PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FIFTH PARLIAMENT

FIRST SESSION

Tuesday, 25 October 2005

(extract from Book 7)

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By authority of the Victorian Government Printer

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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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TUESDAY, 25 OCTOBER 2005

Tuesday, 25 October 2005

The PRESIDENT (Hon. M. M. Gould) took the chair at 2.03 p.m. and read the prayer.

ROYAL ASSENT

Message read advising royal assent to:

Property (Co-ownership) Act
Treasury Legislation (Miscellaneous Amendments) Act
Treasury Legislation (Repeal) Act.

CONGESTION LEVY BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Mr LENDERS (Minister for Finance).

RACING AND GAMBLING ACTS (AMENDMENT) BILL: ROYAL ASSENT

The PRESIDENT — Order! I have received a letter from the Leader of the Opposition dated today proposing an urgency motion pursuant to standing order 5.05 for the consideration of the house today. The text of the motion is:

> That the Council take note of the unprecedented actions of the Premier in advising the Governor to withhold royal assent to the Racing and Gambling Acts (Amendment) Bill.

In his letter the Leader of the Opposition stated the grounds which he considered justified the motion's urgent consideration.

In response to that letter I wrote to the Leader of the Opposition today as follows:

> I refer to your letter of today's date proposing an urgency motion pursuant to standing order 5.05.
>
> I have considered your proposal and have determined that it meets the provisions of the standing order and the rules of practice relating to urgency motions. Accordingly, debate will be permitted immediately after the reading of messages from the Governor and the Legislative Assembly, when the Council sits today.

I have also advised the party leaders of my decision to allow the motion to proceed.

Hon. PHILIP DAVIS (Gippsland) — I move:

> That the Council take note of the unprecedented actions of the Premier in advising the Governor to withhold royal assent to the Racing and Gambling Acts (Amendment) Bill.

In so moving I make these points. This is an urgent matter for the attention of the house. In the last several years few matters have come before the house which have required its attention as urgently as this matter.

Members will recall that on the final day of the last sitting week, Thursday, 20 October, the matter of royal assent on the Racing and Gambling Acts (Amendment) Bill was considered. The President responded to an earlier point of order and, taken together with the Minister for Sport and Recreation's statement on the same matter, required that these matters be dealt with urgently. To refresh their memory, I remind members that the President said in response to a point of order she had considered through the day that the Governor, acting on the advice of the Premier, and declined to assent to the bill. Further, the responsible minister in this place, the Minister for Sport and Recreation, the Honourable Justin Madden, subsequently advised that after the bill passed through Parliament, it was brought to the attention of the government that there were issues with a group of stakeholders with respect to the new enforcement regime contained in the bill.

This goes precisely to the heart of the opposition's concern with this matter. It is quite clear that because there was no opportunity to consider this matter further last week, we need now to urgently have that discussion because it involves a significant breach of parliamentary convention, unconstitutional action and potentially draws the office of the Governor into political affray, and therefore is a matter of the utmost public importance.

An honourable member interjected.

Hon. PHILIP DAVIS — You might learn something if you listen to this!

Parliamentary conventions, the constitutional arrangements and the paramountcy of the Parliament over the executive are all part of the mechanism which exists to protect the rights, welfare and security of the citizens of Victoria. The matter is therefore one of great significance to all the people of Victoria, who place their trust for the government of the state in the Parliament as the body that will make the laws and hold the executive — that is, the cabinet — to account.

I go to the facts of the matter. The facts are that a bill, referred to as the Racing and Gambling Acts

(Amendment) Bill 2005, was initiated in the Assembly on 24 May this year. It was amended in the Assembly and passed on 14 September of this year. Subsequently the bill was passed in this place on 4 October and was then, as we know, presented in the appropriate manner to the Governor for royal assent. We know that the machinery provisions for these arrangements are set out clearly in the joint standing orders of the Parliament of Victoria. Joint standing order 13A states:

> When a bill shall have passed both houses it shall be printed by the government printer, who shall furnish three copies thereof on special paper to the Clerk of the Parliaments, who shall duly authenticate such copies.

Joint standing order 14 says:

> The said three copies of all bills, except the Appropriation Bill, shall be presented to the Governor for Her Majesty's assent by the Clerk of the Parliaments.

Joint standing order 18 says:

> Every act of the legislature, commencing no. 1, from the 1st January, 1857, shall be numbered in regular arithmetical series, in the order in which the same shall be assented to by the Governor.

We just heard a message from the Governor reporting royal assent. I took particular note of what occurred. There has been a breach of procedures in that a bill presented to the Governor has been refused assent.

The 7 October letter to the clerk of the executive council from the Clerk of the Parliaments clearly sets out and numbers the bills that would be presented for royal assent. I note that the Racing and Gambling Acts (Amendment) Bill was 68 of 2005. The message from the Governor to the Parliament was dated 11 October. The glaring omission is that the numbering sequence omits bill 68 of 2005, the Racing and Gambling Acts (Amendment) Bill, which would otherwise have received royal assent.

Further, the advice from the Clerk of the Parliaments to the President, which has been made available to members, clearly says that the Governor had given royal assent to four bills and further states:

> Acting on advice from the government, the Governor declined to give the royal assent to the Racing and Gambling Acts (Amendment) Bill.

I make the point that the contemplation of this legislation has been extended. As I said earlier, this bill had been in Parliament for a considerable period and had even been amended in the Assembly. If further amendments were needed that could have been achieved quite sensibly during the passage of legislation through the houses. However, if there is a deficiency in the legislation, the government has not chosen that remedy for it.

I am concerned about the politicisation of the office of the Governor. The action taken by the government and the Premier in giving advice to the Governor are clear breaches of the separation of powers — that is, the separation between the Parliament, the executive and the judiciary. In our system of government there is a concept of the paramountcy of Parliament over the executive — that the people trust the members of Parliament collectively elected to ensure that their rights and privileges are protected. The government's action circumvents all the understood notions of legislative accountability in the Westminster system. Both houses having agreed to the commencement date of this bill as the day following the date on which it received royal assent, the bill should have been presented to the Governor, assent by the Governor should have been automatic and the legislation should have then come into effect. By advising the Governor to withhold assent without seeking parliamentary authority to change the commencement date of the bill, the Premier has circumvented all the established procedures set out in Victoria's constitutional arrangements.

There is no constitutional authority to advise in regard to withholding royal assent. I will refer clearly to a number of authorities on that. Firstly, it is well understood that our constitutional arrangements are set out in the Constitution Act 1975 and section 15 headed 'Parliament' says:

> The legislative power of the State of Victoria shall be vested in a Parliament, which shall consist of Her Majesty, the Council, and the Assembly, to be known as the Parliament of Victoria.

There are some useful authorities to refer to in this matter and one of them is *The Constitution of New South Wales*, a discussion by Anne Twomey, which says:

> It is generally accepted that the Governor may not exercise a discretion to refuse to assent to a bill which the Governor finds objectionable on policy grounds.

Further, and I think this is a useful extract to refer to, it says at page 223:

> The fundamental constitutional principle is that the Governor acts on the advice of his or her responsible ministers, either through the executive council or directly from the responsible minister in performing the Governor's functions. However, the power to assent to bills is undertaken in a different capacity from the Governor's other powers. The Governor, in exercising the role of giving assent, is acting as a constituent part of the Parliament. Assent is part of the legislative process and has been considered a 'legislative act' rather than an

> 'executive act'. Accordingly it is arguable that the Governor in giving assent does so on the advice of the two houses. Section 3 of the Constitution Act defines 'the legislature' as meaning 'His Majesty the King with the advice and consent of the Legislative Council and Legislative Assembly'.

Further, it says:

> In practice the Governor does not act on the advice of the executive council in giving assent because the assent to laws had traditionally not been dealt with in Executive Council meetings. Nor does the Governor act upon any formal advice from the ministers. The bills are sent to the Governor for assent by the Clerks of the houses who are parliamentary officers rather than representatives of the executive. They do so pursuant to standing orders and the requirements of section 8A of the Constitution Act. The only role of the executive government in the giving of assent is for the Attorney-General to approve and forward the legal advice of the Solicitor General to the Governor. This, however, is regarded as independent legal advice rather than policy advice. It also tends to be negative in nature stating merely that there is no objection to the Governor assenting to the bill, it does not advise the Governor to assent.

In reading that rather lengthy extract members will say, 'That was a commentary on the New South Wales constitution', but the reality is that the principles set out there apply equally to the legislatures in the states of Australia, but clearly they do relate to the constitutional arrangements in this state.

I go on to reinforce the point about the capacity of the Premier and the government to give advice to a Governor in regard to legislation. I quote from the Australia Acts (Request) Act, schedule 1.9(1):

> No law or instrument shall be of any force or effect insofar as it purports to require the Governor of a State to withhold assent from any Bill for an Act of the State that has been passed in such manner and form as may from time to time be required by a law made by the Parliament of the State.

Having gone through all of that, let me get to the nub of the issue. If a bill is adopted by the houses of Parliament and the government itself has a difficulty with the bill, there are some remedies available to it. It can propose amendments of its own, and we have seen that there has been a level of cooperation between the parties and the houses in relation to the expeditious passage of legislation from time to time as required. Or indeed if the bill that is presented to the Governor is flawed in such a way that the Governor has difficulty in assenting to it, then the provisions of section 14 of the Constitution Act, associated with the standing orders of the Parliament, clearly sets out that a Governor's message can be sent to recommend an amendment for the houses to consider; if agreed to, the bill will be further amended.

In this case neither of those remedies was sought. Clearly the government formed a view for reasons which beg the question to be answered — and this is not the time to debate what those reasons may be — and found a reason why it suited its political agenda to delay the giving effect to the law which had been agreed to by both houses of Parliament. It chose not to come back to the Parliament and seek to remedy some deficiency it saw in the commencement arrangements for that law; it sought not to ensure that the Governor proposed a message be sent to the house for an amendment because there was some technical flaw with the commencement arrangements. It arbitrarily intervened in an arrangement that has had a well-established history.

I would like to refer to a reference I found in *Politico's Guide to Parliament* by Susan Child, which is actually a guide for students of Westminster. In regard to royal assent given by the Sovereign, the last occasion upon which royal assent was refused according to this reference was by Queen Anne in 1707. I thought it would be interesting to go further and see what *May* had to say on the subject. I found *May* had the same reference; on page 529 it says:

> The right to refuse the royal assent has not been exercised since 1707–08, when Queen Anne refused her assent to a bill for settling the militia in Scotland.

We know that in Victoria's legislative history this action is clearly unprecedented. This has also never occurred before in colonial history, but in the parliamentary history of Victoria this has not ever occurred before.

Why is it of great constitutional significance? Let us understand what the import of this is.

Honourable members interjecting.

