those opposite are trying to blame the Bracks-Brumby tender. It was not a tender but support that was lent to the Tenix tender. It is unbelievably hypocritical for them to try to shift the blame. What they did was an act of absolute political treachery. I would like to call it something else. I cannot given that we are in this chamber, but that was what it was. Any thinking person knows that it was just political expediency and that the federal government's record in defence purchasing and spending is just appalling. The amount of money that department in Canberra has wasted is a disgrace. Whether it has been

on helicopters, tanks, planes, ships or whatever, it has been just beyond the pale. This decision to undermine and consequently rat on Victorian workers is unconscionable. How that lot over there can try to blame us for it is just beyond the pale.

Hon. D. McL. Davis — You put in a dud bid. It was a dud bid.

Mr SMITH — Mr Davis interjects and suggests again that it was a dud bid. It was $600 million approximately better than South Australia.

Hon. D. McL. Davis — That is what you say.

Mr SMITH — If that is a dud bid, I will ask again: what were we supposed to do? Do it for nothing? Maybe doing it for nothing might have won. I do not know that it would have won because the fix was in. Members should make no mistake — the political fix was in. No matter what we said, what we did or how much we proved that we had the better tender, we were never going to win this. It is obvious. In my view it was a shameful decision, but, as I say, the response from us is to ensure that that dockyard is protected from the hungry claws of their developer mates in the future, and the only way it is going to change and be vulnerable is if and when both houses of the state Parliament agree that it should — and my view would be good luck on that; it is not going to happen.

This is good legislation and I am proud to be associated with a government that is going to protect the interests of those workers and that dockyard into the future. I commend it to the house.

Hon. R. H. BOWDEN (South Eastern) — I rise to make my contribution on the Planning and Environment (Williamstown Shipyard) Bill with a sense of pride because, first of all, these three high-tech and necessary additions to our defence capability are first and foremost Australian defence assets. Whilst we are proud to be Victorians and represent a very large proportion of our great nation, above all these are Australian destroyers and they are high-tech assets that we will build as Australians across our country for the defence of our nation and the service and stability of our region. I would like to say that on that basis these are Australian ships and not Victorian ships. They are Australian ships of which Victoria should expect to and will make a substantial contribution over the life of the contract, because it is expected that about 70 per cent or thereabouts of the total contribution of the value of the contract will come from states other than South Australia. We should be expecting and are obviously of the opinion that a substantial portion of that 70 per cent will be non-South Australian and will come from Victorian suppliers.

It is an important contract for several reasons. It lifts the capability of the Australian navy into another level of technology. These days there are different levels and layers of technology, and the good and supportable concept behind the acquisition of these three vessels is that they will be amongst the world best in the performance standards and capabilities that they will be able to bring in a constructive sense to the defence, stability and security of our country and its region. Therefore this large dollar value that is involved, which is expected to be at the high end of about $6 billion, is, over the length of time of the expected contract, considered by those who are very much more familiar than most of us to represent good value as an acquisition.

It is a strategic contract because the technologies involved and the use of the technologies that will flow into these three ships are meant to be compatible with the advanced and high-tech technologies employed by our allies. That is good because there is a need for compatibility amongst the different naval services we work with, and it is a very good feature of the contract.

The importance of the technology cannot be overemphasised, and I support the comment made by Mr Smith in his contribution that it is common knowledge that the quality of Australian-built naval vessels in the last two decades in particular has been considered not only world class but a leading example of naval construction and quality. Like Mr Smith, when I have spoken on several occasions with senior officers from foreign navies they have made very favourable comments about the inherent quality of the construction, strength and durability of the ships we build in Australia and their ability to perform their task. I have personally heard some very sincere comments about the good quality of our Australian-built naval vessels. That is a good thing, and we have to jealously protect and keep up that standard.

In recent decades those ships have been built in Melbourne, and even though from time to time there are what I consider to be cheap shots at our six Collins class submarines I can tell the house that there are also senior naval people in foreign navies who believe those submarines are very good, capable and deadly if you are on the wrong end of them. A lot of the early technical problems with the Collins class submarines have been solved, and those six submarines are a very potent defence asset for Australia. Instead of running them down I would like to feel that honourable members could be proud of the quality of those

submarines and their ability to defend our country. The Australian servicemen and women who serve in the Collins submarines deserve all the support and all the honour we can give them in the important work they do.

Returning to the bill, its planning aspects will ensure that the site of the Williamstown dockyard cannot be used for non-industrial purposes without the approval of both houses of Parliament. The responsible minister will also become the responsible authority and will need to prepare strategic plans for the proposed use of the area we will know as the Williamstown shipyard. There are no real difficulties with that. It is a sensible proposal. For that reason the opposition is not opposing the bill.

It is also a supportable concept of the legislation that the bill contains some clear definitions of the industrial and marine engineering and ancillary purposes that have to be met in order to assist in defining throughout the planning process what can and cannot be approved for use on that site. That is a good thing. It makes the situation clearer and easier to understand and makes it more difficult for people to use that site for purposes the Parliament does not want it used for. In a positive way it is necessary to follow the definitions carefully within the departments when the minister, as the responsible authority, is looking at details of the strategic plans for the use of the site.

Previous contributors to the debate have dwelt on the role of the Victorian government in working with the Victorian tenderer, Tenix, in relation to this bill. I suggest to honourable members that the South Australian government over many months — 18 months or longer — was pushing hard in the press in promoting its clear desire to try to get this tender for South Australia. It was only in the months leading up to the granting of the tender that the Victorian government was in a public sense showing any real signs of working closely and pushing hard for this project. It may have been doing that behind the scenes, but it was not doing it publicly, and certainly not in a way comparable to the South Australian exercise. It could be considered by some that in a commercial sense Victoria was simply outsold by its government's laissez-faire approach in the early stages of the run-up to the awarding of the tender.

Members might be interested in a brief quotation from the *Herald Sun* editorial on Wednesday, 1 June. It states:

> Defence Minister Robert Hill claims that the ASC got the contract after a unanimous recommendation from the Source Selection Board, made because ASC's superior bid gave value for money.

That quotation was also published in other articles around the time of the awarding of the contract. There was a great deal of emphasis on independent probity and review, and there is a strong acceptance of the fact that the awarding of that contract was done with a high degree of trust and probity. It may be a situation where the state of Victoria was simply outsold and outbid. As I said at the start of my contribution, these are Australian warships and a lot of their content will come from Victoria for valid logical, sensible and economic reasons.

Listening to the contributions so far and reading some of the press articles since 1 June when the contract was very much before the public, I just wonder whether the state government of Victoria through its different departments and agencies in the industrial infrastructure and manufacturing areas has really gone back to the basics that are a commercial reality in business. Did the Victorian government sit down after the awarding of this contract and try to learn what went wrong? What went wrong from Victoria's point of view? I am not aware of any analysis. All we have heard from senior ministers in this government and its leading members is that Victoria did not get the bid. We know that. The federal government said our bid was not good enough, but there is no suggestion that the Victorian government has sat down and done what most responsible companies do routinely — that is, find out what went wrong and ask itself what it could do better next time. There has been no suggestion of that, just an endless criticism of the state of South Australia and the federal government, and I do not think that is good enough.

In a positive sense it is inevitable that there will be future contracts and significant opportunities for the construction of vessels in Victoria. Therefore it is an absolute requirement that those representing the state of Victoria now sit down, find out what really went wrong and try to correct that for the next round of contracts. They may be foreign contracts, domestic ones or all sorts of things, but we do have a capability here. I am sure that all members of the Parliament are interested to support our manufacturing industry, particularly the acquisition of new and higher levels of technology. A constructive result of the awarding of this contract to another bidder would be a very detailed and helpful analysis of why things did not go exactly as we would have liked and indicate what we can learn from it for the future.

The bill provides the ability for the state of Victoria to assist and maintain the construction capability of significant naval vessels in this state. That is a very good idea and it does help the protection of the site so that when these opportunities arise we are able to make provision for sophisticated industries and component suppliers and material suppliers in our state. That is an excellent thing for both sides of the Parliament to be supporting.

In one way I resent the constant carping of the Bracks government about the loss of this contract. I am particularly proud that these vessels, when they are launched and at sea under the command of Australian crews, are Australian warships first and second, and at no time will we ever have cause to be anything other than be proud of these ships because they are ships that will represent our entire nation, and Australia will be proud of them when they go into service.

Hon. S. M. NGUYEN (Melbourne West) — I am pleased to speak on the Planning and Environment (Williamstown Shipyard) Bill before the house. Williamstown is in my electorate. The shipyard is a very popular issue in the western suburbs. They have created a lot of jobs. People who know Williamstown know that the Williamstown shipyard is the best that can be offered to Victoria. The shipyard has many assets. It is in a great industrial area, is of world standard and adopts world best practice. Many contracts have been delivered through the Williamstown shipyard. Williamstown is a popular place. When you go past Williamstown by sea you can see nice yachts, the big shipyards and lots of ships from around the world. It has provided employment for a lot of skilled workers.

It is a shame we did not win the contract and that it went to South Australia. It was totally a political decision. The Howard government tried to save the South Australian Liberal Party at the last election after it failed to win the state election. Mike Rann was elected to run the Labor government and the state. Robert Hill was and still is the federal Minister for Defence. He convinced the Prime Minister that the only way to save some of the marginal seats of the Liberal Party was by providing the contract to South Australia.

South Australian federal members of Parliament like Senators Minchin, Hill and Vanstone and Mr Downer were campaigning to get more seats for the Liberal Party. I am ashamed of the federal Treasurer, Peter Costello, and other senior Victorian federal members of Parliament. They did not do anything. They did not raise their voices to keep the contract in Victoria. Why was that? It was because the Prime Minister, John Howard, would not listen to Peter Costello.

Our Premier, Steve Bracks, campaigned to get the contract for Victoria because Williamstown can provide world's best practice. The state government wanted to show both Victorians and the Prime Minister that Williamstown could deliver the project. For a long time the Premier spoke out about the Williamstown shipyard but we knew that Victorians would have very little say in this project because the Prime Minister had already committed to send it to South Australia. The Premier tried to protect Williamstown because he believed the shipyard should stay in Williamstown and be used in the future for industrial and marine engineering.

We do not want to lose the shipyard to private developers. It would be a wonderful location for apartments and townhouses. It has wonderful views including awesome city views, and I am sure that many developers are very keen to buy the site and turn it into a residential and shopping area. We want the shipyard to continue and to make sure that the skilled workers who live locally can be employed on shipping projects. We would like to see the local council involved; we will not ignore it. The government will consult with it on any decisions that are made. It is a big project; it is a state government responsibility, but we do not want to overshadow the council or take away its role and responsibilities. Anything we do will be discussed with the community and local businesses as well as with the local council and its staff. The minister and the Premier have given that commitment.

The Williamstown shipyard bid for the defence department contract would have created thousands of jobs. We do not want our skilled workers to lose their jobs. We want them to be re-employed using their expertise. I visited the Tenix Williamstown shipyard with an overseas delegation. They were surprised that Tenix in Williamstown could build to world standard because not many people know about that. They thought that anything to do with warships and marine engineering was built in England or in the United States of America. They did not know that anything could be built in Australia. We can deliver; we can make it happen.

Following the political decision to award the contract to South Australia, our skilled workers had to be retrenched. The Tenix Williamstown shipyard will remain for a long time and we will create jobs in the future. It will be used for industrial and marine engineering, and it will be there for a long time. The people of Hobsons Bay know that the locals strongly support the shipyard. We know we can bring back all

the skilled people who live in Williamstown to help create a strong Victorian economy. That is one of the aims of this bill.