Hon. PHILIP DAVIS — The interjectors on the other side should take note of the fact that we are dealing here unarguably with a precedent. This has never occurred in the settled constitutional history of Victoria. Since 1857 this Parliament has not had this type of behaviour, and neither have the other states of the commonwealth nor indeed the commonwealth Parliament experienced such behaviour by a head of government.

The Premier and the government, by their actions, have created a legislative precedent which is not contemplated under the settled arrangements for our system of government. The Premier and government have assumed in this case a dictatorial power to subvert the will of the people vested in Parliament.

Mr Viney — On a point of order, President, the Leader of the Opposition is now making statements that are quite clearly attacking the Premier in a manner that would normally require a substantive motion. I refer you to *Odgers* at page 187, which deals with the question of urgency motions and matters of public importance. It says that:

> It is not in order for an urgency motion to be framed so as to build a substantive motion into the statement of the matter of urgency …

I put it to you that in this debate the Leader of the Opposition has moved a motion that is quite clear in seeking that the house take note of the actions of the Premier, but it would need to be a substantive motion, not an urgency motion, if we were to have a debate in which members went down the path of making such clear criticisms of the Premier or any other minister or member of the Parliament.

Hon. PHILIP DAVIS — On the point of order, President, it is fair for the member to take his point of order. The wording of the motion is quite clear — that the house take note of the unprecedented action on the part of the Premier. If the member has an objection to the argument the opposition is putting, he can contradict it, but to describe in a manner which is appropriate the unprecedented action of the Premier and the government is entirely in order in the context of the motion.

Mr Viney — Further on the point of order, President, I raised the path that the Leader of the Opposition was going down in the context of this debate, using the words he did to describe the Premier. I put to you, President, that if the member wants to have that kind of debate then it has to be in speaking to a substantive motion, not an urgency motion.

Hon. Bill Forwood — Further on the point of order, President, I point out that the motion before the house is a substantive motion and deals with unprecedented actions.

Honourable members — It is not!

Hon. Bill Forwood — It is. It deals with unprecedented actions and the Leader of the Opposition was describing those actions. He is entitled to do that in the terms of the motion before the house.

The PRESIDENT — Order! The motion before the house is that the house note certain actions by the Premier. The Leader of the Opposition is entitled to refer to the Premier. However, he is not to make allegations or use unparliamentary language during the course of this debate. If the Leader of the Opposition wishes to make allegations, he must do so in the form that is acceptable to the house. For clarification for Mr Forwood, this is not a substantive motion. That is not what is before the house at this point in time.

Hon. PHILIP DAVIS — Unlike in the United States, where the President of the United States has a constitutional veto power over the legislature — that is, over bills coming from Congress — no such authority is contemplated or exists in our system. Therefore the actions of the Premier in giving advice to the Governor to withhold royal assent clearly allude to an endeavour by the executive to adopt a behaviour for which there is no constitutional basis. For example, in future a minority government, in resorting to exercising again this unprecedented power established as a consequence of the actions on the part of the current Premier, could exercise powers not vested in the Crown for 300 years, as I have pointed out. It is therefore clear to the opposition at least — if members of the government party do not understand it — that the arbitrary exercise of advice to the Governor clearly puts the Governor in an untenable position, in that the Governor is acting in respect of legislation as part of the legislature but not part of the executive in the form of receiving advice to do with the machinery of government.

It is the machinery of the legislative capacity of this Parliament about which we are concerned. The abuse — and it is the only way I can describe it — of a process of advice to a Governor inevitably brings the office of the Governor into the political affray, and it is certainly my view that this is an untoward, unfortunate and potentially disastrous occurrence in regard to the confidence in our constitutional arrangements.

I would ask all members of the house to note the importance of this motion. It is unusual for an opposition to raise a matter of urgency in this manner — indeed it is now 13 years since it was last done. I took the courtesy to advise the Leader of the Government earlier today that it was my view that, irrespective of the partisan nature inevitably of this body, we as parliamentarians have a primary obligation to protect our constitution and therefore our democratic arrangements.

It is clearly the view of the opposition that the action on the part of the Premier and the government on this matter, that has not been properly, if at all, explained to the Parliament or the community, brings into question our capacity to have faith in the constitutional protections that are available to the people, because it is the Parliament to whom the executive is accountable rather than the Parliament being accountable to the

executive. The action of withholding assent to a bill, which has been adopted by both houses of this place, puts us in a quandary. How will we in the future be confident in the knowledge that decisions of the Parliament will be upheld by the Governor of the day without risk of that decision of the Parliament being subverted by unilateral and arbitrary action on the part of the Premier and the government of the day?

These are questions which I challenge the government to respond to, because if we do not put our primary duty as parliamentarians to the fore right now in seeking to defend and protect the rights of ordinary citizens in this state under the arrangements which have been properly set out and established for hundreds of years under our Westminster procedures, then clearly we have been negligent in our responsibilities. I understood that these arrangements were settled as a result of the English revolution 300 years ago. It seems to me that the fact the Premier and his government have been unable to understand the elements of responsible government and the separation of powers begs the question of their capacity to honestly defend the rights of the people who they have taken an oath of office to defend.

I leave my comments there. I look forward to the Leader of the Government and his ministers responding and giving some comfort to the Parliament and the people of Victoria that this matter will be explained properly and will satisfy the community that the arbitrary exercise of power has not gone to the head of the Premier and his cabinet.

Mr LENDERS (Minister for Finance) — I rise to respond to the motion moved by the Leader of the Opposition. I will attempt to be brief, but in doing so I will address some of the questions he has raised. I must say in opening I always welcome debates on issues of the constitution — with a small 'c' — about the relationship of the executive, the Parliament, tradition and the Westminster system. I find these are great areas of debate because there are fundamental issues here, which the Leader of the Opposition has raised. Also in opening I thank him for his courtesy in coming to me before noon to advise of this, and I note that, as he said, it has been 13 years since such a motion has been before the house.

To start off with, I think these issues are fundamental to where we come from. One is: what is a Parliament? This is the starting point where there is contention between the government and opposition sides of the chamber. If you go back to any basic reading of Australian or British politics, governance or any of those things, Parliament has always been put in terms of three parts. There is the executive — in our instance the Crown, as represented by the Governor, the legislature and the judiciary. Today there is no debate about the judiciary so I will not go into the philosophical debates there. The Leader of the Opposition, in his contribution, said there is a veto power in the US with the executive and the legislature but that is different in some way or another.

Hon. Philip Davis interjected.

Mr LENDERS — I take up Mr Davis's interjection about the constitution. I welcome that because I was going to address the constitution at a later stage. It is interesting that the Leader of the Opposition was referring to Queen Anne's time and there being no precedent in the history of the state. With the indulgence of the house I will read about five paragraphs from the start of the preamble to the constitution:

> Whereas the Legislative Council of the Colony of Victoria did in the year 1854 —

1854, Mr Davis —

> pass a bill intituled "An Act to establish a constitution in and for the colony for Victoria":
>
> And whereas the said bill was presented to the then Lieutenant-Governor of Victoria for Her Majesty's assent and the said Lieutenant-Governor did thereupon declare that he reserved the said bill for the signification of Her Majesty's pleasure thereon …

Let us put that into plain English. The Governor said of the very first bill to set up the state of Victoria, 'I am not going to sign it because before I give the royal assent I want to actually check with the British imperial government'. This is extraordinary. It is the constitution. It is unusual. We are talking here of the bill that established the state of Victoria which was not signed by the Lieutenant-Governor then and there, but on the advice presumably of the chief secretary, or the predecessor of the Premier, it was actually referred to the British cabinet for its opinion before it got assent.

My point is not so much a debating point but that the Parliament is three bodies: the Legislative Assembly, the Legislative Council and the Governor. All three need to concur. That is my first point.

An honourable member interjected.

Mr LENDERS — I welcome the Leader of the Opposition's comment that the Crown should not have a say in this. That is a debate separate from this one. As an existing institution that we are, the royal assent is required to be given to any piece of legislation. So the

assumption that the Leader of the Opposition is making is that that assent needs to be rubber stamped and there is no capacity ever for that not to be applied. As we know, the convention is here. Let us digress from 1932 in New South Wales and 1975 federally. The royal assent has always been given on the advice of the executive government. That is a precedent that I have not encountered not happening, but that is a point for debate. I think the significance here — —

Honourable members interjecting.

Mr LENDERS — I take up the interjections from all over the place that that is factually wrong. I would have thought that anyone with any knowledge of Australian government and the whole debate about 1975 would know — I am trying to think of the terms used at the time about letters patent, discretion and all these sort of issues — there was a debate and an industry about whether or not the Crown takes the advice of the executive government. In my $3^{3}/_{4}$ years as a minister I have not yet seen a request for royal assent that has not actually had, under the Westminster conventions, a joint signatory process of the Crown and the responsible minister advising. What I would say is that the foundation act of the Parliament of Victoria describes the Parliament as being the three bodies: a Legislative Assembly, a Legislative Council and a Governor, and that the assent of all three is required before action.

Concluding on the constitution, I refer to the last bit of the preamble, just to reinforce the point before people think that the Crown, the Governor, has no role here. These are the enacting words of the preamble:

> Be it therefore enacted by the Queen's Most Excellent Majesty —

I do not like the term myself; I think we could have a better term than that, but —

> by and with the advice and consent —

and it lists both houses of the —

> Parliament assembled.

First, let us make it unequivocally clear that the constitution has always envisaged there is the Crown, the Governor, and then there are the two houses of Parliament, and all three are required to consent or to concur before an act of Parliament becomes law. The only exception to that of which I am aware is the annual appropriation bill which now simply requires the assent of the Assembly and the Crown. Other than that there is not a single piece of legislation which does not require the tripartite assent. That is the first point I would make: let us get together on that particular point.

Hon. Philip Davis — The argument falls down because it says nothing about executive government.

Mr LENDERS — Once we have moved beyond that — and I understand the Leader of the Opposition is going a bit beyond the technicalities here and is also talking of precedent, and I fully concede he is talking about something above and beyond this — let us first hit on the head the furphy that somehow or other the royal assent or the assent of the executive government, which is what the royal assent is, is not required for an act of Parliament.

Hon. Bill Forwood — Hang on! You cannot confuse the Governor and the executive. They are completely different.

Mr LENDERS — I also take up Mr Forwood's interjection that you cannot separate the role of the Governor and the executive. Again I invite Mr Forwood to read the letters patent that have been in place since the appointment, and also the terms that he finds in the constitution — the Governor, with the advice and consent of the executive council. It is a common term, 'with the advice and consent of the executive council'. What we find here is that a law in the state of Victoria requires tripartite approval with one exception — the annual appropriation bill. Then what are the vehicles for an act of Parliament that is not suitable to be put in place immediately and what other forms of advice are there to go through?

First, we also need to put on the record that this was an absolutely transparent message. The Governor, on the advice of the Premier, declined to assent to that act for a period of time, and that advice was sent back in a message to both houses of the Parliament. Firstly, it was transparent. Secondly, there is a range of issues that need to be addressed by the Parliament, the government and the Victorian community in determining if legislation is sufficiently mature or ready to be implemented.

One of the usual instruments we have is regulations — and Mr Forwood speaks a lot about this, but this is an important constitutional issue. For a piece of legislation that is perhaps not ready for implementation, one option is regulations, one option is the royal assent. Often we put into a bill that it will take effect upon royal assent, sometimes we put into a bill that it will take effect on a certain date and sometimes we put into the bill that it will take effect on a date determined by regulation.

There is a range of tools that are used by the Parliament to actually determine the implementation date of a bill.

In the context I accept the Leader of the Opposition's point, that this is an unusual action. I will get to the term 'unprecedented' shortly. I will accept that it is unusual, but I will say that the concept of the executive government staggering the implementation of legislation is not unusual.

Legislation goes through in line with the timing of the proclamation and it is implemented by regulation. They are two areas where it is not uncommon for the executive government to determine the implementation date of an act of Parliament. In relation to this instance, I concede it is unusual for this to be the vehicle for that to be done, but it is not unprecedented for the executive government to determine the implementation date of a piece of legislation.

I go further in respect of the word 'unprecedented' — and I look forward to discussing the 'unprecedented' issue. As I said before, the Leader of the Opposition had the courtesy to advise me before 12 noon today that this motion was coming. In the time available I tried to do a bit of research on whether there were any precedents for this situation, so I will be the first to concede that my research on the action I am referring to is perhaps not fully matured, but I will share with the house what I understand to be the case. If this is not factual it is at least a good illustration of why this is not an unreasonable method to use, but I believe it is factual.

As I understand it, in the lead-up to the conversion to decimal currency on 14 February 1966 — we all know that date, and those of us who are 47 remember it from the advertisements we saw when we were children — each state was asked to pass complementary legislation. I am not sure why, but each state was asked to pass complementary legislation for that to be enacted. My understanding is that the state of Victoria passed the legislation and in its enthusiasm put it into place before 14 February 1966. The state of Victoria was then somewhat jammed with the problem of what to do when your legislation says you have decimal currency but that decimal currency has not come into place yet. I understand that piece of legislation did not receive royal assent for the same reasons that the bill we are discussing today has not received assent. I will stand corrected on a further development of the history on this — —

Hon. Philip Davis — Are you going to make an explanation to the house if you are wrong?

Mr LENDERS — I will stand corrected if further research shows that to be the case. The Leader of the Opposition asked whether I will make an explanation to the house. I invite the house to check. I am making this as a debating point acknowledging that even if what I say is not the case — in the time available I have not had the chance to research it more thoroughly — that would be an appropriate mechanism if a consequence of the drafting of legislation were that it would be unworkable or undesirable.

I also go back to the precedent I used before. I referred to our Constitution Act of 1854, if I recall the date correctly, which had a mechanism in place that provided for royal assent to be withheld — —

Honourable members interjecting.

Mr LENDERS — I will conclude with two points. Firstly, our own Constitution Act had a reserve power. Written in the preamble to our constitution was the concept that royal assent would be withheld on some bills until the legislation was referred to London for the advice of presumably the British cabinet or the Secretary of State for Colonies. Secondly, that situation was not unique to 1854, when our constitution was adopted. I believe that possibly right through until appeals to the Privy Council were abolished, but certainly for a lot of the history of this state, there was the capacity for federal bills to be reserved for the United Kingdom Secretary of State for Foreign and Commonwealth Affairs to withhold approvals. So the Governor General before assenting to Australian legislation could withhold approval until he sought the advice of a British minister. I do not want to go back to those days, far from it.

For the record, the reason the government has difficulty supporting a resolution that includes the words 'the unprecedented actions' is that conceptually, whether it be by regulation or by proclamation, we delay the implementation of bills at all times and legally this mechanism is not unheard of in Victoria. I fully concede that it is not common, but the motion says it is unprecedented and we need to acknowledge that there is precedent for it.

On that note I will conclude my contribution to the debate. I welcome a debate on constitutional issues at all times. In this case they are legitimate issues for the Leader of the Opposition to raise in this place, but in terms of what he says, a staggered approval exists right through our law and issues like this have precedent in the state of Victoria.

Hon. P. R. HALL (Gippsland) — When I was elected to this chamber one of my colleagues who had been here for a long time gave me some advice. He said, 'In this place you learn to expect the unexpected and the unusual', and we have both of those here this afternoon. When I arrived at this house this morning this debate was not expected, so we are on an unexpected journey with the course of this debate, but I might add it is a welcome one and I will explain that in a minute. We also have the unusual. Unusual not only applies to the circumstances of the event we are debating but also the response we have just had from the Leader of the Government. Some of the arguments put forward by him were most unusual.

As I said, this is a welcome debate and certainly The Nationals regard it highly. It is disappointing to see the minister who lead the debate on the bill in question walking out of the chamber and not listening through the course of this debate. After all, he was the minister responsible for the passage of the legislation through the chamber.

The week of this house usually starts with messages from the Governor assenting to certain acts, and so it was again today when we received a message from the Governor assenting to various acts of Parliament. They are acts that have been debated fairly extensively through the Parliament. The time for the passage of a piece of legislation through both chambers of this Parliament is an absolute minimum of three weeks, more frequently it is a much longer time than that.

The legislation in question, the Racing and Gambling Acts (Amendment) Bill was, as pointed out by the Leader of the Opposition, first introduced into this Parliament on 24 May — five months ago, so it has been under consideration by the Parliament, and I would have thought by the government in particular, for some time. There is evidence that it has been very actively considered by the government because, if I am not mistaken, the amendments to this legislation were made by the government itself. It saw reason to look more closely at this act of Parliament and make its own amendments.

We get to the highly unusual situation that occurred last Wednesday when the messages from the Governor not only contained messages assenting to certain acts, but also a message that he did not provide assent to the Racing and Gambling Acts (Amendment) Bill. It is worth noting again the exact terminology of the message that was presented to this house. I will not read the message in full, but the important part read by the President says:

> The Governor, acting on advice from the government, declined to assent to that bill.

Those are the important words, 'Acting on advice from the government'. The Leader of the Government put forward an argument suggesting this was not an unprecedented action. The first precedent he suggested was the preamble to the Constitution Act itself, which was drafted in 1854, when the Lieutenant-Governor made reference to referring assent of that act to the Queen, and I would have thought that was quite appropriate. People who have been ministers in this place before, particularly my colleague Mr Baxter, whom I refer to for advice from time to time on some of these historical and detailed administrative matters of government, inform me that it has been quite common in the past for the Governor to seek an explanation as to the meaning of certain components of acts, and I see ministers in this chamber nodding. It is entirely appropriate and correct that the Governor of Victoria should not simply act as a rubber stamp and assent to everything purely on the advice and direction of the executive government, to use the words of the Leader of the Government.

In a truly accountable and democratic system the various levels of government should each be independent of each other. If the Governor has some problems with legislation it is quite right for him to ask or, as the Leader of the Opposition said, refer the matter back to the Parliament for amendment. It is quite appropriate. However, if the Leader of the Government is suggesting that the Governor should simply act every single time in accordance with the wishes of the government, without question, then I have been teaching all the kids that I have talked to about the constitution of Victoria wrongly throughout these years. The Governor of Victoria is an important person who should act independently of government. He should consider the advice given to him by the Parliament but not be totally dictated to by the wishes of the executive government, as claimed by the Leader of the Government.

I am not in a position to say categorically whether the other example put forward by the Leader of the Government in respect of legislation for the creation of decimal currency in Australia is true or not. I have not done that research and I am not in a position to say whether that occurred, just as I am not prepared to say categorically that this is an absolutely unprecedented action because I have not gone right back through the records; I have not had time to do so. However, it is a highly unusual circumstance that I think warrants explanation.

Before I go on to make a couple of other comments I want to say one other thing in respect of the Leader of the Government's contribution to this debate. I found it highly surprising, unusual and extraordinary that he did not take the opportunity to fully expand on the reasons the government requested the Governor not to provide that royal assent. It was a golden opportunity for the Leader of the Government to explain the government's actions in full, but that opportunity has not been taken in this debate to date.

Certainly last Wednesday, when the message was received, and a point of order was taken by the Honourable Bill Forwood — —

Mr Viney interjected.

Hon. P. R. HALL — Your turn will come. Put your name forward if you want to talk, Mr Viney, instead of doing it by interjection all the time. You can argue the points, but do not do it by interjection!

The PRESIDENT — Order! The member should ignore interjections, which are unparliamentary.

Hon. P. R. HALL — I also found it highly unusual that when this message was received by the chamber last Wednesday, and a point of order was raised by the Honourable Bill Forward in seeking an explanation for the government's action, the minister who had carriage of this bill did not know why the government had advised the Governor not to give royal assent. What do government members do during cabinet meetings? Do they not advise each other of actions, particularly this highly unusual action of not giving royal assent to particular legislation? I found it extraordinary that the minister was unable to give an explanation.

The next day, and the Leader of the Opposition has put this on the record, an explanation was given, but one could hardly say it was a fulsome explanation. It was a scant explanation that really did not go into any level of detail about why this action was taken.

I want to go back to the legislation itself, the Racing and Gambling Acts (Amendment) Bill. It has already been said that it has been around for a while. It was introduced on 24 May and sat in the Parliament for five months. The government had already reviewed it and introduced its own amendments while the bill was in the Legislative Assembly. During debate on it we were given the impression that it was an important piece of legislation, particularly with respect to some of the amendments to the Racing Act.

I went back and read the second-reading speech given by the Minister for Consumer Affairs on behalf of the Honourable Justin Madden on 15 September. I will not read out the passages from that speech which I think were important to this debate. There were plenty of messages given during the second-reading debate that it was important for the legislation to be passed and assented to in time for the spring racing season because part of it, particularly the amendments to the Racing Act, was concerned with illegal betting operations which the government said were losing money for both the industry and for Victorians. Therefore, we were all left with the very clear message that this legislation had to be passed, and so it was passed through the Parliament on 4 October and presented to the Governor for royal assent.

The limp excuse — and that is the best way I can describe it — that has been given by the government to date is that it requires further consultation on this matter before the bill is assented to. Frankly, I simply cannot believe that, and nobody out there in the racing industry or anyone else I have spoken to about these highly unusual circumstances can believe that either.