The federal government has undermined the state government and the Premier because of its political agenda. It is not fair for Victoria to see that happen. The Prime Minister should look after the interests of Victoria as well as the other states. He should be fairer. I am not surprised that Mr Costello is unhappy with the decision, and I have heard him speak out about that. The Leader of the Opposition in the other place and the members of Parliament on the other side who campaigned with the Bracks government, did not speak to their leader in Canberra to tell him that the project should be awarded to Victoria. Members of the Liberal Party are not concerned about the interests of Victoria. They do not want to raise their voices. All they do is attack what this government does and what Premier Bracks has tried to do for Victoria. He tried to win jobs back for Victoria, but the Liberal Party failed to support him. All they do is criticise us and undermine what we do. I am sure the Leader of the Opposition will look at this bill and campaign with us to raise this matter with the Prime Minister to make sure the federal government takes more interest in Victoria.

I am delighted to support the bill because it provides for the retention and the future of the Williamstown Shipyard. We will be working with the local community and the local council to ensure that happens. Everything we do will be through consultation. We will not ignore the views of the community. I commend the bill to the house.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

In so doing I thank all members for their contribution to the debate.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

TOBACCO (AMENDMENT) BILL

Second reading

Debate resumed from 9 August; motion of Mr GAVIN JENNINGS (Minister for Aged Care).

Hon. D. McL. DAVIS (East Yarra) — The opposition strongly supports the Tobacco (Amendment) Bill. We believe it takes a series of steps in that long campaign that the community and public health advocates have waged to improve the health of the community through managing the impact of tobacco on the community. We know the impact is severe. It is almost unnecessary in many ways for me to list the impact on the community but nonetheless it should be done. The opposition is aware of the impact of smoking on an individual and the cost to the broader community. The Liberal Party is prepared to take a proactive position in this area, to support the government where it can sensibly do so and in other areas is prepared to be innovative and announce a new policy in the hope that the government will support it.

The bill does a number of things. It amends the Tobacco Act to ban smoking in enclosed workplaces and in other areas, to increase control over tobacco advertising, to introduce further measures to prevent the supply of tobacco products to young people and to ban smoking in covered public transport property. They are useful steps, but there are other areas, and the Liberal Party will move an amendment to ban smoking in schools. The opposition is prepared to innovate with policies and believes there should be a ban on smoking in schools and at the entrance of government buildings and playgrounds.

We know that tobacco is a major cause of ill health and the largest preventable cause of ill health and early death in this state and nationally. Tobacco causes close to 5000 deaths in Victoria each year and also has a significant economic impact. Diseases in which tobacco is a significant risk factor include coronary heart disease, stroke and peripheral vascular disease, lung cancer and other respiratory diseases. It is important to note that passive smoking has been shown to be a significant risk factor for non-smokers and smokers. Passive smoking has been recently shown to increase the risk of heart disease by 50 to 60 per cent. They are significant figures and figures which are important to have on the record.

Approximately 40 per cent of Victorian workers continue to be exposed to passive smoking in the workplace. Those industries include particularly, amongst others, the hospitality industry and certain

factories and warehouses and home businesses. The World Health Organisation has concluded that there is no safe level of exposure to passive smoke. Because of that the further restrictions on the opportunities for smokers to smoke are justified where they genuinely impact on others either through passive smoking or, as I will indicate later, through the example they might send to others.

It is important to place on the record some concerns the opposition has about the bill. They are not concerns about the principles behind the bill but concerns that relate to the issues surrounding the implementation of the changes that will occur in the hospitality industry, in pubs and clubs in particular from 1 July 2007. We think that lead time is important in the first instance and support the government in that, but we think that greater clarity is required for clubs and pubs. It is only right that where bone fide and legal businesses are operating and changes in the law impact on them they have sufficient time to understand the changes and sensibly plan and implement them. If I have any criticism of the government it is about the failure to be as clear as it could about aspects of the ban on so-called enclosed spaces. I will come to those matters later. The ban on enclosed spaces is likely to cause confusion, and I put the minister on notice that I will ask him some questions in the committee stage to get an explanation as to how some of those provisions will operate.

It is worth while looking at international comparisons. Smoking bans have been implemented elsewhere in the world. Full smoking bans in licensed premises have been implemented in Ireland, New Zealand, Norway, New York State, California and a number of Canadian jurisdictions. I was fortunate to sit next to the Irish health minister at a recent function and to have a discussion about the steps taken in that country. It is clear to me it is possible to ban smoking in clubs and pubs. If the Irish can do it, I think we can too.

The other point that is important is the context in Australia. I welcome the fact that plans are under way to ban smoking in licensed premises in Queensland, New South Wales and Tasmania, as well as in Victoria, through this bill. It is not my purpose to reiterate the second-reading speech, but to put it in context and as it is some time since the speech had its second reading in this chamber, it is worthwhile giving an explanation of how these provisions will work. The act creates a new offence of smoking in an enclosed workplace. That provision is new section 5A, which is substituted by clause 6.

A number of exemptions are set out in new section 5A(2). It is important to place these on the record so that we can see the context of the bans contemplated by this bill. The exempted areas include: residential premises, the outdoor dining or drinking areas of licensed premises, a declared smoking area of a casino, a vehicle, a place of business occupied by the sole operator of the business that is not for use by members of the public, a personal sleeping or living area, a premises providing accommodation to members of the public for a fee, a residential care facility, an approved area in a mental health service, a personal sleeping or living area or exercise yard of a prison or detention centre. From 1 July 2007, part 3 of the bill removes the exemption of licensed premises from the operation of the offence of smoking in enclosed workplaces contained in new section 5A(1).

New section 5C provides that it is an offence to smoke in an outdoor dining or drinking area if an area has a roof or walls in place and the total area of the wall surface exceeds 75 per cent of the total notional wall area. This is an area where some clarification is required. There are definitional issues. The Australian Hotels Association and others have raised with me and other members of this place questions as to how this will operate, questions as to what a sail is, what size a sail needs to be to be a roof, and these sorts of issues. I put the minister on notice that I intend to ask some questions to clarify sections and provide predictability and certainty for the industry.

Sections to be introduced by the legislation will restrict certain marketing and sales activity employed by tobacco companies to increase the consumption of cigarettes by children — buzz marketing and certain types of signage. These are changes the opposition strongly supports. Unsatisfactory marketing techniques of these types, whilst legal at the moment, are aimed in ways that we think are unhelpful publicly. We do not believe they are in the community interest and they are certainly not in the interest of children — for example the take-up rate of smoking is influenced by this type of advertising. Tobacco companies have become increasingly clever in the ways they have presented material and attracted children to that material, including the use of the Internet and other methods of promotion that use technology. Strangely in some ways you see the return to some old techniques too of merchandising and presentation that are unhelpful. To the extent that this bill goes some way to regulating and restricting some of those marketing, sales and merchandising techniques, I and the opposition welcome those changes.

In summary, and without repeating the minister's second-reading speech, I will say something about the dates and times that these things come into operation.

Licensed premises provisions within the act come into operation on 1 July 2007 so there is some time for industry adjustment. Other provisions come into operation on 1 March 2006, so that is not so far away.

There are other issues I think we need to put on the record. I note the Cancer Council Victoria media release and attached data from 2 May 2005, saying that new figures spell out massive community support for a smoke-free Victoria. In summary its survey of 3000 Victorians in 2004 found that support for smoke-free pubs and clubs had risen dramatically over the last four or five years with 79 per cent supporting smoking bans in bars and 69 per cent saying total smoking bans in hospitality venues should be brought in before 1 July 2007, so we know where the community is on many these issues. Interestingly more smokers approved of smoking bans in bars and clubs than disapproved of them, admittedly by a narrow margin — 48.4 per cent approved of the smoking bans in bars and 42.8 per cent disapproved. While there is a need to clarify the operation of certain provisions of this bill there is no doubt where the community is and where parliamentarians should be in advocating strongly for these changes.

The consultation undertaken by the opposition was very wide, not only including the important bodies — Quit, the heart foundation and the cancer council — but also many individual practitioners of public health. I thank many of those people, particularly the cancer council, Quit and VicHealth, for the support and information that they have provided to me and other members of the opposition. I am thankful for that. One of the tasks in opposition is the collation of information. I have to say it is not particularly easy with the resources that the Bracks government has left each and every member of the opposition, including our leader's office. The wind-back of staff that occurred after the state election has made the task of research more difficult and it is important that bodies like Quit and Cancer Council Victoria are able to lay their hands on important public health information quickly when it is required by members of Parliament. I am very thankful for that generous support. I know that is provided equally to other members of Parliament from whichever political party they come.

The opposition is concerned to move forward the agenda for public health matters in this state. We have a number of positions that we wish to put to the house, but first I want to say that the opposition has a strong position to ensure that in the near future either we or the government — and I lay down the challenge to the government, including the parliamentary secretary — take steps that are required to ensure a ban on smoking in and around public hospitals and many other public facilities. I think the concept of the cloud of smoke that we face when we go into a public health facility is unsatisfactory. It is a poor example, and part of the role required here in these issues is to set examples bit by bit in a forthright way.

The Liberal Party released a policy in late January about banning smoking around government building entrances and playgrounds. When elected we would seek to do much of that by administrative means, if the government in power now has not taken that step. It is important to note that we have been prepared to innovate when it comes to important areas like schools. The Liberal Party strongly believes that the issue of government leadership and legislative leadership is significant when it comes to schools. I flag my intention to move an amendment during the committee stage of this bill. I will move this amendment and seek to provide the legislative lead — the lead from the Parliament — that is required to make a clear statement as to the position of the community. We do not believe that there should be smoking at schools or on school properties in school hours, and that is the substance of our amendment. Today I have written to all members of Parliament and indicated that if people are prepared to hold some discussions we would look at any suggestions or recommendations as to how we might design such an amendment, but certainly the one I propose — unless there are other contributions from other people — will be the one we will seek to move.

The evidence is very clear that there is confusion in the government's approach to smoking in schools. There are guidelines and they are implemented variously around the state, but there is no clear legislative position. Equally I believe that most school communities would support this position, as most members of the community do. I have got to say that since we made the announcement the day before yesterday — that is, that we would amend this bill to attempt to achieve that aim — my office has had literally scores of calls and emails supporting that position. I find it remarkable that almost without exception they have been incredibly positive.

The view of the community is that we should take this step to ban smoking in schools, and we should do it because of the lead and the role model set for our children by teachers and others who are senior in the school community. The evidence is overwhelming that the lead and the role models that are provided do matter. There is good international research to show that the position of teachers in particular, and senior teachers specifically, can have a significant impact on whether children take up smoking. Preventing smoking

at an early point in life will reduce the chance of later take-up and addiction, thereby reducing the overall impact of smoking in a public health sense. Smoking is a tremendously bad thing for individuals to start to do, but it is bad in a public health sense as well. I will lay out some further details at the time I move that amendment, but it is very clear to me that the community supports this position. We have had overwhelming support about that, and I urge government members to really look in their hearts and ask whether they actually support the concept of a less than clear statement from the Parliament about smoking in schools, both public and private.

The final thing I would like to say is that a longer-term series of steps have to be taken. I do not need to lay out the agenda further, but I believe there is a need to continue the campaign and continue the pressure not only in terms of the public health measures — and legislative measures as well — but also in terms of the support mechanisms in the community. Whether it is done through Quit or through local initiatives, there is a need to continue those support mechanisms and the general campaign to ensure that fewer people smoke. The community will be healthier, it will be happier, and I am very firmly convinced that this bill is overwhelmingly supported by the Parliament and the community. I look forward to the committee stage when I will ask the minister a few questions and detail some aspects of our amendment.

Hon. D. K. DRUM (North Western) — I take great pleasure in contributing to the debate on the Tobacco (Amendment) Bill. With the work I do with the youth of my region and across Victoria, it is something that obviously I feel very strongly about. This tobacco bill obviously has various purposes. Effectively there are five major aspects of the bill. It will ban smoking in enclosed workplaces and in other areas. There will be increased controls over tobacco advertising, which is certainly going to have an impact on some of our younger users of tobacco. The bill will introduce further measures to prevent the sale and supply of tobacco products to young people, and it is hoped that it will generally increase controls over smoking on licensed premises — in indoor, outdoor, dining and drinking areas. It will also ban smoking in covered public transport property.