The government is suggesting that it did not do its homework before the introduction of this bill. The usual course of action is that you go through a consultation period, then you introduce a bill. You then let the opposition and others do their consultation to see what the players think about a particular piece of legislation. As I said before, the government had five months to review any concerns that may have arisen out of this particular piece of legislation. This chamber is supposed to be a house of review; that is what the government claims it is. The bill came to this place and the government still had no concerns with it, but after five months of this bill sitting in the Parliament, after extensive debate in both the Assembly and the Council, suddenly there is a problem.

I do not think the problem rests with the lack of consultation. There is something more sinister about the reasons why the government has advised the Governor not to give royal assent to this bill. I think it is a reflection on the credibility of this government that we have not received a wholesome, full and honest explanation as to the delay in the assent to this piece of legislation. The Leader of the Opposition has quite rightly and correctly put forward a motion today which invites that explanation as to the delay in the royal assent.

The very least the government could do today is pay this chamber and the people of Victoria the courtesy of giving them that sort of explanation. At the very least an explanation is required. This has been a terrible exercise that has reflected very poorly on this

government. It is not over, and I think the government has an opportunity to, at least in part, set the record straight here today. I am disappointed that the Leader of the Government has not; perhaps somebody else will.

Hon. BILL FORWOOD (Templestowe) — Let me start my contribution today by referring to the contribution of the Leader of the Government. What disappointed me most in his contribution was that after starting by asking, 'What is a Parliament?', he got confused between the executive and the government. If you look at our constitution, the first part is the Crown. It deals with the Governor and the Lieutenant-Governor. The second headed 'Parliament' deals with what the Parliament is. In particular I refer to section 15 of our constitution, which says:

> Parliament
>
> The legislative power of the State of Victoria shall be vested in a Parliament, which shall consist of Her Majesty, the Council, and the Assembly, to be known as the Parliament of Victoria.

That is the second part. The third part of the constitution is the Supreme Court, which we do not need to deal with particularly today.

The fourth part of the constitution is the executive. There is a difference between the executive and the Crown as evidenced by the Constitution Act itself in having a different part. Part IV of the constitution, which is headed 'The Executive', contains section 87E. Under 'Advice to Governor' it says:

> Where the Governor is bound by law or established constitutional convention to act in accordance with advice —
>
> (a) the Executive Council shall advise the Governor on the occasions when the Governor is permitted or required by any statute or other instrument to act in Council —

that is, the Governor in Council —

> and
>
> (b) the Premier (or, in the absence of the Premier, the Acting Premier) shall tender advice to the Governor in relation to the exercise of the other powers and functions of Governor.

But it does say as the preamble to that section:

> Where the Governor is bound by law …

The circumstance that is before us today is one where the Governor is bound by history, convention and the letter of the law not to behave as part of the executive but to behave, as section 15 says, as part of the Parliament. I am not going to go back to requote the words from Anne Twomey — —

Mr Gavin Jennings — Why not?

Hon. BILL FORWOOD — I have been invited to requote.

Mr Gavin Jennings — The word 'arguable' appears in the extract.

Hon. BILL FORWOOD — It does. I am happy to go back to that, because what it says, and the advice that we have absolutely received, is that in acting to assent to a bill, the Governor is acting as part of the Parliament and cannot and must not act on the advice of the executive. When the government — —

Mr Gavin Jennings — I invited you to read it.

Hon. BILL FORWOOD — I am happy to read it.

> However, the power to assent to bills is undertaken in a different capacity from the Governor's other powers. The Governor, in exercising the role of giving assent, is acting as a constituent part of the Parliament. Assent is part of the legislative process and has been considered a 'legislative act' rather than an 'executive act'.

Happy?

Mr Gavin Jennings — It is a different word to the word Mr Davis used. Mr Davis used the word 'arguable'.

Hon. BILL FORWOOD — Shall I read it again? I will read it again:

> However, the power to assent to bills is undertaken in a different capacity …

Section 15 of the constitution makes the point that in exercising the power of assent, the Governor is acting as part of the Parliament.

It is worth going through the process by which this takes place. Bills come to this place and they are dealt with by both houses of Parliament, and we pass them. The will of the Parliament is evidenced by us passing those bills, and in the particular case of the bill that we passed — the Racing and Gambling Acts (Amendment) Bill — it said, in clause 2, that the bill would come into operation on the day after the day on which it received royal assent. In other words, both houses of this Parliament, in full knowledge, passed a piece of legislation which said it would come into effect on the day after royal assent.

The Leader of the Government made the point that there are other options for not having it proclaimed, and I agree entirely. The government had a range of choices. As it has done in this bill it could have chosen

to proclaim a range of commencement dates. Clause 2, the commencement clause, states:

> (1) This Act (except sections 3 and 10) comes into operation …
>
> (2) Section 10 is deemed to have come into operation on 21 December 2004.
>
> (3) Subject to sub-section (4), section 3 comes into operation on a day to be proclaimed …

The government already has in this legislation a range of different commencement dates, and if it had so wished it could have put in 'part 3 of this act comes into operation on' any particular day it wanted.

I see a nod from the Leader of the Government. The choice was there but that choice was not given to the Parliament. The Parliament debated this bill in both houses, and then it passed this particular piece of legislation, which is absolutely explicit. It says that apart from the bits that have particular proclamation dates, it will come into effect on the day after royal assent, and that is what we voted for in this house; and that is what they voted for in the other house.

I make the point, as has been made by other speakers to the motion, that this particular piece of legislation was amended in the other house. It was in the Parliament from the middle of May. It was amended by the government. Had the government wished to amend the commencement clause of the sections that it is now concerned with, it could have done so then, but it chose not to. It was a clean bill that came to us.

The first point to make is that in accordance with the operations of this house we passed legislation in that form. Once the legislation was passed, on 7 October the Clerk of the Parliaments wrote to the executive council, and I want to read this letter into *Hansard*. It says:

> I have the honour to transmit, for the consideration of the Governor, duplicate copies of the bills specified hereunder which have passed the Legislative Council and the Legislative Assembly.
>
> Will you please inform me when and where it will be the Governor's pleasure to have these bills presented to him for Her Majesty's assent.

Listed underneath are the Crimes (Contamination of Goods) Bill, the Melbourne Lands (Yarra River North Bank) (Amendment) Bill, the Racing and Gambling Acts (Amendment) Bill, the Sentencing and Mental Health Acts (Amendment) Bill and the Sports (Anti-doping) Bill. At 9.30 a.m. every Tuesday before the Executive Council meets — this is not part of the executive council — the Clerk of the Parliaments takes to the Governor the bills he has identified to the Governor on the previous Friday for royal assent.

Hon. T. C. Theophanous — At his pleasure!

Hon. BILL FORWOOD — And his pleasure is always at 9.30 a.m. on a Tuesday, Mr Theophanous.

An honourable member — You should talk! How long did you delay the proclamation of the Accident Compensation Bill? You do not want to talk about these things.

Hon. BILL FORWOOD — I am happy to talk about it.

Hon. Philip Davis — Stay on message.

Hon. BILL FORWOOD — Okay. Let me make the point that there are different mechanisms for commencing the actions of particular pieces of legislation. A bill like the Accident Compensation Bill had a proclamation date far into the future, and maybe on a day to be proclaimed. Many bills introduced by this government have exactly the same mechanism, but it was not used in this case.

Let me get back to where I was. The Clerk of the Parliaments arrives to present the bills for the Governor's assent, and there is no capacity for the Governor not to sign, because he is acting as the third part of the Parliament.

Mr Gavin Jennings — What do you mean?

Hon. BILL FORWOOD — If you look at section 87E of the Constitution Act you will see that it says the Governor must act on the advice of his ministers in his Executive Council capacity, but not in his capacity — —

Mr Gavin Jennings — Where does section 14 come from?

The PRESIDENT — Order! Mr Jennings will have his opportunity.

Hon. BILL FORWOOD — He has no capacity not to sign. The Attorney-General provides a certificate that says there is nothing unconstitutional in the legislation, and on that basis the legislation is signed. I do not know the case that Mr Lenders referred to about decimal currency, but I have been advised by one Queen's Counsel and various others that this has never happened in Victoria before. What we had was the executive intervening in the actions of the Parliament without power or authority. According to the will of this house and the other house, as expressed by vote, the

legislation was presented to the Governor in the terms of sections 13A and 14 under the joint standing orders.

When the Governor declined to sign it, it was decided that the Clerk of the Parliaments had no choice but to continue to present that piece of legislation for signature, because standing order 14 says:

> The said three copies of all bills, except the Appropriation Bill, shall be presented to the Governor for Her Majesty's assent by the Clerk of the Parliaments.

The next Friday the Clerk wrote a letter again presenting the bill for royal assent, and again the executive intervened.

We have a situation where not the Governor but the executive intervened in the actions of the Parliament. Let me put this in a simpler way. What will happen in the next Parliament if, after the Legislative Assembly and Legislative Council have passed a piece of legislation, that legislation goes to the Governor but the executive decides it does not like it? Will the executive intervene again and say, 'No, the American example comes into play — there is a right of veto given to the executive over the actions of the Parliament'? That is where the government is leading us. There is no capacity for the executive to intervene in this particular case.

We all accept that under section 87E of the Constitution Act the Governor must act on the advice of the executive in every single circumstance apart from when he is acting as part of the Parliament. When the Governor is acting as part of the Parliament the executive cannot intervene. It has no authority at all to intervene to stop a piece of legislation going through What we now have is a constitutional crisis of real importance. Farrer Herschell, the Lord Chancellor of Great Britain, said in a speech on 23 May 1878:

> The acts of today may become the precedents of tomorrow

Unless we fix up what has happened here we will have a precedent that will establish for all time that the executive has the capacity to intervene in the Parliament. It does not have that capacity, and it should not.

I turn to the question of why this happened. We have not yet had an explanation of why it happened. What we know is what the Minister for Sport and Recreation said in this place last Thursday, 20 October, and I will paraphrase his comments. When the minister responded to what I had put to him twice in relation to not only why the act was delayed but also how it was delayed, he did not answer the question as to how. No-one has yet answered as to how it was delayed, and I do not think anyone has adequately answered as to why.

In dealing with the question of why, we were told, and after discussions with me recently the Minister for Gaming in the other place, Mr Pandazopoulos, repeated this on ABC radio to Jon Faine, that after the bill passed through the Parliament it was brought to the attention of the government. It has been in the Parliament for four months. It passed through the Parliament on 4 May. We know that between 4 May and Friday, 7 October, someone or something got to the Premier and as a result the Premier took the unprecedented, unconstitutional and arguably illegal action of issuing an instruction to the Governor, thereby embroiling the Governor in an affair not of his making. We now have a situation of wanting to know who got to the government, what they said and why the government acted in this manner. No-one has yet told us that. As Mr Hall pointed out — —

Honourable members interjecting.

Hon. Philip Davis — Some dodgy brothers got to you!

Hon. BILL FORWOOD — Thank you! The dodgy brothers got to them.

I refer to two letters. The first is a letter of 10 August from Graham Duff, chairman of Victoria Racing Ltd, to the minister. It says:

> The board has agreed to make arrangements for granting interim approvals to interstate and offshore wagering service providers except in the case where the wagering services offered by any provider is deemed to create, or is likely to give rise to, an unacceptable risk to the integrity of the Victorian thoroughbred racing industry.

In other words — —

An honourable member — Betfair!

Hon. BILL FORWOOD — In other words, Betfair. The word 'Betfair' was also used on radio on Friday, 21 October, by the Minister for Gaming, and I will get to that in a moment. The letter continues:

> However, the board recognises the administrative difficulties associated with an interim approval process and resolved to request that you arrange for the bill to be amended so that section 2.5.16A comes into operation on 1 March 2006.

That is the Betfair clause that the government amended on 15 September in the other place. On 8 September the minister responded to Racing Victoria Ltd in these terms:

> In your letter you have requested that consideration be given to amending section 2.5.16A to provide that it will come into operation on 1 March — —

Mr Viney — On a point of order, President, I raised a matter earlier in relation to substantive motions, and I point out that in my view Mr Forwood is going down the same path as his leader. However, in addition Mr Forwood is clearly starting to raise matters in relation to the actions of the minister — and I point out that the minister is not mentioned in this urgency motion before the Chair. I ask you, President, to ask Mr Forwood to come back to the motion and advise him not to go down the path of what should otherwise be covered by way of substantive motion.

Hon. BILL FORWOOD — On the point of order, President, the motion is very clear: it is asking us to take note of the unprecedented actions of the Premier in advising the Governor to withhold royal assent.

The PRESIDENT — Order! I know what the motion is.

Hon. BILL FORWOOD — President, I am going to the reasons of the government given in this place by this minister and on radio by another minister as to why this action took place. This is about the withholding of assent, and that is what I am dealing with.

The PRESIDENT — Order! As I indicated earlier this is a narrow take-note motion before the Chair. It refers to actions taken by the Premier in advising the Governor to withhold royal assent. It is not a substantive motion, so the member in his contribution to the motion before the Chair has to relate it specifically to what is in the motion. He is not to go off on other tangents. He is to use the appropriate practices of the house. This is an urgency motion, not a substantive motion. If he wants to raise a substantive motion, he knows the practices of the house and how to do so. I call the member back to the motion before the Chair.

Hon. BILL FORWOOD — Let me say it is disappointing that I did not have the opportunity to finalise the minister's response, but copies are available for anyone who wants to read it; that might help them out.

Getting back to the motion before the house, there is no doubt about the capacity of section 87E for ministers acting in Governor in Council or the Premier to give advice to the Governor. The Governor is duty bound to take that advice except in the circumstances we have here. If you want any more proof than the proof I have already given, I refer you to the Australia Acts (Request) Act 1985. We heard in the unusual contribution from the Leader of the Government his discussion about how bills used to be sent to England. What he did not read was the next paragraph which says 'Whereas the Imperial Parliament deemed it expedient to authorise Her Majesty to assent'.

In other words it was not the executive who told Her Majesty — it was the Parliament who then told Her Majesty to assent. That was the old system. I am sorry to correct him in relation to that. In 1985 Australia got rid of the old system through a mechanism called the Australia Acts (Request) Act. I refer honourable members in particular to sections 7, 8 and 9 which deal with the issue of powers. Section 7 says:

> (5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

This is very similar and means the same as section 87E of Victoria's Constitution Act — that is, the Governor acts on the advice given by the Premier. However, section 9 of the Australia Acts (Request) Act, which is headed 'State laws not subject to withholding of assent or reservation' could not be more explicit. It goes on to say:

> (1) No law or instrument shall be of any force or effect in so far as it purports to require the Governor of a State to withhold assent from any Bill for an Act of the State that has been passed in such manner and form as may from time to time be required by a law made by the Parliament of the State.

That is exactly what happened in this case. The legislation was passed in the Assembly and in this Council in a manner and form required by law. The Australia Acts (Request) Act makes it very clear, under its heading 'State laws not subject to withholding of assent or reservation'. The Governor does not have the capacity to do what the government has purported to ask him to do, and the position the government has put him in is untenable. It should not have happened. It needs to be corrected, because we cannot have the circumstance where the executive can interfere in the will of the Parliament in these circumstances.

Mr GAVIN JENNINGS (Minister for Aged Care) — Whilst I am not necessarily happy that the Parliament is debating an issue which has been described as a constitutional crisis, I am very happy to contribute to the debate, because I wish to allay any fears that may be in the chamber or anywhere else in the Parliament or the Victorian community about whether there is a constitutional crisis.

Clearly, there is not a constitutional crisis. Clearly, the circumstances which have been outlined in the house by opposition spokespeople and The Nationals in the debate today have not demonstrated that Parliament as an institution is in crisis. The rights and privileges of Victorian citizens are not under threat. One of the good things about this debate is the independent Chair operating in this Parliament acceded to the fact that this is an urgency motion even though it may well have failed the test that is written into the standing orders and is attached to the rules for urgency motions — of whether indeed this is the appropriate vehicle, place and time to debate such issues. In fact it was a demonstration — —

An honourable member — Are you reflecting on the Chair now?

Mr GAVIN JENNINGS — I am actually supporting the generosity of the Chair who actually acceded to the urgency motion being moved by the Leader of the Opposition, because at no point in time in his contribution or of any other speakers in their contributions for that matter, during the course of this debate have they outlined the circumstances by which this is an urgency motion, and why it is appropriate for us to be debating it at this point in time. Nobody has indicated what the circumstances are by which the Parliament and the rights of the citizens of the state of Victoria are at risk and what the urgent matter is that needs resolution in terms of whether this particular bill, the racing and gambling bill — —

Hon. Bill Forwood — You do not think that is the executive meddling?

Mr GAVIN JENNINGS — I will deal with every issue that Mr Forwood has raised. There is no doubt about that. I will not sit down without addressing every issue, but I will do it in the way I would actually prefer to mount an argument.

There are some valid reasons why the Governor decided not to give the Racing and Gambling Acts (Amendment) Bill 2005, bill no. 68, royal assent recently. He clearly transmitted a message to the Parliament of Victoria including this chamber to indicate he is prepared to reconsider that bill for royal assent and I believe the date that was notified was 26 November. The Governor has clearly indicated to the Parliament and people of Victoria at what time he is prepared to consider giving royal assent to this bill. That is very important.

No-one in the debate until now, I think actually including my leader, has indicated that the Governor in the message to the Victorian Parliament has indicated he will consider the bill for royal assent on 26 November. It is very important that members understand that what we are in effect discussing is the timing of the giving of royal assent, not the way it has been purported to have happened and described by those opposite. The government — in any shape or form or by any representative of the government, whether it is the executive or the Premier — has not at any time said that it is not the intention of the government to have royal assent granted to the bill. It is an important issue for us to get clearly on the record — —

Hon. Bill Forwood — What does it say?

Mr GAVIN JENNINGS — The longer you keep intervening and interrupting the longer I will stay here. Have no doubt about that.

Hon. P. R. Hall — Why 26 November?

Mr GAVIN JENNINGS — Mr Hall asked: why 26 November? I do not know why 26 November but — and this relates to the flippant remark by Mr Forwood during his contribution that it is the prerogative of the Governor at 9.30 each and every Tuesday to give royal assent to bills — I can almost guarantee that he will not be giving royal assent to any bill next Tuesday because that is Melbourne Cup Day.

Hon. Bill Forwood interjected.

Mr GAVIN JENNINGS — I think it is a very relevant point. In fact the most relevant point in terms of the timing of the operation of this bill is that after being introduced in May it was passed by the Parliament on 4 October. Within a matter of days after 4 October the Caulfield Cup was run and then the rest of the Spring Racing Carnival was on, which is the busiest time in terms of operation in the racing calendar. To be perfectly honest, this is something that I am not well informed about or much involved in, but I do understand clearly that it is the busiest time of the year for the racing industry and the busiest time — —

Honourable members interjecting.

The PRESIDENT — Order!

Mr GAVIN JENNINGS — In terms of the constitution, I will be addressing all the questions in relation to it — I have no problems in doing that.

Hon. B. N. Atkinson interjected.

Mr GAVIN JENNINGS — The issue is that this is the busiest time of the year for the racing industry and

whether there had been the opportunity for the provisions of the bill to be validated and to inform the sector that is most crucially interested in the bill, the racing and gaming industry, in preparation for the Spring Racing Carnival. Clearly that reason is most obvious reason to anybody who is not completely skewed and paranoid in their thought processes.

Hon. D. McL. Davis interjected.

The PRESIDENT — Order! Mr Davis!

Mr GAVIN JENNINGS — Anyone in the community would understand that if you were going to introduce a new regulatory regime to the racing industry in the state of Victoria perhaps October/November is not the best time to do it. It is very important for us all to take a deep breath and consider what has happened as a result of the Governor taking the action. No-one in the government has contested the view that in this instance the Governor has acted in accordance with advice given by the Premier. It has been argued by people on the other side of the chamber that the Governor may have acted solely on the advice of the Premier.

As all members read the Constitution Act they know that, as outlined in section 87E of the Constitution Act, the Governor has the responsibility to act independently of the executive and the Premier but is obliged to take advice from both the executive council and the Premier. Under the two provisions of section 87E of the Constitution Act the Governor is obliged to consider that advice and take action accordingly. It so happens that by all accounts the Governor, as is his prerogative, has chosen to agree with the advice provided by the Premier of the state of Victoria in relation to this matter.

Hon. Andrew Brideson — What was the advice?

Mr GAVIN JENNINGS — The advice — I have just outlined to the house the nature of the advice — was that the implementation of the bill would not be effective in the context of the Spring Racing Carnival and an appropriate time was required to get the implementation process correct.

Hon. Philip Davis — Do you know what you are saying? Do you really know?

Mr GAVIN JENNINGS — Absolutely.

Honourable members interjecting.

Mr GAVIN JENNINGS — In fact, Mr Davis, you know what you said too, because when I called upon Mr Forwood to actually reread your quote from Anne Twomey he did not do so, he read a different quote. So you should not ask whether we know what we are talking about.

Hon. Philip Davis interjected.

Mr GAVIN JENNINGS — In fact, Mr Davis, you know that you and Mr Forwood have been sprung, because you inappropriately — —

Hon. Philip Davis interjected.

Mr GAVIN JENNINGS — You have been sprung reading very selectively — —

Hon. Philip Davis interjected.

Mr GAVIN JENNINGS — I will.

The PRESIDENT — Order!