The Nationals have consulted the Australian Hotels Association (AHA) about the impact that its members think this type of legislation is going to have on various hotels throughout Victoria. We have also consulted with various municipalities and the Victorian Healthcare Association, the Australian Nursing Federation and the Australian Medical Association. We also have some information from the Victorian branch of the Australian Education Union. They have been very positive about the changes in the bill.

It is worth noting that the AHA in particular was quite positive about this bill. Specifically the association believes that there is a very strong need as we introduce these restrictions on smoking in their premises and push their customers into the beer gardens, the balconies and the verandas and so forth, to do so in a very positive manner. We do not see these restrictions being introduced in a negative way. Obviously the association believes that the impact of smoking bans on gambling venues was delivered in a somewhat negative and restrictive manner. It certainly turned people away, more so than inviting new patrons into those establishments. I think it is worth picking up that we really do need to spend a considerable amount of money on a positive campaign about making premises throughout Victoria much more family-friendly venues to go to.

The passive smoking issue certainly remains a very strong issue within Australia and certainly within Victoria. A whole range of figures has been put out, but it is estimated that some 1600 deaths in Australia each year are the result of passive smoking alone. Certainly that is something that we really do need to look at very carefully. Obviously lung cancer, heart disease, reduced birth rates, respiratory problems and such have already been attributed to and have now been scientifically proved to be the direct result of passive smoking. That is something we really do need to be aware of, and if we can put in place this type of regulatory legislation, then I think it will help Victoria to be a far healthier place in which to enjoy these public places.

One of the key elements of the original legislation related to the phasing-in period of the provisions relating to smoking restrictions in licensed premises. The smoking bans came into force in December 2003 and organisations had little or no time to ready themselves for the bans. They certainly did not have enough time to build alternative smoking areas in their gaming facilities. They were forced to try to construct hastily arranged areas that people could move to where they could smoke cigarettes. We saw a dramatic downturn in the patronage of such facilities. Not-for-profit organisations around the state that rely on gaming also suffered big losses.

Another aspect that only exacerbated the introduction of the legislation banning smoking in gaming venues was that it was introduced without any thought to the cross-border anomalies that were created at that time. Victoria went ahead and introduced its law with its time

frame and people in New South Wales sat back and laughed at us as the patronage went across the Murray River. That hurt a lot of our not-for-profit organisations as well as our hotels. It was some 12 to 18 months before there was a slight return in usage and patronage. Even now we are still not back to the numbers that were there before the smoking bans came in. The government should have learned its lesson. It should ensure that when it is making such advances in our smoking laws it does so in conjunction with New South Wales. New South Wales would also have to do that, obviously, in conjunction with Queensland. We would also have to have the same type of arrangement with South Australia, although we do not have anything like the border anomalies issue with South Australia that we have with New South Wales currently. The 2007 date for the end of the phasing-in period will make the bill much more palatable for all licensees around the state.

It is interesting to note that many people believe the bill does not go far enough. I take this opportunity of letting the house know that The Nationals will be supporting the amendment foreshadowed by Mr David Davis and will not be opposing the legislation. On the point that perhaps the bill does not go far enough, we have letters from the Australian Education Union talking about the role model aspect of smoking, which is obviously very important. The figures and indicators are very clear. They show the percentage of smokers among young boys and girls throughout Australia — and therefore in Victoria — who have one or two parents who are smokers. We need to look at the reasons why young people take up smoking. We need look at the indicators that kick them off to take up this ridiculous habit and do all we can to stop that. We need to recognise that in order to target the children we need to target the parents, which in turn will have the ideal effect we want to have on youth. It is a bit of a roundabout way of approaching the problem but we have to start somewhere.

I refer to the money given to Quit, the government's peak anti-smoking body. The people at Quit tell us that there is a direct correlation between Quit having sufficient funds to run shock campaigns on radio and television and the spike in the number of calls it receives from people wanting to give up smoking. If the government is truly serious about trying to impact on the numbers of Victorians who are smoking, it has an enormous power at its disposal by supplying the various organisations with sufficient funds to run the advertising campaigns, because it has been proved that those campaigns work.

Members might ask whether it matters that people make that one phone call to Quit. The chance of an individual giving up smoking without any assistance at all is something like one in five — that is, there is a 20 per cent success rate among people who try to give up smoking on their own. That is increased to one in two, or a 50 per cent success rate, if they make that one phone call to Quit and become involved in an organisation such as Quit which would give them support. Getting people to make that first phone call has tremendous connotations for the success rate and it can be achieved by providing additional funding. Members need to understand that and we need to lobby hard on behalf of Quit to ensure that it is adequately funded.

We also need by targeting the parents to ensure that they do not send a message as role models. In his foreshadowed amendment Mr David Davis is trying to take another step in ensuring that the guardians of our children throughout the day — schoolteachers — are not role models because they are seen smoking cigarettes throughout the course of the day. It has been clearly identified that parents have a huge influence on children and it can be argued — in fact has been proved — that the influence of schoolteachers on our youth is equally dominant. Again, we must try to keep smoking away from our students. Already most schools operate in a very sensible manner by allocating a hidden courtyard or somewhere else for teachers to go to smoke. That tends to be what happens at the minute but why should we put that responsibility onto schools and school councils when we can make that sort of regulation in Parliament and do away with smoking on school grounds broadly?

Yesterday I was talking to the Leader of the Government in this chamber on this very issue. He said that the current state government has a very broad plan and that is that it will not ban cigarette smoking in open spaces. The government is happy to look at various ways of limiting cigarette smoking in workplaces and, as the bill provides, to ban smoking in places such as railway stations, which have a roof but which in most respects are open. The government is happy to move into those areas but it does not want to move to open spaces. For example, banning smoking on the beach would be a transgression of the Labor government's policy. Therefore, banning cigarette smoking at a school football oval would also contravene the government's current policy because it happens to be outdoors.

In noting the indoor/outdoor policy that the government is using as its broad definition of appropriate or inappropriate spaces in which to ban smoking it is interesting to note that currently stadiums in Victoria such as the Melbourne Cricket Ground are smoke-free venues. The MCG is very much an outdoor area but the

government has crossed that line in the sand. It did not create the MCG as a smoke-free venue at a minimal cost. Significant costs were involved in replacing sponsorship at that venue, which was very heavily sponsored by the tobacco companies. The government bought out the sponsorships to promote places like the MCG as smoke-free venues. The government has crossed the line and that gives support for moving down the path proposed today by Mr David Davis.

The foreshadowed amendment talks about school hours, so weekend use of school sporting facilities and their grounds for such activities as outdoor theatre productions would not be caught up in such legislation. It is well balanced. It is there to meet the real needs of students. It goes right to the cause of why students continue to take up this ridiculous habit. The cause is that their role models are smoking and therefore it becomes more normal for them to smoke in their daily lives. If we can cut down those instances where their role models are normalising this habit, we are certainly going to increase the chance of young boys and girls going through their lives without taking that first cigarette.

In my research on this issue I found that clearly that it takes only 100 cigarettes for an average human to become addicted to tobacco smoke. We tend to think that three or four after school or three or four on a weekend here and there will not have any long-term effect, but again research proves very clearly that once an individual has smoked an accumulated total of 100 cigarettes they are hooked. Tobacco has addictive powers far greater than those of heroin. We need to be careful about becoming flippant about the dangers and the power of the tobacco drug. It is certainly something we need to look carefully at.

The Australian Education Union was one body that supported a tougher stance than what we currently have before the house. In a letter the president of the Victoria branch of the AEU has quoted guidelines for Victorian schools, which say:

> Role modelling by adults is influential. Teachers are often in a particularly influential position with young people and their behaviour can have an impact. They should be aware of this potential as it relates to smoking.

The guidelines quoted by the AEU also state:

> Schools should aim to prevent smoking at school. A smoke-free environment reinforces that smoking is not normal behaviour …

That is something we would support. The guidelines also state:

> Students, staff and parents should refrain from smoking on school premises …
>
> An ongoing communication strategy should be designed to inform the whole school community of the reasons for a smoke-free environment.

Let us not just put the bans in place. Let us have an ongoing communication strategy to explain what we are doing and why. I think it is really interesting. The letter continues. We support the stance of the AEU. Members would do well to read the letter. Obviously the Department of Education and Training has a very strong knowledge of how the views, habits and behaviour of teachers impact students.

We have spoken about the work done by Quit Victoria. I would also like to talk about the Victorian Alcohol and Drug Association. In its recent June publication, VAADA spoke about the federal government's contribution to antismoking measures throughout Australia. It has recently put together a $25 million program over four years to campaign against youth smoking. I think that is going to be very well received as we move forward. I congratulate the federal government on spending that sort of money to stop young people becoming smokers. The publication says:

> VAADA welcomed the amendments to the Victoria's Tobacco Act, particularly the smoking bans at workplaces, bars and youth events …

VAADA has put the total financial cost of the mortality rate due to smoking-related illnesses at $5 billion annually. We need to again look at these issues. VAADA believes there is room for further improvement in this area. It certainly pinpoints the high-roller room at the casino and prison cells as workplaces that should be free from cigarette smoke.

The stance that VAADA is taking is credible. The publication also says the following issue needs consideration:

> … the protection of young people who are subject to secondary smoke within enclosed spaces, such as family vehicles.

Talking about that could be the start of regulating that area. That is how VAADA sees the issue. It sees the issue as a bigger problem than most Victorians do. VAADA is starting to say that children are being put at risk by their parents who choose to smoke in the enclosed area of a motor vehicle. I think we will head down that track in years to come and ban smoking in such enclosed areas.

We also have to be aware that some of these laws as we send them forward are likely to have spin-off problems

associated with them. One that we need to be aware of is the starting up of what they call backyard bars. What started off as areas that might be simply nothing better than a pretty flash backyard barbecue can very easily turn into a Sunday afternoon session at a privately owned venue which then becomes a hit with people who like to be able to have a drink and a smoke. These backyard bars have been sprouting up as it gets more and more difficult for some inner city establishments to provide an area in their current premises that offers both a licensed drinking area and an outdoor area that is going to meet the criteria of an outdoor area — that is, a certain percentage of premises that do not have an enclosed area or enclosed walls. We need to be aware of that.

It is also worth nothing that the Australian Hotels Association is also talking very strongly about needing to look at the penalty provisions that we have put in place for so many of the licensees who are found guilty of supplying cigarettes to minors. Perhaps we need to also look at a situation where the youth who are partaking in that purchasing of tobacco can also be subject to a respective penalty. At the moment that is not the case. Section 15K, which is set out on page 28 of the bill, is headed 'No offence by minors'. Whereas a person who sells tobacco to minors is going to be breaking the law and will therefore be forced to pay 5 penalty units for their indiscretion, there will be no such offence committed by the minor who is attempting to buy those cigarettes. While we leave this ridiculous situation that we have here in Victoria as it is, 13 and 14-year-olds can go from shop to shop trying to buy cigarettes and not commit a crime. I think it is ludicrous that we as the lawmakers of the state do not have the strength to introduce a law that bans cigarette smoking by 13-year-olds. I think down the track someone is going to have the strength to change it, but at the moment we do not want to do it. I do not know why we do not make smoking illegal for minors, but certainly we are dancing around the edges with a whole range of restrictions and penalties for people who would dare sell a minor some cigarettes.

It is only a matter of time before we take the final step, as we have done with alcohol, and make it an offence for young people to buy cigarettes and to be in possession of cigarettes. This has been done in America. Some 37 states in America have introduced purchase, use and possession (PUP) laws. There has been a whole range of reasons as to why they have introduced these laws and they have been met with varying degrees of agreement by the people associated with this industry. We need to look at those laws and at the strength of the success rates, because certainly some 28 to 29 per cent of juveniles in America that have gone before the courts in the states that have those PUP laws have not smoked cigarettes since that date. If we are going to have that sort of success by taking kids that have been caught smoking to court and putting them through the system and scaring the pants off them, then maybe we need to look at doing that here in Victoria. We are going to need somebody who is going to stop mucking around with these laws and do something significantly different from what we are doing. We can either fund campaigns like Quit and organisations like VAADA properly so they can have the impact they need to have or go the full step and legislate to make cigarette smoking illegal for minors in the first instance. There is certainly a lot of work that we can do in this state. As I said, we will not be opposing this bill, but we will be supporting the amendment that is before the house.