Mr GAVIN JENNINGS — In the first instance, if we talk about selective reading, Mr Davis in his — —

Hon. Philip Davis — There was no selective reading in my contribution.

Mr GAVIN JENNINGS — Absolutely. That was true in relation to Twomey.

Hon. Philip Davis interjected.

The PRESIDENT — Order! Through the Chair, Minister. The Leader of the Opposition should stop interjecting. He has had his opportunity.

Mr GAVIN JENNINGS — In fact Mr Davis used selective reading related to the transmission of the message from the Governor. He did indicate that the Governor was not going to give royal assent to this bill, but he did not complete that attribution to the Governor by indicating on what date the Governor was intending to give royal assent. Mr Davis should not come in here and say that he is squeaky clean in relation to the quotes and reading that he has provided to the chamber, because he was very selective, just as, indeed, Mr Forwood was extremely selective in his reading of Twomey. In a second I will read Twomey, even though it does not necessarily assist my argument, on the basis of demonstrating selective reading and a particular skewing of the argument that has been presented to the house, which is not complete.

Let us go back to how the bill was handled in relation to the standing orders. No-one has disputed the fact that the bill was provided by the Clerk to the Governor for royal assent in anything other than the appropriate fashion, consistent with joint standing order 13A.

Hon. Philip Davis — We are not criticising the Clerk or the Governor.

Mr GAVIN JENNINGS — Okay, but you used standing orders and tried to invoke them on the basis of saying that it did not comply with joint standing order 13A. It absolutely complied with 13A. I have in front of me a copy of the letter that accompanied the Clerk's transmission of that legislation to the Governor, which is signed by Ray Purdey, the Clerk of the Parliaments. It includes the sentence:

> Will you please inform me when and where it will be the Governor's pleasure to have these bills presented to him for Her Majesty's assent.

We have made some jokes about that. Mr Forwood is quite wrong. The Governor does not sit on every Tuesday. I reckon he certainly will not be sitting next Tuesday. The Governor has responded to that request from the Clerk, indicating that 26 November will be the day on which he is prepared to consider that particular bill.

Mr Davis has indicated that he has major concerns about whether standing order 18 has been complied with. It deals with the sequence of bills receiving royal assent and how they will be recorded from this day on in terms of the Victorian statutes. Mr Davis is concerned about whether the bill will somehow drop out of sequence and there will be some form of legislative crisis because it may have its number changed. I can reassure the house that the number is provided by the Parliament of Victoria, and it will stay no. 68 of 2005 regardless of when it is assented to and regardless of when it is proclaimed. The potential legislative crisis that has been created by the Governor not giving royal assent to this bill up until now does not exist.

Indeed, and we have had this argument across the chamber, many bills have a different operative date from the day they are given royal assent and the proclamation date.

Hon. B. N. Atkinson — Which is provided for in the legislation and passed by the Parliament, which is quite different to this one.

The PRESIDENT — Order! Mr Atkinson!

Mr GAVIN JENNINGS — Absolutely. I will conclude on that point, so do not worry, it will be addressed.

There is nothing untoward or unconstitutional and no legislative crisis in relation to a separation between the passage of a bill, the date of royal assent and the proclamation provisions within a bill. There is nothing unusual about that potential for there to be a delay or lack of direct, linear or chronological alignment between all those things happening. There is no direct obligation within the constitution that describes the timetable that may apply to that action by the Governor or the proclamation of any provisions within the bill; there is no requirement. I want to go to what opposition members have tried to make some mileage out of, matters that they describe as unconstitutional.

Hon. B. N. Atkinson — They are.

Mr GAVIN JENNINGS — I would like members to reflect for a second on whether we are talking about unconstitutional in the context of what the constitution may allow for as distinct from what the constitution may disallow. The opposition has tried to play merry havoc with and tried to create a degree of confusion or agitation in the Victorian community by implying that the actions that have occurred in this matter are unconstitutional in the context that the constitution does not allow for them.

Hon. Richard Dalla-Riva — That is right.

Mr GAVIN JENNINGS — That is clearly not the case. Even the arguments put by the Leader of the Opposition are very clear in that he indicated that the constitution is silent on this matter and relies on interpretation. Indeed the very evidence that he relied on, the evidence of Anne Twomey, the evidence I tried to get Mr Forwood to correctly address, mounts the case that it is arguable. The word 'arguable' is an important part of the Twomey quote. I will repeat the relevant extract that Mr Philip Davis read regarding Anne Twomey's contribution on the New South Wales constitution. This is not an argument that necessarily helps me, apart from the fact — —

Hon. Bill Forwood interjected.

Mr GAVIN JENNINGS — No, it does help me fundamentally because Anne Twomey's words — these were out of Mr Davis's mouth — say that the constitutional argument that he has mounted is arguable. Anne Twomey states:

> The Governor, in exercising the role of giving assent, is acting as a constituent part of the Parliament. Assent is part of the legislative process, and has been considered a 'legislative act' rather than an 'executive act'. Accordingly, it is arguable that the Governor in giving assent does so on the advice of the two houses.

In this regard she relies upon Western Australian case law in footnote 374. She states on the following page that:

> Certainly, in practice, the executive council does not give advice in relation to assent.
>
> …
>
> This leads to the question whether ministers can advise the Governor not to assent to a bill which has been passed by both houses. The circumstances in which this issue may arise are rare because the bill will have been passed by the Legislative Assembly in which the executive government usually has a majority. However, it may arise in at least the following cases:

The first case that Anne Twomey, who the Leader of the Government and his assistant relied upon, is:

> 1. Where a bill has been passed but a legal problem with its validity or operation is identified before assent.

Hon. Bill Forwood — A legal problem.

Mr GAVIN JENNINGS — 'Or operation', Mr Forwood. You may be deaf. It says:

> … or operation is identified before assent.

The very author — —

Hon. Bill Forwood interjected.

Mr GAVIN JENNINGS — It does not. The very author that the opposition has relied upon as being its main constitutional advocate in relation to this matter has indicated, in this same piece of work that the opposition has referred to, that your position is arguable. That is not in the context of the Victorian constitution but in the context of the New South Wales constitution, no. 1, and also cites examples where the difficulty that may occur because of the operation of a piece of legislation may give rise to the Governor making a decision not to give assent at that particular time. That is in the very article that the opposition has relied on

There is the other juxtaposition. Mr Forwood jumped back and forth in terms of the logical instruction that occurs within the Victorian constitution, so I shall finish on the Victorian constitution and say that we may have all been blessed in relation to this matter if the government had decided in the drafting of the bill to have a proclamation clause that was not specifically tied to the operative date of royal assent. It may well be that we would have been better off and been saved this debate and certainly the paranoid activity and arguments that have been mounted in relation to this debate. However, we are not in that position because the bill in particular did not have that provision, so what options are available to us?

Section 87E(a) of the Victorian Constitution Act clearly outlines that advice is given to the Governor by the executive council, or the advice given to the Governor is the specific provision of the Premier. What is arguable between us is not a crisis, but is what the introductory phrase in this particular section means. The contention of the government is that the advice to the Premier is consistent with the words from the Constitution that say:

> Where the Governor is bound by law or established constitutional convention to act in accordance with advice —
>
> (b) the Premier (or, in the absence of the Premier, the Acting Premier) shall tender advice to the Governor in relation to the exercise of the other powers and functions of Governor.

Mr Forwood made a jump in saying that there is nothing written within the constitution that lays out in black and white law whether the Governor has any other prerogative but to accept legislation once it has passed the Parliament.

Hon. Bill Forwood — He does not.

Mr GAVIN JENNINGS — That is your argument.

Hon. Philip Davis — Unless he sends it back.

Mr GAVIN JENNINGS — Very good; that is exactly my point. What is the logic of section 14, which says:

> The Governor may transmit by message to the Council or the Assembly for its consideration any amendment which he desires to be made in any bill presented to him for Her Majesty's assent and all such amendments shall be taken into consideration in such convenient manner as the standing rules and orders of the Council and the Assembly provide.

Clearly Mr Forwood in his contribution did not recognise that, but he recognises it now. The Honourable Philip Davis recognises it.

Hon. Philip Davis interjected.

Mr GAVIN JENNINGS — You might have recognised it on Thursday.

Hon. Philip Davis — You did not listen.

Mr GAVIN JENNINGS — I did listen to it. In fact I am responding to it. As I have already indicated, if there were a proclamation date provision within the bill we might not have had a problem. If the Governor chose to act on the basis of advice he received from the Premier, he may have exercised his prerogative to exercise section 14 of the Victorian constitution and send it back.

Hon. Bill Forwood — Why didn't he?

Mr GAVIN JENNINGS — Because clearly the Governor thought that the simplest way to deal with this matter — and this is my assumption — was to deal solely with the question of what is the operative date of the royal assent. That is the logical construction that I have made. I have not had a conversation with the Governor, but the logic makes sense to me. That is the simplest way to make a decision about when assent would be considered.

Hon. Philip Davis — You usurp the authority of the Parliament.

Mr GAVIN JENNINGS — I listen to everything you say; I probably listened more closely than you would have liked. Unfortunately I cannot say the same applies to you, because I have responded to every issue you have raised in relation to the standing orders or the constitution of Victoria, every issue in relation to why this matter was not dealt with at the time. It is the Governor's choice about when to make a decision. That is usual practice. I do not deny usual practice, but it is the Governor's choice.

Hon. Bill Forwood — The Governor's choice, but the Governor acts on the whim of the Premier.

The PRESIDENT — Order!

Mr GAVIN JENNINGS — The aspect that must disappoint the opposition greatly is that it has not been able to demonstrate that this is a matter of urgency in relation to the rights and privileges of the Parliament or the people of Victoria. It has, however, raised legitimate concerns in terms of understanding the connections between the various arms of parliamentary democracy within Victoria and the way in which the government has acted to comply with its obligations under the constitution.

I believe the logical construction of what may have underpinned the Governor's thinking makes a lot of sense. In fact any construction that indicates anybody's actions as being outside the constitution has fallen short because that has not been demonstrated — apart from the argument mounted by Anne Twomey that both Mr Davis and Mr Forwood have relied on, which clearly says this is an arguable matter and then proceeds to outline the circumstances by which this very action could be available to a Governor acting in accordance with advice provided by the government of the day. So the very quotes and circumstances the opposition has relied on fall short of the mark of demonstrating, beyond the conspiracy theory that you may choose to exercise — —

Hon. P. R. Hall — Tell us the reason why, then, Gavin.

Mr GAVIN JENNINGS — I say to Mr Hall that that is where I started. I am not going back there because I started there. I would encourage Mr Hall to read it at his leisure. I would encourage everyone at their leisure to get on with parliamentary business. This matter is not urgent and there is no justification for Parliament's time to be much further spent in relation to this motion before the house today.

Hon. D. K. DRUM (North Western) — My contribution will be brief. The Minister for Aged Care has challenged members on this side of the house to tell the chamber why this motion should be considered to be of an urgent nature. The government's own second-reading speech clearly states that this bill was brought into the house to safeguard the revenues of the racing industry. Every day that this bill goes without royal assent there are millions and millions of dollars leaking out of the racing industry into unauthorised gaming houses that have international homes, specifically Betfair. That is why this needs to be debated in an urgent manner.

He also mentioned that we could have saved this debate if we had acted in another manner. But the government would also have saved this debate if it had simply come clean and told us why the government has taken the action it has. The minister says he has told us. He has not told us anything about the reasons why the government saw it as so important that it needed to take this extraordinary step of asking the Governor to withhold royal assent. The implications initially in this action were that Racing Victoria Ltd was behind this delay. That has most certainly been quashed by Racing Victoria. The press release put out by the Minister for Racing, Mr Pandazopoulos in the other house, said this call had come from stakeholders, including Racing Victoria. That is not the case.

Racing Victoria showed some anxiety about this bill five months ago, and the government communicated with it when it showed that anxiety. The government wrote back to Racing Victoria, saying that those concerns were not valid and would not be listened to. Racing Victoria has had the last five months to ready itself for this legislation, and it has done that. It is eagerly awaiting introduction of this legislation. So for the government to say that this delay has been caused with the blessing of Racing Victoria clearly is not true.

The Parliament has every right to know. We asked the government last Wednesday and we again asked on Thursday. The three paragraphs that the Minister for

Sport and Recreation put out to the house on Thursday evening — —

The PRESIDENT — Order! Mr Drum will sit down. I have been listening to his contribution. We have already had two points of order raised by members of the opposition about broadening the debate beyond the motion before the house. The member has been talking about issues not related to the motion before the house, and I draw his attention to that fact and to my previous rulings. I bring him back to the motion that is before the house, which is not about the Victoria Racing Club or anything like that but is to do with the actions of the Premier advising the Governor about royal assent. I bring the member back to the motion.

The motion before the house does not give members the opportunity to have a substantive debate about the delay. The motion before the house is about withholding royal assent. The honourable member will continue, on the motion.

Hon. D. K. DRUM — If I strayed at all in my contribution, it was simply to answer the points put forward by the minister. I thought that if he could make those assertions, then I would also be able to answer them.

With that I am happy to conclude my contribution This is an urgent matter. Certain requests have been made of the Premier to share with this Parliament the reasons for the action he has taken and as yet no-one in the government has thought that information serious enough to be shared with the Parliament and the people of Victoria.

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — I rise to make a couple of points in relation to the motion before the house. First of all, it is important to understand, notwithstanding the emotive language that has been used by the opposition on this, that this is not, as the Honourable Bill Forward attempted to say, a constitutional crisis of any sort whatsoever. It is not the sort of constitutional crisis we had in 1975 when the Governor-General of this country decided to take action against the then Labor government. That was a constitutional crisis created by the Liberal Party. This has nothing to do with that sort of constitutional crisis. It is inappropriate for Mr Forwood to come in here and use that sort of language in what is essentially a technical handling of the way a particular bill is going to achieve royal assent. What is important is that we get the argument around the real concepts.

The Leader of the Opposition tried to say, I think in his first few words, that it was unconstitutional. It is not unconstitutional; no action has been taken which is unconstitutional. If the opposition actually thought it was unconstitutional, then it might try to the take action through the courts because that would be the appropriate way — —

Hon. Philip Davis — That would be interesting. What do you propose?

Hon. T. C. THEOPHANOUS — You have not proposed it because you know it is not unconstitutional.

Hon. Philip Davis — It is the Parliament which is the court of public opinion.

The PRESIDENT — Order! The Leader of the Opposition! This debate has been going on for a couple of hours now, and to a large extent it has been done in a very orderly fashion. I would like to see the conclusion of the debate continue along those lines. I ask members to stop interjecting and allow the minister to make his contribution so we can deal with the question before the Chair.

Hon. T. C. THEOPHANOUS — Let me make these points about constitutionality. The Premier has the right under the constitution to advise the Governor on the exercise of his power. No-one disputes that; the Premier has the right under the constitution.

Hon. Philip Davis — To exercise the power of veto?

Hon. T. C. THEOPHANOUS — No, he has the right to advise the Governor in relation to the exercise of the Governor's power.

Hon. Philip Davis — To exercise the power of veto. Is that right? Is that what you are saying?

Hon. T. C. THEOPHANOUS — No. Read the constitution. That is what it says. It says the Premier has the right to advise the Governor in relation to the exercise of the Governor's powers.

Hon. Philip Davis — Where does it say that?

Hon. T. C. THEOPHANOUS — It says that in the constitution.

Hon. Philip Davis — Where does it say he can exercise the right of veto?

Hon. T. C. THEOPHANOUS — I know that the honourable member wants to make an issue of something which is not an issue. I did not use the term

'veto'. I said the Premier has the right to advise the Governor and no-one disputes that.

The second point to make is that the Governor, in considering whether to accept the advice of the Premier, will take into consideration the extent of his own powers — that is, the Governor's powers — and also the constitution. On this occasion the Governor, following the advice from the Premier, decided that he indeed — —

Hon. Bill Forwood — Did he take separate advice?

Hon. T. C. THEOPHANOUS — If Mr Forwood listens he will learn. The Governor has decided that he indeed has the discretion to decide on the timing of when he will consider the question of giving royal assent. That is what he has decided.

Hon. D. K. Drum — If at all?

Hon. T. C. THEOPHANOUS — No, he has decided about the timing, that he has this discretion. And why has he decided on that timing? It is implied in the letter which was sent to him by the Clerk. The letter from the Clerk, as was read out before, says:

> Will you please inform me when and where it will be the Governor's pleasure to have these bills presented to him for Her Majesty's assent.

When and where! Nothing is clearer than this letter from the Clerk, which invites the Governor to give him a time when he will consider royal assent. What the Governor has decided is that he will consider royal assent at a certain date. It might not be the date that suits the opposition — it might not be its date — but it is a date on which he has determined he will consider royal assent, and he has done so on the basis of a very clear understanding that he has that power, which is implied in the letter that was sent to him by the Clerk.

I just want to make one final point: the opposition has come in here and tried to beat something up on the basis that the assent to this legislation, and consequently the proclamation of the legislation, will be delayed by a few weeks. It has tried to beat up this kind of action as unconstitutional. But if you go back and a look at the way members of this opposition dealt with these kinds of bills when they were in government, you see that instead of putting in a proclamation date or providing that the bill was proclaimed at the point at which it received royal assent, they consistently put into bills that the commencement date would be whenever the government decided to proclaim them.

It is a far greater crime than what is being done here to deliberately put into legislation that the proclamation date will be on a date to be decided and then to hold over the proclamation that. I can remember being in this house and arguing about the then minister refusing to proclaim sections of the Accident Compensation Act which might have benefited workers. He held it over because he wanted to hold something over the unions at that time. I can remember those things happening in this house, and nobody from the Liberal Party complained then that it was an abuse of the processes of the house or raised the fact that legislation had already been passed.

On the substantive issue of the proper working of the Parliament, the Parliament has worked properly on this occasion. The Clerk has sent the letter to the Governor. In the letter he has asked the Governor when he would like to consider this issue. The Governor has responded and given his view as to when it will be considered, and that is the way it will occur. It is completely constitutional. The opposition's actions are nothing but a try-on.

House divided on motion:

Ayes, 20

Atkinson, Mr	Forwood, Mr *(Teller)*
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
Drum, Mr	Vogels, Mr

Noes, 21

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

Motion negatived.

QUESTIONS WITHOUT NOTICE

Electricity: supply

Hon. BILL FORWOOD (Templestowe) — I direct my question without notice to the Minister for Energy Industries. In doing so, I refer to the government's *Energy for Victoria* document, which says on page 10:

> The government is confident that Victoria will continue to enjoy secure energy supplies over the next 10 to 15 years.

I ask: is that security assessment based upon new coal-fired base-load generation capacity?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — I think I have answered this question in varying ways in the past, including in the way I have notified the house in relation to the government's strategy for the delivery of electricity in this state. However, the member has given me the opportunity to record that there are estimates around of continuing growth in electricity consumption of about 2 per cent per annum in base-load consumption of power in this state, notwithstanding the huge amount of effort this government is putting in to try to reduce energy consumption, making us all more energy conscious.

We still predict that there will be an increase, and that comes from two sources. One is continuing strong economic growth in Victoria. The second is continuing growth in population in Victoria. Those are positive aspects. We are also having an increase in the growth of peaking power requirements to the point of roughly 3 per cent growth per annum, so we have an even bigger demand for peaking power.

The government's strategy has been — and my predecessor started this strategy when we first came into government — to try to catch up on the fact that the previous seven years had seen total neglect in relation to ensuring adequate capacity in the electricity industry. The only thing the previous government was interested in was selling, not in building. That is the difference between the previous government and the current government. It was interested in selling; we are interested in building.

That is why we commenced a program that added about 1000 megawatts of additional capacity in order to meet Victorian demands, which included an upgrade of the Snovic and a number of other peaking power stations in the main around the state. Added to that, we expect Basslink to come into operation some time early next year, which will result in a further 600 megawatts of available capacity for this state. As well as that, we are expecting the Laverton power station to be built, which will result in a further 320 megawatts of capacity. During the time we have been in power we have built the capacity of the system, and we continue to build that capacity to something of the order of at least 2000 megawatts, and more. That is the difference between what has been happening under this government and what happened under the previous government.

Allied to that is our determination to ensure that whatever fuel is chosen in the future for base-load power we look after the environment. That is why we have launched our *Greenhouse Challenge for Energy* paper, which outlines a number of strategies in that regard. We also committed $103 million of public money to the energy technology innovation strategy in order to try to build clean coal technology to allow us to use coal in the future to benefit our children and the future of this state. I can assure the member of one thing: this government will make sure that we have a secure supply, and it will do it responsibly.

Supplementary question

Hon. BILL FORWOOD (Templestowe) — At the outset I make the point that we did not need to build power stations; we lifted capacity on the existing power stations from 65 per cent to 100 per cent. We added one-third to the system by running it more effectively.

Hon. T. C. Theophanous interjected.

Hon. BILL FORWOOD — It happens to be true. Have a look at the Essential Services Commission!

My supplementary question is: does the minister believe that market-based signals will be sufficient to ensure the next generation of coal-fired power stations in the valley?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — I think there will be adequate market signals. As the member would know, it is not just the market signals, it is the market signals working with a government that promotes investment in the state, a government that the private sector has confidence in to have an appropriate regulatory and other environments going forward. All of those things are true.