Ms CARBINES (Geelong) — I am very happy to support the Tobacco (Amendment) Bill, and I am very proud to be a member of a government that is prepared to make difficult decisions to tackle the very serious health issues that are presented to all Victorians by smoking in our state. The statistics associated with smoking and passive smoking are quite frightening. Some 5000 Victorians die each year from smoking-related deaths. The impost of smoking on the Victorian economy amounts to about $5 billion a year. Smoking, of course, is related to heart disease, stroke, many cancers, vascular disease and low birth weight in infants. The insidious nature of passive smoking needs to be tackled, and the government is tackling that. There is a 50 to 60 per cent risk of heart disease if you are exposed to passive smoking.

During our first term and in this term both the Minister for Health, Bronwyn Pike, and the former health minister, John Thwaites, both from the other place, have introduced groundbreaking legislation which has placed Victoria at the forefront of smoking regulation in Australia. We introduced the legislation to make dining smoke free. I remember speaking on that bill in our first term and was delighted to see that legislation enacted. We have banned smoking in shopping centres. We have banned smoking in gaming and bingo areas. We have increased the penalties for selling cigarettes to minors. We have placed very strict restrictions on the advertising and display of cigarettes at point of sale. We have been prepared to progressively tackle the issue of smoking across the state. This has certainly been borne out with very strong results. In 1999 when the Bracks government was first elected, some 20.7 per cent of adult Victorians smoked. In 2003 that figure had dropped to 16 per cent. I believe Victoria has the lowest rate of smoking across the nation, and I am convinced that is as a direct result of the legislation that the Bracks

government has brought into our state to address the serious health issue of smoking.

They are fantastic results, but we cannot be complacent. Minister Pike is not complacent. She is making sure that with this bill we are further attempting to address the incidence of smoking, and we hope to see a commensurate reduction in the levels of smokers in this state. I know from my own experience that prior to the introduction of the banning of cigarette smoking in dining rooms and restaurants, it was pretty much a hit-and-miss affair if you were a non-smoker that you could go out and enjoy a smoke-free meal. I remember speaking about going to restaurants in Geelong and having to put up with the equivalent of a chimney stack next to my table when about five smokers all lit up at once. I also remember back to my youth and the way in which cigarettes used to be advertised. I know that often young people were used in advertisements to promote cigarettes as if in some way cigarette smoking was related to health and beauty and fitness.

I can remember an advertisement for Alpine cigarettes that I used to drive past. It featured a young woman in a fairly revealing bikini with some cigarettes tucked down her bikini bottoms. I am sure the inference was that if you smoked Alpine cigarettes you would end up looking like her, but nothing could have been further from the truth! I am quite prepared to admit that I used to smoke cigarettes as a young person — —

Hon. D. K. Drum interjected.

Ms CARBINES — I saw the light, Mr Drum, and gave them up.

Hon. D. McL. Davis — Only cigarettes?

Ms CARBINES — Only cigarettes. It is interesting that at the time I took up smoking every one of my friends smoked cigarettes. As I have gotten older, more and more people have given them up and that has been reflected in my social circle. None of my friends smoke at all these days and we are really pleased that that is the case.

The bill before us today introduces the banning of smoking in licensed venues, pubs and clubs from July 2007. That will be very welcome because it is really annoying to go into pubs and clubs and have to put up with other people smoking and with having to ingest their smoke passively. I am looking forward, as are the majority of Victorians, to the time when smoking is banned in licensed venues and I congratulate Ms Pike, the Minister for Health in the other place, for taking this issue on.

We are also enforcing the ban on smoking cigarettes in enclosed workplaces. From March 2006 there will be further restrictions on the sale and advertising of cigarettes in under-age venues and at under-age events. We are also banning smoking in covered areas on train stations, bus and tram stops. We are increasing the enforcement regulations in respect of the laws on selling cigarettes to young people and we are giving police the ability to issue an infringement notice.

Smoking outdoors while dining al fresco is allowed; smoking will be allowed on balconies and obviously in outdoor areas associated with pubs and clubs. The issue of smoking in pubs and clubs is a very serious one, not only for patrons but also for workers at those venues. Some 30 per cent of workers in the hospitality industry are exposed to passive smoking and health experts estimate that one shift in a smoky bar is the equivalent of smoking 16 cigarettes. I would like to acknowledge the role of the Liquor, Hospitality and Miscellaneous Union in promoting the serious health risks associated with passive smoking to their members. My husband used to work in the hospitality industry. He worked in bars and at one stage at the casino and he used to come home absolutely reeking of cigarette smoke. He needed to get changed before he came into the house and his health deteriorated over that time. I know that his experience was common to all workers — and still is — in pubs and clubs who are exposed to passive smoking.

The clauses in relation to the new bans on smoking are well supported by the Victorian community and there have been many media articles congratulating the government on the new bans. The editorial in the *Ballarat Courier* of 13 October 2004 headed 'Smoking reforms are appropriate social policy' states:

> Congratulations to Premier Steve Bracks and his government for finally moving to ban smoking in pubs, clubs and other licensed premises.

The *Age* in its editorial on the same date carried the headline 'Clearing smoke from the final frontier'. It was followed by the subheading 'A move to ban smoking from Victorian pubs and bars is a welcome one'. We have had lots of positive endorsements from around the state.

But there is one person who does not think we are doing the right thing. Honourable members will probably be surprised to read — I was, and I am going to put it on the record — that the Prime Minister is not convinced. An article on page 4 of the *Age* of 12 November 2004 is headed 'PM unconvinced on smoking push'. In the article Mr Howard is reported to have said that anti-smoking measures may already have

gone too far. Mr Howard is totally out of step with the rest of the nation and he needs to get with the program and support the Victorian government in what it is doing to improve the health of all Victorians.

I want to spend a little bit of time talking about the amendment that Mr David Davis has flagged in this house today. I remind Mr Davis that prior to becoming a member of Parliament I was a teacher in Victorian schools for 20 years. Unlike Mr Davis, I have had experience in the management of the smoking issue in schools. Smoking is banned in all school buildings 24 hours a day every day. Smoking is not allowed on school premises and all schools have rules and regulations relating to smoking. This amendment is not necessary at all.

What I find most interesting is that Mr Davis did not choose to have this amendment introduced when the debate on this bill took place in the Legislative Assembly. It was not introduced there; no-one put it forward in the Assembly. On further investigation I found out that neither Mr Davis nor anyone in the Liberal Party put in a submission to the health minister when there was consultation in relation to this legislation. At 5 minutes to midnight we find Mr Davis, in a media flurry, announcing that he wants to ban smoking in school grounds.

You have to wonder why Mr Davis has done this. If he was committed to this amendment he would have flagged the issue with the Minister for Health in the other place during the consultation phase. If he was committed to this amendment you would think he would have ensured it was debated in the Legislative Assembly. No, that is not the way Mr Davis operates. Mr Davis likes to have the media stunt; he likes to have all the attention on him; he likes to bring in something that will get him a bit more attention and raise his profile. Mr Brideson is nodding — I am right. I know I am right, Mr Brideson. Here we are today debating an amendment that is not necessary. Mr Forwood is nodding too. There is a lot of nodding on the back and front benches of the Liberal Party. Mr Drum agrees as well.

Smoking is already banned in all school buildings. The amendment is just not necessary. No student is permitted to smoke during school hours on any school day. They are not permitted to smoke on excursions or at any school-related activities. Teachers are not allowed to smoke in front of students. This has been the case for a very long time. This amendment is not necessary; all students receive education in relation to smoking.

I was out at Bellaire Primary School in my electorate on Friday talking to grade 5 and grade 6 pupils, and they could tell me all the reasons why it is very bad for their health to take up smoking. They knew those reasons, and they are determined that they are not going to take it up. That is the key with young people: you educate them. You do not punish them. You do not threaten them with $500 fines. The government is doing a great job through the state school system to educate young Victorians about the risk to their health of taking up smoking, and I congratulate all teachers for their role in that. This amendment is not necessary at all.

The Liberal Party did not make a submission to the consultation that Minister Pike undertook. Mr Davis wants to impose a $500 fine on any student who is caught smoking in the school grounds. That is not the key to addressing this issue. The key is educating young people, and the government is making great inroads on that. You can see that from the progressive reduction in the number of Victorians who are smoking and by the reduction in the number of young people who are taking it up. That is the key. This amendment will not address the problem. We have a proud history in this government of addressing smoking in this state. We have evidence of that from the legislation we have brought to this place.

Contrast that with the actions of the Liberal Party when it was last in power during the Kennett years. Its members were dragged screaming and kicking to this place to introduce legislation to raise the age at which people may purchase cigarettes. That was the one piece of legislation that government brought in. It raised the smoking age from 16 to 18, and good on it for that. But Mr Davis should not come in here bringing in amendments in a media flurry and pretending that he cares. If he cared about it that much he should have put in a submission, and it should have gone through in the Assembly. But no, he wanted the attention on him when it came in here.

By contrast we have a proud government that is addressing smoking in this state very seriously, as is evidenced by the reduction in the number of smokers across the state. I congratulate the Minister for Health in the other place, Minister Pike, for taking on this critical issue, this last frontier issue in the state. I also congratulate the member for Albert Park in the other place, John Thwaites, for the work that he did in the three years that he was health minister.

Hon. Bill Forwood — What about the parliamentary secretary? What about Daniel?

Ms CARBINES — And, of course, the Parliamentary Secretary for Health, the member for Mulgrave in the other place, does an excellent job. With those few words I commend the bill to the house and wish it a speedy passage.

Hon. BILL FORWOOD (Templestowe) — As I address a few words to this 'proud government' I will remind its members that pride comes before a fall. I welcome back Ms Darveniza. It is nice to see her here. There was trouble with the vote without her here this morning. I welcome the opportunity to indicate my support for the legislation before the house, and that should not surprise anybody in this place, knowing as they all do that I am an elected member of the Victorian Health Promotion Foundation. Along with my colleagues in the other place the member for Mount Waverley, Maxine Morand, and the member for Lowan, Hugh Delahunty, I represent the interest of the Parliament in VicHealth, a job which I take seriously and enjoy. By way of a sideline, I used to be on a subcommittee of VicHealth back in the days when Rhonda Galbally was there, so my record in relation to preventing smoking and working in this area stands the test of time.

VicHealth's contribution to the decline of tobacco smoking in this state should not be underestimated. Smoking rates and public approval of smoking have significantly declined since the inception of VicHealth funding for Quit in 1987. Smoking rates have shown a consistent decline, going from 30 per cent to 17 per cent, and over the last five years support for smoking bans in public places has increased from 58 per cent to 72 per cent for bars and nightclubs and from 71 per cent to 80 per cent for gaming venues. Despite that it was interesting to read in the *Occupational Health and Safety Daily News* of 28 July the headline 'State governments too slow to act on smoke bans: survey'. The article states:

> Melbourne — Almost two out of three Australians think state governments have been too slow to ban smoking in pubs and clubs. While 9 out of 10 people believe smoking should be banned in cars, carrying children …
>
> Health Australia, an anti-tobacco lobby group Action on Smoking, and drug company Pfizer, which manufactures … Nicorette, surveyed 1300 smokers and non-smokers for the poll.
>
> Results showed most Australians were ignorant about the lethal effects of smoking. More than half the respondents did not know that tobacco causes the most drug-related deaths in Australia. Smoking is the largest preventable cause of death and disease, killing more people than drugs, alcohol, suicide, breast cancer and murder combined.

Yes, I think it is good that this bill is here; yes, I and the Liberal Party support it; yes, I think it is slow; and yes, there is more to do. But let us never forget that more than half of the respondents still do not know the effects of tobacco smoking and the dreadful effects that it can have on their lives. In her contribution Ms Carbines, who is so quick to give a speech and shoot through, talked of the effects that workers in workplaces have to grapple with, such as environmental tobacco smoke (ETS). She cited the case, I think, of her husband. In 2003 I asked a question on notice in this place of the Minister for WorkCover and the TAC. Question 1176 can be found at page 431 of volume 461 of *Hansard* of 21 April 2004. The question was how many improvement notices, how many prohibition notices and how many directions in relation to ETS had been issued by WorkCover.

In other words, under the Occupational Health and Safety Act, the Victorian WorkCover Authority (VWA) has an obligation to provide safe workplaces. We have heard people in this house, including Ms Carbines, talk about the danger that environmental tobacco smoke causes in the workplace and she talked up the work of the liquor and hospitality union and my friend Brian Daley. But all the VWA issued was one improvement notice and two prohibition notices. How serious was it about tapping this problem? And that leads to some of the detail of the legislation before the house today.

My colleague will go into some details about the way this legislation will work in the outside areas, and so he should. I was heavily lobbied by Boyd Fraser, an anti-tobacco lobbyist of some repute. I think he was a member of the Labor Party at some stage. He told me that I should persuade my colleagues to vote against this legislation because it did not go far enough. I pointed out that I supported the legislation and that it was good legislation; that maybe it did not go far enough but that there was no way in the world that we would oppose it. He made the case a number of times, particularly in an article headed '"Tobacco Amendment Bill" a pious fraud' which appeared on 2 June. It says:

> Victorians have shown an enthusiastic willingness to embrace bans on smoking and the Bracks government has delayed the eventual prohibition of smoking in all enclosed and partially enclosed areas of pubs and clubs for many, many years if not decades. This is a truly shameful outcome.

It goes on to talk about the exemption of so-called drinking areas et cetera. It also says:

> The appalling slowness with which the Bracks government has addressed the issue of smoking in the hospitality sector has, to a very disturbing and troubling extent, been made possible by the steadfast reluctance of the WorkCover

> authority to faithfully fulfil its commitments with respect to the Occupational Health and Safety Act. This is notwithstanding its public acceptance of the NOHSC guidance note regarding ETS and its declaration that it is practicable to prohibit smoking in the workplace and that nil exposure is the appropriate standard.

So this proud government can come in here and pat itself on the back, but there are people who think it has not gone far enough or fast enough in dealing with this really important issue. The next challenge for this government is to deal with some of the other issues that need to be dealt with. My colleague the Honourable David Davis will introduce an amendment to ban smoking in schoolyards because of the influence that teachers have in relation to acting as role models for pupils at school.

We now have the largest ever total investment in tobacco control. In 2004 VicHealth invested $4.2 million, and as a result we increased our grant to Quit from 10 per cent to 12 per cent of our total government funding. Significant additional funding to Quit came in 2005 from the Cancer Council — $314 000; from the National Heart Foundation — $20 000; and from the Department of Human Services — $300 000. So a lot of money is going into this, and so it should, but more should be done.

Let me give some more examples of things that should be done in the no smoking area. It would be sensible to bring in the graphic picture warnings at point of sale. The commonwealth government's new pictorial warnings will come in in March 2006. Those warnings should come in for point of sale materials as well. We should also consider making sure that tobacco products are placed out of sight of point of sale material. Why do we not decide to make all youth events smoke free, not just dance and music events? While we are doing that, why do we not decide to ban smoking in cars when children are present? If we are serious about this, we ought be thinking of these things as well.

The commonwealth government should be doing other things, and I am happy to be out of step with the Prime Minister on this issue. My view is that we should remove the duty free status of tobacco products and ban the sale and promotion of tobacco through the Internet as well. That falls within the responsibility of the commonwealth government.

When we get onto mass funding campaigns to encourage cessation we should really concentrate on smoke-free workplaces, and the government must get serious about that. For the life of me I cannot see how the exemptions that exist in this bill can lead to smoke-free workplaces. Other people are going to say this better than I can, but I wonder whether in summer, when the blind comes down over the parliamentary veranda — and it will cover more than 75 per cent of the back veranda — Mr McQuilten will be able to sit out the back and have a fag, and we will wait for the minister to answer that question during the committee stage. If he is smoking and our parliamentary staff walk through, or members of the Labor government walk out to the chook house, or I am out there talking to my colleagues without having a cigarette, then we are in danger from ETS. This government should get real. It should get serious. It should take the matter by the horns.

Hon. R. G. Mitchell — What did you do during your seven dark years?

Hon. BILL FORWOOD — My seven dark years? Dear me.

A note has just been passed to me. Ms Carbines has an appalling habit of giving a speech and fleeing the chamber. It is a pity that she is not here to listen to — —

Hon. R. G. Mitchell interjected.

Hon. BILL FORWOOD — He was here for her speech. It is a pity — —

The ACTING PRESIDENT (Hon. R. H. Bowden) — Order! Members should make their comments through the Chair!

Hon. BILL FORWOOD — Mr Acting President, with all deference to you, Ms Carbines said that Mr David Davis's amendment was a stunt. I put it to you that this government's track record is not as good as Ms Carbines likes to indicate. This government should be doing many other things in the anti-smoking area, and one would hope that it will develop the will and the muscles to do it quickly. It is outrageous for government members to argue that it is a stunt. It is arrogant to presume that government legislation is perfect: it is not. I have pointed out a number of things that this government could and should have done in this area, and it should have done them today. It is a nonsense to suggest that this house does not have a role in scrutinising and improving legislation. That is part of its job. The government wants us to be relevant and we are being relevant. Ms Carbines should get on the program. She should support the change that the opposition is putting forward in the interests of the children of Victoria and in the interests of people stopping smoking before they start. It is hard to give up. Let us not have them start. Let us not have them in a

position where they are copying their role model teachers.

I support the bill wholeheartedly. I look forward to the next tranche that the member for Mulgrave in the other place will bring before this place — —

Mr Gavin Jennings — He is not coming up here!

Hon. BILL FORWOOD — Into the Parliament! I look forward to working closely with VicHealth on this crucial issue. I look forward to the government doing something in a timely way.

Hon. S. M. NGUYEN (Melbourne West) — I support the Tobacco (Amendment) Bill. We all know that cigarette smoking affects the health of the community. We are trying to ensure that there is less smoking in public places so it will not affect other people. In the past legislation was introduced to stop people smoking in shopping centres, restaurants, in the workplace or inside public buildings. Now the government wants to go further because, firstly, we want to encourage smokers to reduce smoking; and secondly, we also want to prevent other people from being affected by passive smoking.

The bill makes very clear that we want to introduce a lot of things in the future. We are working with the Australian Medical Association, the Australian Education Union and other organisations to let them know we plan to implement measures they have put to us. As a government we are responsible to make laws to improve the health of the community and to restrict smoking in public places. We are increasing penalties for those who sell cigarettes to under-age youth, and prohibiting smoking in workplaces, buildings and schools and restricting further tobacco advertising. The law has been strengthened for those who sell cigarettes to people under 18 years and we are tackling smoking at under-age music events.

There is a debate about smoking in schoolyards. The bill will stop people smoking in school buildings. I know a lot of young kids smoke in the toilet or where teachers cannot see them. We will make teachers more responsible because if they are smoking they must smoke outside the buildings in schoolyards. People might smoke outside the school gate. There will be a long walk from the classroom to the schoolyard or school gate.

We will impose smoking bans in clubs and pubs and other licensed premises from 1 July 2007. A lot of people can smoke outside and away from public places. I used to smoke but I do not smoke any more. I worry about people smoking in front of me in the fresh air, but the government is doing more and more every day. We cannot do everything at once. The public should be aware of our intention. These laws will make it harder for smokers. I commend the bill to the house.

Ms ROMANES (Melbourne) — Many of us remember the days when you could smoke anywhere and at any time. We have witnessed a revolution in our lifetime. Victoria has become that way in terms of smoking reform and antismoking campaigns. I go back to the former Cain government which introduced the Victorian Health Promotion Foundation and Quit programs.

Hon. Bill Forwood — It has been a tripartisan approach!

Ms ROMANES — Indeed. Ever since there has been a tripartisan supported program for health promotion campaigns in this state. That was a very important initiative, not advanced very much in the Kennett years given that the Tobacco Act was amended only once to lift the age of purchase from 16 years to 18 years, which was done under duress as a result of a Council of Australian Governments agreement.

The legislation we are dealing with in the house today does follow on from the track record the Bracks government has established over the past few years. There has been a raft of tobacco reforms including the introduction of smoke-free dining laws in 2001; the smoke-free shopping centre laws in November 2001; smoking restrictions in licensed premises, gaming and bingo premises and the casino in December 2002; reforms addressing youth smoking, including increasing the penalties of selling cigarettes to minors in 2000 and restricting tobacco advertising and displays within tobacco retail outlets from July 2001 to January 2002. The result of all these initiatives from the period 1985 onwards is a decline in Victoria of approximately one-third of those who smoke. It is presently estimated that 16.2 per cent of Victorians are smokers — that is for people aged 18 years and over. That figure was established in 2003 and there has been a sustained decline amongst youth from 22 per cent smoking in 1999 to 17 per cent in 2002.

The legislation will extend and further the work that has already been done by the Bracks government and the Minister for Health in the other place, Bronwyn Pike, by banning smoking in enclosed workplaces, including pubs, clubs and other licensed premises, by 1 July 2007.

There are other objectives contained in the bill. I was pleased to see one of those is to ban smoking and the

promotion and sale of tobacco products at under-age music events from 1 March 2006. That rings a bell with me because just last Saturday evening, along with the chaplain of Strathmore Secondary College, I was presented with 58 debutantes and their partners. It was a wonderful evening inside the venue, but when you stepped outside the venue there were lots of students, teachers and parents who were smoking. It occurs to me that under this legislation those practices will be banned at the presentation ball next year. That will send home an important message to all those involved.

In its newsletter that I am sure most members of this house received, VicHealth emphasises the reason for the government continuing to develop further legislation to assist in reducing smoking in this state. Its winter newsletter is entitled 'An ounce of prevention is worth a pound of cure — making the case for choosing health promotion'. It puts the message strongly in terms of the key areas that VicHealth is currently working on: continuing the campaign to reduce smoking, the SunSmart campaign, the improvement of mental health and wellbeing, and tackling obesity.

In considering the reduction of smoking, VicHealth's research work force and tobacco control unit puts the question: if you cut the number of Australians who smoke by another 5 per cent by 2010 what would be the benefits? In terms of investment in public health in the area of smoking, it would be a blue-chip investment and it would lead to 50 000 fewer premature deaths in the following 30 years. Those who quit would be richer by the equivalent of a $50-a-week pay rise. Businesses would also benefit from reduced absenteeism due to serious smoking-related diseases. In 1998-99 the cost was estimated to be more than $1 billion. It would also lead to reduced WorkCover insurance premium costs. The federal government would ultimately pay out less on the pharmaceutical benefits scheme because its cost would decrease by 17 per cent, with a $4.5 billion reduction in costs for smoking-related cardiovascular disease, as shown in one study which estimated the impact of a 5 per cent reduction over 40 years. They are enormous gains.

I want to draw to the attention of members an impact not often understood or realised by those who smoke. That is the link with eye disease. The Centre for Eye Research Australia, which is very close to Parliament House, has done a lot of work and established that smoking is the biggest modifiable risk factor for age-related macular degeneration, and one quarter of age-related macular-dependent degeneration may be due to smoking. Furthermore smokers are at increased risk of sight problems due to cataracts. Smoking is costing our community and individuals in the community an enormous amount. Therefore the legislation that we are dealing with today is critical to that campaign.

In relation to the amendments that have been flagged by Mr Davis I would concur with my colleague Ms Carbines that these are not necessary. There are already government policies and practices which forbid smoking in school buildings, which forbid teachers to smoke in front of students and which forbid students to smoke on the school grounds. This matter has already been dealt with and the proposals put forward by Mr Davis are unworkable and unenforceable and they relate more to Mr Davis's desire for media coverage than to outcomes for young people, teachers and families in this state. With those words — and again emphasising the importance of the bill in terms of public health implications in this state — I commend the bill to the house.

Mr SCHEFFER (Monash) — I speak in support of the Tobacco (Amendment) Bill. I was a smoker until my late 20s. Looking back I must say I find it incredible that most days I smoked a packet a day, sometimes more. I smoked in the foyer of the Baillieu Library, I smoked on trams, I smoked in my own home, I smoked in other people's homes, I smoked in restaurants and at work any time I wanted. In those days we even smoked on aeroplanes! Nothing could make me give up. I knew that it was dangerous to my health, but I somehow lacked the power to change my behaviour. For the most part smoking was seen as a private choice. The public health argument had little traction in those days, and I was part of a world that promoted and glamorised my dangerous addiction in every way possible. I was seduced by the associations that the dream machine of the advertising industry created for me. Smoking was urbane and sophisticated. No meal was complete without a cigarette over coffee.

But more than a quarter of a century on I think we understand a lot better that tobacco smoking is a public health issue. We know how much it costs the community and that tobacco smoking needs to be tackled as a whole-of-population issue. We understand that law and regulation play a big part in changing individuals' behaviour and that publicly funded support for individuals who want to kick the habit is critical if we want to see society as a whole stop smoking and reverse its devastating impacts. Smoking, as everyone knows, exposes people to a high risk of contracting three diseases that cause most deaths: heart disease, stroke and lung cancer. Around 80 per cent of all lung cancer deaths and 20 per cent of all cancer deaths are linked to smoking. Smoking during pregnancy can lead to miscarriage, stillbirth or premature birth. It is very

serious. Even if you do not smoke yourself, the health risks of passive smoking are considerable. The National Health and Medical Research Council (NHMRC) says that while the health effects of passive smoking are well documented, there is sufficient evidence that passive smoking has an adverse effect on health and it has recommended that policies and practices be introduced to reduce exposure to environmental tobacco smoke.

Since 1986 the quantity and quality of scientific research into passive smoking and health has increased enormously. The NHMRC reviewed the scientific evidence and found positive associations between passive smoking and lower respiratory illness, lung cancer, major coronary events and asthma in children, as well as other conditions, such as sudden infant death syndrome. The NHMRC also found that passive smoking can increase the risk of death from all causes, and that in addition to these serious health effects passive smoking irritates the eyes and the upper respiratory tract. It too is serious.

Passive smoking, more than active smoking I think, is also an occupational health and safety issue. The National Occupational Health and Safety Commission's October 2002 position statement entitled *Environmental Tobacco Smoke in the Workplace*, recommended that exposure to passive smoking should be excluded from all Australian workplaces. The statement said that there is no evidence for a safe level of passive smoking, and that typical exposure levels place workers at risk of contracting the serious conditions that I mentioned before. The commission also recommended that Australian jurisdictions should increase the prohibition on smoking in workplaces. This is exactly what this bill is doing.

The minister points out in her second-reading speech that around 30 per cent of Victorian workers are exposed to passive smoking at work. She singles out the hospitality sector as one area where workers are at particular risk. The level of risk is alarming. Hospitality workers are exposed to levels of smoke hundreds of times, and in some instances thousands of times, the acceptable risk levels for major diseases. The minister also indicated in her second-reading speech that tobacco smoking takes some 5000 lives and costs Victoria over $5 billion a year in health care and negative social impacts.

Reduced tobacco smoking right across the community will not only save lives and improve the quality of life of many individuals, it will also result in huge economic benefits. These are two compelling reasons for continuing to work on ways to reduce smoking right across the community.

The last 30 years have seen a dramatic change in public attitudes to smoking. Health authorities, researchers, community organisations and successive Liberal and Labor governments have worked patiently and consistently to encourage and pressure the community as a whole to reduce tobacco smoking. This has been achieved through a combination of graduated restrictions placed on where people can smoke through to increasing the price of tobacco products, putting health warnings on cigarette packets, prohibiting tobacco advertising, imposing tougher penalties for selling tobacco to minors and through a vast array of educational programs.

The minister indicated in her second-reading speech that in recent years smoking rates have declined 4.7 per cent for adults and 4.1 per cent for young people. This means that between 1999 and 2003 smoking rates fell from 20.7 per cent down to about 16 per cent. That is impressive, and it is some indication that the strategies that successive governments have put in place are in fact working. The present bill takes another step on the road and will, I believe, come to be seen as a milestone in the very long campaign to improve public health.

The purposes of this bill are to improve public health by further restricting people's exposure to tobacco. The bill will introduce smoking prohibitions in enclosed licensed premises that will take effect from July 2007. The prohibition will not include outdoor spaces attached to a venue, such as courtyards and balconies, provided that they are open to the air. From March 2006 smoking will be prohibited in enclosed workplaces and in covered areas of tram and bus stops as well as railway platforms. The bill will also prohibit smoking at under-age music and dance events and impose restrictions on tobacco sales and advertising events of this type. Laws that prohibit the sale of cigarettes to young people will be strengthened under this bill, and police powers will be extended so that they can issue notices where there are infringements.

Complex legislation that aims to change community behaviour needs a long lead time and a carefully thought through communication plan. The prohibitions regarding enclosed workplaces will start on 1 March next year, and those regarding licensed premises will start in July 2007. The government has made a commitment to the Municipal Association of Victoria to provide additional funding for educational and enforcement activities as they relate to the reforms. Local councils will share a total funding of around $620 000 over three years to conduct educational and enforcement activities. Transport inspectors will be responsible for the enforcement on train platforms and at bus and tram stops. Over three years the government

will spend an additional $2 million communicating the reforms. The campaign will target workplaces and under-age music events, tram stops, bus stops and places of that type.

The government will also establish advisory committees made up of representatives from industry, health promotion groups, and local government peak bodies to provide advice on how best to communicate the changes to the tobacco laws. The communication activities will begin well in advance of the time these amendments come into effect and will be stepped up in the two months leading to the commencement dates, and education and reinforcement messages will continue after the laws have been implemented. All that is important because it is how you embed change in public attitudes, and that is why we need a long lead time for a bill such as this.

There have been criticisms that the prohibitions will impact negatively on the night economy, but interestingly experience from New York appears to show that the concern is unfounded. A recent study by that state's Department of Taxation and Finance showed that while there was a dip in the first six months, business subsequently rebounded. I congratulate the government and the minister and also the member for Mulgrave in another place, the Parliamentary Secretary for Health, and the department for their excellent work in the preparation of this bill. These are far-reaching tobacco reforms and I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 and 2 agreed to.

Clause 3

The CHAIR — Order! The Honourable David Davis to move his amendment no. 1, which is a test for his amendments 2, 3 and 4 on clause 5, which he will foreshadow.

Hon. D. McL. DAVIS (East Yarra) — We might discuss the definitions contained in clause 3 in conjunction with clause 24, which contains the new section 5C, 'Dining areas: offence by smoker'. Proposed section 5C(1)(b) states that a person must not smoke in an outdoor dining or drinking area if the total actual area of the wall surfaces exceed 75 per cent of the total notional wall area, and paragraph (4) contains a definition of 'notional wall area'. Many of those points in that clause relate to the definitions section here to the extent that there is a definition of 'outdoor dining or drinking area', which is described in clause 3 of the bill as meaning:

> … any of the following outdoor areas that is predominantly used for the consumption of food or drinks or both —
>
> (a) a balcony or veranda;
>
> (b) a courtyard;
>
> (c) a rooftop;
>
> (d) a marquee;
>
> (e) a street or footpath;
>
> (f) any similar outdoor area.

The definitions go on:

> 'roof' includes any structure or device (whether fixed or movable) that prevents or significantly impedes upward airflow, including a ceiling;
>
> 'substantially enclosed' includes completely enclosed.

One of the key purposes of the bill is:

> … to ban smoking in enclosed workplaces and other areas.

It is in that context that I am trying to understand precisely how the bill and its definitions of those outdoor dining or drinking areas will operate. For example, earlier my colleague the Honourable Bill Forwood referred for example to the outdoor area at the back of Parliament House. It has a movable roof and walls on three sides, and there is traffic through the area as people move to the chookhouse and elsewhere. Currently people smoke in the area. The President is not here, and we would not want to reflect on her.

Mr Gavin Jennings — More than you just have!

Hon. D. McL. DAVIS — More than I just have. Could the minister explain how the definitions and the purpose of the act to ban smoking in enclosed workplaces and other areas will operate in such an area?

Mr GAVIN JENNINGS (Minister for Aged Care) — I thank the committee for the opportunity to reinforce some of the material that Mr Davis has just read into *Hansard*. I will not go through the series of definitions Mr Davis has referred to. His reading was pretty accurate, according to my scanning of the bill as he went through it. He did not refer specifically to the defining issue, which is set out in clause 24 and brings

together the concept in terms of the test of what 'substantially enclosed' means in the context of the bill. The bill will be enforced by making a determination about the wall area that encloses the space. Clause 24 is very important to read in the context of the definitions. The critical concept is that for an area to be roped into the provision the wall space has to be 75 per cent or greater.

Fast-tracking that concept to the example that has raised its ugly head in the context of the balcony in the parliamentary precinct, where it has been known — much to our lamenting — for people to use that space for smoking, the first critical test is whether there is a roof over that section. The awning is retractable. To invoke the provisions of the bill we have to work out whether when the awning is in place it is of sufficient structure to significantly impede the updraft of air. For the purposes of this test, let us say that the awning does impede that updraft of air. Then that is the first aspect of the provisions that deem the balcony relevant to the bill.

The second test is whether the wall space around the perimeter of that roof constitutes 75 per cent or more of the wall space. Going back to primary school geometry, that roof under the awning is rectangular, as is the floor space. Let us have an assessment of whether that test of 75 per cent is satisfied. There is only one way that it would be satisfied in a rectangular space — that is, two of the longer sides have to be included. It is very clear that one of the longer sides of that rectangular balcony space is open to the air, so the balcony would not pass the 75 per cent test. So even though I might be a much happier person when I spend time out in that space, it would not be included under the bill.

Hon. D. K. DRUM (North Western) — Also on the design of the roof, obviously some licensees will become reasonably creative as they try to work out a design for a roof that will keep the weather off patrons but has something such as a peaked ventilation system at the top such that it will not impede the upward flow of cigarette smoke. What will happen is that licensees will need somebody to look at their plans and either tick them off or not. They will be spending millions of dollars in setting up venues, especially in the inner city, where sites are on extremely valuable land. They will have minimal opportunities to set up outdoor smoking and dining areas. They will have creative designs for the roof that may or may not impede the upward flow of cigarette smoke. Licensees and developers will have to be able to talk someone with direct clout so that they can have their respective designs ticked off. Certainly people who have contacted me are looking for some direction in that planning stage.

Mr GAVIN JENNINGS (Minister for Aged Care) — It is very important for the committee to understand first that the legislation has been designed to ensure that there is integrity in the scheme that will operate. The second thing is that, in accordance with the provisions of the act, extensive guidelines will be produced for the sector and the public health officers who will be charged with the responsibility of enforcing the provisions. It is also very important to recognise that the government has tried to enforce change that reduces the imposition of banning smoking in enclosed public spaces in a way that is mindful of the existing physical and commercial environment in which we operate.

The change has been designed to be implemented in a way that is not too intrusive or dysfunctional in terms of the ability of the operators of the facilities to understand how the regulations will work and how they could be tested and assessed against that criteria. Extensive material will be generated to support the implementation of the new regime. Some people may be champing at the bit and saying, 'Get on with it and do it next week'. The provisions will come into place over a period to allow for that appropriate education and familiarisation for the sector.

I do not doubt that a number of people will try to creatively get around the provisions. We should not necessarily set out to create legislation to cover all types of scenarios or architectural treatments but be pretty clear when it boils down to it what are the fundamental tests. The critical test of whether the air comes through is: does the smoke get out through the roof and is three-quarters of the wall space around the area enclosed?

I agree we should in fact provide some guidance. We will be providing guidance. There will be a lot of work done in terms of preparing the material to provide for the existing enforcement of these locations. I take up Mr Drum's point: it is important that everyone in the sector becomes familiar with these limitations when they are developing new proposals. I anticipate that the education material will be provided and circulated in a way which will enable that to occur.

Hon. D. K. DRUM (North Western) — I thank the minister for his answer. I was looking at the latter part of what the minister said then. We are not looking to try and get around this legislation. We are looking for roof designs that simply comply with the legislation but still enable some of these restricted premises to have outdoor dining and smoking. It is going to be critical for the minister to put in place some form of advocacy in the industry that will enable it to proceed with these

somewhat radical designs. I am certainly convinced that that will be the path that a lot of licensees will take.

Hon. D. McL. DAVIS (East Yarra) — As I have said, the Liberal Party supports the Tobacco (Amendment) Bill in general, but we believe it can be improved within the objectives of the act, which are:

(i) to ban smoking in enclosed workplaces and other areas;

(ii) to increase controls over tobacco advertising;

(iii) to introduce further measures to prevent the supply of tobacco products to young people;

(iv) generally to increase controls over tobacco;

Within those objectives we believe the legislation can be improved by a ban on smoking in schools, on school premises and in school hours. We believe there is insufficient clarity in the current system that operates in the state. I accept that many schools have implemented a ban successfully, but the current guidelines that exist are messy. I will refer to those shortly. I seek the insertion of a series of definitions, and I therefore move:

1. Clause 3, page 5, after line 4 insert —

> '"**school**" means any State school established under section 21 of the **Education Act 1958** or any school registered under Part III of that Act;
>
> "**school day**" has the same meaning as in the **Education Act 1958**;
>
> "**school hours**" means the hours that a school requires a student to attend on any school day;'.

This amendment is acceptable as a test for amendments 2, 3 and 4. In treating this first amendment as a test, I will also speak to those other amendments.

Essentially the Liberal Party is proposing the insertion of a new subclause to be headed '5HA. Schools: offence by smoker'. That would provide for the issuing of a series of penalties and would ban smoking on school premises during school hours. As I said, the current situation is largely controlled by government guidelines and the implementation of those guidelines varies in effectiveness. The guidelines are not a piece of legislation which make a clear statement about the intent of the Parliament and the community. I believe it is worth while making such a clear statement through legislation. I also believe the situation regarding smoking in schools is very important because the take-up of smoking is critical at that point.

I will enlighten the house on some research that I find persuasive, particularly the June 2004 edition of the *Health Education Reserve*. I want to quote the results of a study on national and school policies regarding the restriction of smoking by teachers, and the multilevel analysis of student exposure to smoking by teachers in seven European countries. Wold et al are the authors. I am going to abbreviate this process by briefly quoting a number of these papers, but it is important to get these on the record as background for why the opposition believes we should take this step. The conclusion of that study says:

> The results suggest that both national and school-level policies on restriction of smoking among teachers are associated with a decreased probability of students reporting that they are exposed to teachers who smoke indoors, but an increased probability of being exposed to teachers smoking outdoors.

That is why we need a very clear set of statements, because to simply ban smoking indoors is not sufficient. I know that the government thinks it has some policy position that says, 'We will only ban smoking indoors but not outdoors'. I do not think that position is satisfactory. Mr Drum made the salient point before that we have banned smoking at a number of venues that are now entirely smoke free, the Melbourne Cricket Ground being the most obvious example.

Hon. J. M. McQuilten interjected.

Hon. D. McL. DAVIS — Nonetheless a smoking policy is important and I do not accept fully the government's distinction. I think over time there will be a necessity to deal with smoking in other areas, and I think this is just the first step.

I make the further point that in *Tobacco Control* for June 2001, an article entitled 'School smoking policies and smoking prevalence among adolescents — multilevel analysis of cross-sectional data from Wales' states:

> This study demonstrates an association between policy strength, policy enforcement, and the prevalence of smoking among pupils, after having adjusted for pupil-level characteristics. These findings suggest that the wider introduction of comprehensive school smoking policies may help reduce teenage smoking.

I think there are another couple of important studies. I refer to *Health Education Research* for August 2005, a very recent publication. An article headed 'Compliance and support for smoke-free school policies' states:

> Student smokers who saw teachers smoking in school were less likely to favour school smoking bans …The percentage of private school students seeing teachers smoke on school grounds has been at least twice that of public school students since 1996. Compliance with and support for smoke-free

> schools increased since smoking was banned on campus for everyone.

I think that is an important point.

> Perceived compliance by teachers, much lower in private schools, appears to undermine student smokers' support of this policy. Increased efforts are necessary to communicate to teachers the importance of their modelling of policy compliance to students.

I should say in response to comments by some members of the government that the opposition does not only favour a legislative ban here. We favour an integrated policy. I have said a number of times that we obviously see anti-smoking policy as education on one hand and support mechanisms on the other, both in the workplace and at a statewide level through Quit and other resources, but also the whole gamut of public health efforts. However, that in no way invalidates the importance of a clear policy position.

Another important paper in the *BMJ* of August 2000 by Wakefield et al concluded that:

> School smoking bans were related to a greater likelihood of being in an earlier stage of smoking uptake … and lower prevalence … only when the ban was strongly enforced, as measured by instances when teenagers perceived that most or all students obeyed the rules

The conclusions state:

> These findings suggest that restrictions on smoking at home, more extensive bans on smoking in public places, and enforced bans on smoking at school may reduce teenage smoking.

In moving this amendment I want to compliment a number of bodies. Quit and the Australian Medical Association have particularly taken a leadership position, and I welcome the support that the AMA gave the opposition on Monday when it first announced publicly that it would take this position. Its media release states:

> AMA Victoria president Dr Mark Yates has welcomed state opposition moves to include schools and school grounds in Victoria's latest smoking control reforms.
>
> Dr Yates appealed for bipartisan support for the amendments of the Tobacco (Amendment) Bill when they are put to the Parliament by opposition health spokesperson …

Blah, blah, blah! The point is that there are important bodies that have a strong view that smoking should be banned on school premises in a comprehensive way and that there should be a legislative position to achieve that, not simply a series of guidelines. The government's glossy book of guidelines, *Smoke-free Schools*, is a lovely presentation and an important document — a document that we support — but we do not believe it sends a clear enough signal to the community, and to the education community in particular.

I also want to put on the public record in moving this amendment some comments by the Australian Education Union, Victorian branch. This is Mary Bluett as the branch president writing to the government earlier in the year, with copies to both Bronwyn Pike and Daniel Andrews. I think it is important to put on the record some of the comments made in this document:

> The Victorian government has had guidelines for 11 years recommending that schools should be smoke free, both outside on school grounds and indoors. The most recent policy statement from the Victorian Department of Education and Training appears in a 2004 publication entitled *Smoke-free Schools — Tobacco Prevention and Management Guidelines for Victorian Schools*.
>
> The guidelines acknowledged that —

according to this document —

> role modelling by adults is influential. Teachers are often in a particularly influential position with young people and their behaviour can have an impact. They should be aware of this potential as it relates to smoking.

I think most teachers are aware and treat this very responsibly, but this is a very important signal. The guidelines state:

> Schools should aim to prevent smoking at school. A smoke-free environment reinforces that smoking is not normal behaviour.
>
> Students, staff and parents should refrain from smoking on school premises (including school grounds or in view of students), at school functions and during school-based activities.

But the union went on to say:

> The AEU also notes the research quoted by Quit Victoria that shows teachers smoking during school hours is associated with adolescent smoking.

I note that:

> The AEU believes it is the government's responsibility to pass appropriate legislation that ensures students are not exposed to cigarette smoking in their schools and do not see staff as role models as smokers.
>
> As part of this process the government must provide resources — for example, Quit programs …

We agree with that very strongly.

> It is also important for the government to remove the ambiguity within the current policy regarding the mandatory nature of the guidelines. This would mean school communities would not have to go through a difficult and

time-consuming policy-making process in order to implement a smoke-free policy in school premises.

The AEU also makes the point that it would not take any industrial action if such a policy were introduced. I think it is important that the AEU's position on this be reflected and understood publicly.

This is an important amendment. It is an amendment that can send a strong message to school communities and the whole community that smoking is something we wish to reduce significantly, that a key zone for activity is schools, that the government's guidelines are not sufficient — a non-legislative position is not sufficient. By passing legislation this Parliament and the community takes a firm position against smoking in schools and sends the clearest signal to our students, to our parents at school communities and to visitors and others involved in the school community, and in doing so we achieve a good outcome in terms of public policy.

I urge members of the government to support this amendment. I appreciate the support offered by The Nationals and Ms Hadden as an Independent, but I think this is quite an important amendment and in the long run will make a big difference.

Mr GAVIN JENNINGS (Minister for Aged Care) — I would like to put to Mr Davis and the committee that at one stage during his presentation he made a self-deprecatory comment by saying, 'Blah, blah, blah' in relation to some endorsement — —

Hon. D. McL. Davis — I was abbreviating.

Mr GAVIN JENNINGS — I want to clarify to Mr Davis and to the committee that the arguments and many of the issues raised that go to the heart of his proposition and his intent are in very close alignment with the intent of the government. Philosophically we share in many ways a similar commitment to trying to ensure that the prevalence of smoking amongst young Victorians is significantly diminished over time and that fewer and fewer of them take up smoking and then are increasingly kept free from a smoking environment. That is clearly the intention of the government. During our time in government we have introduced legislative reforms to try to ensure that young people do not get access to purchasing cigarettes. Ironically, given where we are today, they were opposed by Mr Davis's party. Some of the provisions we have introduced have been opposed because his party thought they were too onerous.

The stage we are at today is that the government has introduced a succession of reforms in legislation, through programs, through regulation and through education in the community to try and limit the availability of cigarettes. It has done this through its purchasing regime and through its attitude to public spaces in Victoria. The building blocks of this legislation include the government continuing that trend by saying enclosed outdoor public spaces or enclosed public spaces that have an outdoor component to them now come within its scope. We are building a cumulative effect so that enclosed public spaces, workplaces and now enclosed open public spaces will be subject to restrictions on smoking within them. Those cumulative pieces of legislation are the building blocks of the government's reforms.

What we have not considered and have not roped into the legislation are private indoor spaces and open-air environments. It is because we have had a concerted approach to that legislation that we are at odds today with the amendment. The government does not accept the amendment because it is not consistent with the way this piece of legislation has been constructed by building upon existing statutes. I appreciate that Mr Davis has pointed out to the committee that the government supports a very rigorous regime in schools to ensure they are smoke-free indoor workplaces and that there are rigorous guidelines and programs in place to try and prevent smoking in schools. That is what we are committed to doing. That is part of the intention of Mr Davis's amendment, and we share that objective. However, the government will not support the amendment because it is not consistent with the fundamental way we have tried to reform the legislation to try and give clarity to our intention and purpose and to how we understand it will need to be enforced in the future. It is for that reason that the government supports keeping its piece of legislation intact, and it will not accept this amendment.

The CHAIR — Order! In relation to Mr Davis's amendment 1, which is a test for his amendments 2, 3 and 4 to clause 5, the question is that the words and expressions proposed to be inserted be so inserted.

Committee divided on amendment:

Ayes, 20

Atkinson, Mr	Forwood, Mr
Baxter, Mr	Hadden, Ms
Bishop, Mr	Hall, Mr
Bowden, Mr	Koch, Mr
Brideson, Mr	Lovell, Ms
Coote, Mrs	Olexander, Mr (*Teller*)
Dalla-Riva, Mr	Rich-Phillips, Mr
Davis, Mr D. McL.	Stoney, Mr
Davis, Mr P. R.	Strong, Mr (*Teller*)
Drum, Mr	Vogels, Mr

Noes, 21

Broad, Ms	Mikakos, Ms
Buckingham, Mrs	Mitchell, Mr (*Teller*)
Carbines, Ms	Nguyen, Mr (*Teller*)
Darveniza, Ms	Pullen, Mr
Eren, Mr	Scheffer, Mr
Hilton, Mr	Smith, Mr
Hirsh, Ms	Somyurek, Mr
Jennings, Mr	Theophanous, Mr
Lenders, Mr	Thomson, Ms
McQuilten, Mr	Viney, Mr
Madden, Mr	

Amendment negatived.

Clause agreed to; clauses 4 to 29 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

I would also like to thank all members, and indeed some people in the gallery, for their passionate contributions to the committee stage of the bill.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

ADJOURNMENT

Mr LENDERS (Minister for Finance) — I move:

That the house do now adjourn.

Liquor: responsible service

Hon. B. N. ATKINSON (Koonung) — I wish to raise my matter with the minister responsible for liquor licensing, the Minister for Consumer Affairs. I know that she is aware of the item I wish to bring to her attention this evening and I thank her for being in the chamber to take it.

As the minister would be aware from press reports, I have written to the Restaurant and Catering Industry Association indicating my concern with a practice that is adopted by some liquor licensees in the interests of what they regard as fine dining and good service, which is to top up glasses with alcoholic drinks when in fact they are not empty. In the course of my portfolio responsibilities I have been at quite a number of dinners and functions in recent days, and I have observed this practice on a number of occasions, where wine glasses have been topped up when they were not empty.

My concern is that people are increasingly conscious of how much liquor they consume, and while it is obviously a crude measure and it is probably important that people understand that they have a personal responsibility in liquor consumption and that perhaps this is not the best way of measuring their consumption, nonetheless they rely on the measure of how many drinks they have had in an hour and how many drinks they are able to have subsequent to that hour. The problem is that if their drinks are being topped up at these venues, then those people obviously have an opportunity to lose track of just how much they are drinking. At a recent function I noticed that drinks were topped up when people were dancing and therefore away from their table. They had absolutely no idea that their drinks had been topped up and had little idea of how much they were drinking.

While I appreciate that most small venues and venue operators — because many of the restaurants are small businesses — and many of the event centres, major hotels and so forth adopt sensible, good liquor-serving practices, there is a need to consider this issue. I raise it in a genuine sense. I certainly do not want to see massive regulation of these venues because I do not think that is appropriate. But I think they perhaps ought look at some protocols within the industry to change it.

I wonder if the minister could take this matter up with the director of liquor licensing with a view to establishing a dialogue with the industry which would include the Australian Hotels Association, Clubs Victoria and the Restaurant and Catering Industry Association of Australia, as I said, not with a view to further regulation of the industry but to establish some sort of protocol so people might understand exactly what the situation is going forward with the service of drinks.

Mansfield Autistic Centre: travelling teacher service

Hon. W. A. LOVELL (North Eastern) — I wish to raise an issue for the attention of the Minister for Community Services in the other place regarding the extremely long waiting list for the Mansfield Autistic Centre's travelling teacher service which provides home-based assistance to autistic children.

Hon. M. R. Thomson — Did you say Mansfield?

Hon. W. A. LOVELL — Yes, Mansfield. The travelling teacher service involves seven teachers who travel throughout Victoria particularly in the western Victoria, Hume and Gippsland regions providing help not only to families with autistic children but also to schools and health professionals. This invaluable service ensures that children affected by autism receive a better level of personalised care, and it also provides autistic children with a better opportunity to realise their full development potential.

Currently Mansfield has seven travelling teachers who provide services to 220 families. Unfortunately a further 180 families are on the list waiting for an opportunity to gain access to the travelling teacher service. The travelling teachers are partially funded by the Department of Human Services. The department provides funding that covers the salaries of four travelling teachers, and the Mansfield Autistic Centre funds a further three teachers and meets all the costs of vehicles and administration. However, with 180 families on the waiting list, Mansfield Autistic Centre is struggling to meet demand. Autistic children need to have consistent and regular specialised education.

The autistic children in the 180 families currently on the waiting list for travelling teachers are losing crucial developmental opportunities due to the limited funding available to the Mansfield Autistic Centre, which is preventing it from expanding its travelling teacher service. This situation has been made worse by the Bracks government's decision to slash disability support funding in primary schools throughout Victoria that has resulted in a reduction of educational opportunities for autistic children to realise their full development capabilities.

The action I seek from the minister is a commitment to assist autistic children and their families by increasing funding to the Mansfield Autistic Centre's travelling teacher service to enable the waiting lists to be reduced, so that autistic children in the western Victoria, Hume and Gippsland regions receive the educational opportunities they desperately need and deserve.

Water: Wimmera irrigators

Hon. W. R. BAXTER (North Eastern) — I wish to raise a matter for the attention of the Minister for Water in the other place. On 26 July I met with members of the Wimmera Irrigators Association, and they put to me an issue which I think is of considerable concern and merit, and could in due course spill over to irrigators in my own area.

As a consequence of the construction of the Wimmera Mallee pipeline, a project that is welcomed be everyone everywhere, I think an unintended and unfortunate consequence is about to be visited upon this small group of irrigators in the Horsham district. Until now they have as part of their irrigation charges been paying $256 000 as a headworks charge, and over time they have been assured that the $256 000 is in fact full cost recovery — in other words, they are paying all the costs that are being incurred as part of the headworks for the supply of their water. Of course, they pay additional funds on the top of that for the supply they receive on farm.

As a consequence of the installation of the new system and the increase in their proportionate share of the water used — because we are now going to save so much water — they have been advised that their headworks charge is going to rise by 148 per cent to a staggering $636 000. They are not going to receive any extra security or any extra water, and they are not asking for either of those things. They are already paying full cost recovery, so how could it be that, simply because a project is being implemented which is for the greater good of the community and is actually going to save some water that will go to the environment, a formula worked out by someone sitting in an airconditioned office in Melbourne, which might at first blush seem to have some validity, is going to impose a cost which, if it goes ahead, will send many of these irrigators to the wall? They will have to leave the industry.

The Wimmera Irrigators Association wrote to the minister on 27 June requesting a meeting with him to discuss this personally. I want to encourage the minister as earnestly as possible to have that meeting at the earliest possible stage to put the minds of these irrigators at rest.

Tempy Primary School: relocation

Hon. B. W. BISHOP (North Western) — My adjournment matter is directed to the Minister for Education and Training in the other place. The issue I raise tonight concerns the small primary school at Tempy, right in the middle of the Mallee. The action I request of the minister is that the Tempy Primary School not be forced to leave its position in the Loddon Campaspe-Mallee region to be relocated in the Central Highlands-Wimmera region.

I am advised that this may occur as a result of the initiative called A Fairer Victoria, which sounds great but in this case would be a backward step for this small Mallee school. My understanding of A Fairer Victoria is that it is to line up the health and education regions with common borders, which as I said before might be great in theory but will not work in Tempy Primary School's situation. The school tells me that a move to Central Highlands-Wimmera region would cause severe dislocation of services to this small school and is strongly resisted by the school community and in fact the wider community.

I have an excellent letter from the Tempy school council signed by its president, Paul Mole. I cannot read it all, but I would like to quote a couple of paragraphs. It says:

> The students of the Tempy Primary School exclusively attend the Ouyen Secondary College after the primary years of schooling. The OSC is located in the Loddon Campaspe-Mallee region and is largely serviced by the Mildura network. The Tempy Primary School presently is also serviced by the Mildura network. It is important that there is continuity of services such as speech pathology and the work of the school guidance officer to the students over the entirety of their schooling and especially in the middle years when transition is so important.
>
> Tempy as a community has strong links with Ouyen. In addition to being serviced by the Mallee Track Health and Community Service the greater majority of the families use the Ouyen medical services …
>
> The sporting clubs that the Tempy community are associated with are based in Ouyen.
>
> Commercially the Tempy community use the shopping facilities that are available in Ouyen.
>
> Socially there are strong relationships between the Ouyen and Tempy communities.
>
> Similarly the major centre that the Tempy community use for the less readily available services is Mildura.
>
> Relocating the school to another region seriously hinders the strong links that have been established in all these areas.

The reasons for the Tempy Primary School staying where it is are strong and defendable, whereas any suggestion of a forced move to an unconnected area simply lacks logic, has no support and is not defendable.

The action I request from the minister is that the Tempy Primary School stay in the Loddon Campaspe-Mallee region to avoid the serious and severe dislocation of both education values and community values which would undoubtedly occur if the school were forced to move to the Central Highlands-Wimmera region.

Disability services: accommodation

Ms HADDEN (Ballarat) — The adjournment matter I raise tonight is for the Minister for Community Services in the other place, the Honourable Sherryl Garbutt. It concerns the very important matter in my electorate of a suitable accommodation facility for young disabled adults who are presently living in nursing homes in the Ballarat area. I have spoken in this place before about Vicki Smith, who has spent the last 19 years in nursing homes in Ballarat. She has just turned 35 years of age. I have also spoken about Chris Nolan, whose family still lives at Meredith. Chris was a co-founder of the Meredith music festival. He has been in a nursing home in Melbourne for the last nine years. Vicki Smith wrote to the Minister for Community Services, the Premier and cabinet ministers in March 2003 asking what the state government was doing about building an accommodation facility for the 50 or so young disabled adults presently living in Ballarat nursing homes. Since then I have tabled five petitions — three in 2003 and two in 2004 — with a similar request that suitable accommodation be built for young disabled people in Ballarat.

Vicki also wrote to the commonwealth government, and the commonwealth Office of Disability wrote back to Vicki stating that under the commonwealth state territory disability agreement (CSTDA) responsibility for employment services for people with disabilities belongs to the commonwealth, while responsibility for other services such as accommodation and respite care belongs to the state and territory governments. It further states that the commonwealth Office of Disability is waiting for negotiations to be concluded with the Honourable Sherryl Garbutt, pending the signing of the new CSTDA agreement, as to what funds the state government will be making available for accommodation services for young disabled adults. Since then, in 2003–04, $124 million was granted by the federal government over a three or five-year period for accommodation for young disabled adults.

I therefore ask the minister what action she has taken to have suitable and appropriate accommodation built in Ballarat to house Vicki Smith, Chris Nolan and other young disabled adults and in which financial year it will be built so that these young people and their families can start planning for their future.

Responses

Hon. M. R. THOMSON (Minister for Consumer Affairs) — The Honourable Bruce Atkinson raised the question of the topping up of wine glasses in establishments that tend to be at the higher end of fine

dining. Both the Australian Hotels Association and Restaurant and Catering Australia take very seriously the responsible serving of alcohol. As a matter of fact the AHA introduced the responsible serving of alcohol with out any requirement by government. It took it up on behalf of its members and encouraged them to take it up to the point where the government has extended the undertaking of responsible serving of alcohol courses to those who sell through a package licence. I think the ongoing dialogue on the responsible serving of alcohol that we already have with the Australian Hotels Association and Restaurant and Catering Australia is so strong that that training will continue in the future. It is an ongoing process that is constantly reviewed.

I remember the last time I was the consumer affairs minister launching an online program on the responsible serving of alcohol to make it easy for people to access. I can only commend both the AHA and Restaurant and Catering Australia for the way they take that responsibility so seriously and look to ensure that the dining and drinking experience is both pleasurable and responsible. In relation to this issue, one way you can deal with it is to put your hand over the glass, and they will not refill it.

The Honourable Wendy Lovell raised an issue for the Minister for Community Services in the other place regarding the Mansfield Autistic Centre and the provision of travelling teacher services for families needing them. I will raise that with the minister for her response.

The Honourable Bill Baxter raised a matter for the Minister for Water in the other place concerning a meeting he had on 26 July with the Wimmera Irrigators Association concerning increased costs for headworks arising from the Wimmera–Mallee pipeline. I will raise that with the minister in regard to his arranging a meeting with the association.

The Honourable Barry Bishop raised a matter for the Minister for Education and Training in the other place concerning the Tempy Primary School and its allocation to another region outside the Loddon Campaspe-Mallee region seeking that that not occur given the association the school has with Ouyen. That matter will be passed on to the minister.

Ms Hadden raised a matter for the Minister for Community Services in the other place concerning the building of suitable accommodation for disabled young people in the Ballarat region.

Motion agreed to.

House adjourned 7.04 p.m.