I contest the preamble to the supplementary question about increased efficiency, because if Mr Forwood wants to talk about history, greater efficiencies were made in the energy sector prior to the Kennett government coming to power than after it came to power.

Consumer affairs: fundraising organisations

Ms MIKAKOS (Jika Jika) — My question is to the Minister for Consumer Affairs. Through Consumer Affairs Victoria the Victorian government regulates the activities of fundraisers. Can the minister advise if she has concerns about the activities of any specific charities or appeals?

Hon. M. R. THOMSON (Minister for Consumer Affairs) — I thank the member for her question. There is no doubt that Victorians are very generous when it comes to donating to charities. We see that every year with the Royal Children's Hospital appeal, and we saw it in the recent tsunami appeals following the disaster in Asia.

It is vitally important that we have in place legislation that gives consumers confidence that they can donate and know that the money is going where they expect it to go. The Bracks government is committed to ensuring that its legislation gives that kind of confidence to consumers. Some members will remember the changes to the act in 2001 which saw, among other things, the establishment of a public register and the ability for the director to create a set of conditions for the registration of fundraisers. Those were important initiatives to build in the community confidence in our fundraising appeals systems.

However, we are not stopping there. The member for Narre Warren North in the other place, Luke Donnellan — —

An honourable member — A good member!

Hon. M. R. THOMSON — He is a very good member. Luke Donnellan has been undertaking a review into fundraising. I am looking forward to the release of that report and its recommendations on what we need to do or may need to do to tighten our regulation of fundraisers to increase the confidence Victorians have in our fundraising organisations.

I am pleased to say that in the vast majority of cases the act is complied with and no action needs to be taken. However, every now and then something occurs which requires action under the act. That is what has happened most recently with the issuing on 10 February 2005 of a public information statement by the director of consumer affairs in relation to a fundraising appeal undertaken by the Children's Cancer Institute Australia for Medical Research. Consumer Affairs Victoria had particular concerns. Undertakings were given at the time of registration. There was a condition on registration that 40 per cent of the funds would be spent on expenses and 60 per cent would go to the intended purpose of the appeal. After concerns were raised in the media, Consumer Affairs Victoria looked into the matter, and following an audit it was discovered that $192 114 was raised but only $15 800, or 8 per cent, had been passed on to the beneficiaries. Consumer Affairs Victoria is rightly concerned. It has asked the Children's Cancer Institute Australia for Medical Research to show cause as to why it should remain registered as a fundraiser in Victoria.

We want consumers to be confident, particularly when they are giving donations to charities. We will continue to ensure Victorians can be confident that when they donate, their donations go to the beneficiaries they believe they are donating to.

Electricity: supply

Hon. BILL FORWOOD (Templestowe) — My question is again to the Minister for Energy Industries, the Honourable Theo Theophanous. The New South Wales government's *Energy Directions Green Paper* 2004 says:

> To guard against adequate … private investment in generators not being forthcoming in time to meet —

potential —

> … supply shortfalls, the government has committed to exploring backup strategies … and a plan for implementing them.

Has the Victorian government decided to do the same?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — I would have thought the member would have understood by now that there is a significant difference between the Victorian energy sector and the energy sectors in most of the other states — certainly the ones to our north. The states to our north have electricity systems which are in the main publicly owned, so their investment decisions are obviously coloured by the fact that they happen to own the major part of the system. It puts them at an advantage in being able to make decisions which may or may not be commercial in relation to the construction of particular power stations.

We in Victoria do not have the same situation, courtesy of the sale of the electricity system by the previous government. As a consequence we must to a very large extent rely on the market to make those investments, and that means creating the market conditions for that investment to take place. I say to the honourable member, however, that we actively pursue investment. We do not just simply sit back and rely on the market to provide all the necessary investment in the energy sector, or for that matter any other sector. That is certainly the case in my portfolio in the resources sector and elsewhere. We actively engage with the private sector in a variety of ways, including seeking to attract investment in specific large projects. Many of those large projects may be not just related to providing electricity in the form of a generator attracting

investment in generation but may also be coupled in some instances with the use of that electricity in a variety of different ways. We try to attract that investment in this state.

We try to attract a significant amount of investment in the wind industry. Unfortunately the wind energy sector is looking at a very serious set of issues in relation to future investment because of the unconscionable decision of the commonwealth government not to extend the mandatory renewable energy scheme and therefore choke off further investment in that important area. As a state we believe that was a retrograde step. We are doing everything we can. The member knows, for example, that we have introduced legislation to try to help the wind industry with investment. We have established a wind energy support package to help that industry make an investment in renewable energy.

This government works with industry and helps it to make the investment that is required in the energy sector — and we get absolutely no support from the federal government and very little support from the opposition.

Supplementary question

Hon. BILL FORWOOD (Templestowe) — The minister is aware, I know, that in the same green paper the New South Wales government said that it did not consider it was appropriate to invest further capital in activities like electricity generation when this capital and risk exposure could be provided by the private sector. Given that the New South Wales government has said that and given that it has said it is exploring backup strategies and a plan for implementing them, does the minister believe the next amount of generation capacity at base load level will be built in New South Wales, where they use black coal and not the brown coal found in the Latrobe Valley?

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — The member invites me to speculate as to what the New South Wales government may or may not have in its forward plans. I am interested in the Victorian energy system. The Victorian energy system is being run in a way that benefits consumers. It is being run in a way that creates jobs and provides security of supply in this state — something that was never done by the previous government.

Housing: tenant support

Hon. KAYE DARVENIZA (Melbourne West) — My question is addressed to the Minister for Housing, Ms Broad. Can the minister advise the house of the action being taken by the Bracks government to govern for all Victorians and to improve the support provided to public housing tenants?

Ms BROAD (Minister for Housing) — I thank the member for her question on the very important issue of better services for Victoria's public housing tenants. The Bracks government prides itself on being a government that can deliver improved services while keeping a strong and balanced budget.

I am pleased to inform the house today that under the Bracks government's $5.9 million social housing advocacy and support program, otherwise known as SHASP, existing and prospective tenants in community and public housing will receive better support to help them find and keep a home of their own.

This program will commence on 1 January 2006, replacing the existing public housing advocacy program. This new service will help tenants and housing applicants most in need by providing extensive, long-term support for tenants who have complex issues as well as efficient and speedy referrals for more straightforward problems. Older tenants will be a top priority for support workers under this new program, because seniors make up 40 per cent of all public housing tenants and they can have greater support needs.

Under the new program social housing tenants will receive specific and practical help to sustain their tenancies. This will include the development of plans to pay rent arrears, including referrals to financial counsellors where required. It will also include referrals to expert services to address a range of issues, including family breakdown, mental health issues and disability support needs, as well as help to overcome literacy and language difficulties that prevent people from understanding and responding to contact from the Office of Housing.

Some 11 non-government agencies that have demonstrated the capacity to deliver intensive support as well as case coordination have been selected to deliver this program in local areas right across Victoria. As well as that, the Tenants Union of Victoria will continue to be funded to deliver a strong and efficient centrally based advocacy service. I would like to take this opportunity to acknowledge and thank it for the good work it does on behalf of Victoria's housing tenants.

We are making these improvements because we believe every Victorian is entitled to decent services. That means people who are having trouble with their

housing situation should get the help they need. We know that a stable home is important to help people keep their lives on track, so this new service will ensure tenants receive specific and practical help to establish a trouble-free tenancy.

It is only possible for this government to deliver these improved services because we do not have a half-baked half-tolls policy like the Liberal Party does — a policy which not only is not financially credible but which would put services to tenants at risk if the Liberal Party were ever returned to government. In contrast the Bracks government will continue working to improve services for Victoria's public housing tenants while delivering a strong, balanced budget.

Telemarketing: do-not-contact register

Hon. P. R. HALL (Gippsland) — My question without notice is directed to the Minister for Consumer Affairs, the Honourable Marsha Thomson. On 4 October I asked the minister if Consumer Affairs Victoria had been involved in any prosecutions for breaches of the telephone marketing provisions set out in the Fair Trading Act. The minister said she was not in a position to provide that information and added:

> … but I will endeavour to find out about it.

As three weeks have now elapsed and I have heard nothing from the minister, would she give the house the courtesy of a report on her promised endeavours?

Hon. M. R. THOMSON (Minister for Consumer Affairs) — I thank the member for his question. I was hoping to make a formal response to the member in writing. I was awaiting a response from the department, but I do not have it at this point in time. However, I have verbally sought information on the question the member asked about prosecutions, and I am happy to pass the information on for the benefit of the house and therefore save the department having to write to the member.

There have not been any prosecutions in relation to telemarketing, nor have there been complaints about it that can be substantiated to the point of litigation occurring. This is in relation to the current act. The member will be aware that at the moment a joint review of telemarketing legislation is being undertaken by Victoria and New South Wales. It is looking at how we can further harmonise the legislation between the two states and make it easier for telemarketers to adhere to the legislation across borders. It will also clarify aspects of the legislation for consumers, and this is a perfect opportunity to do that.

The member will also be aware that I and my NSW ministerial colleague Dianne Beamer have jointly called for a national do-not-call register. We both took that to a ministerial council meeting and got the support of all state and territory ministers. We received an undertaking from the federal Parliamentary Secretary to the Treasurer, Chris Pearce, that he would write on behalf of the ministerial council to his ministerial colleague the Minister for Communications, Information Technology and the Arts, Helen Coonan, in relation to a do-not-call register. We have recently heard public announcements that the federal government is yet again looking into the establishment of a do-not-call register.

I urge, and will continue to urge, the federal government to act swiftly on the establishment of such a register. It works in the United States of America. In fact I think there are now 88 million subscribers to the do-not-call register in the United States. It is proving to be successful there, and whilst I am not suggesting we necessarily pick up that model completely, it is not as if we would be working in isolation and creating something totally new.

While it is important to have good and sound legislation in state jurisdictions — and I believe that is vitally important — it is also important that consumers have an opportunity to opt out of telemarketing completely. That is not what our laws do. Our laws restrict the times consumers can be called, they restrict the way in which a product can be sold, but they do not say, 'You cannot call'. The best way to go about ensuring that is to set up a do-not-call register with proper penalties attached to it to ensure that consumers can be confident that if they put themselves on the register they will not be called, they will not be annoyed and it is at their choice.

I am hoping that the federal government will act quickly on the call that has been made by all consumer affairs ministers and that we will finally see some action on this matter.

Supplementary question

Hon. P. R. HALL (Gippsland) — I thank the minister for her advice, finally, on that particular matter, and I note with some surprise that there were no complaints received by Consumer Affairs Victoria on telemarketing that warranted prosecution for a breach of those provisions. Perhaps the minister would elaborate, therefore, on the nature of the complaints received by consumer affairs in respect of telemarketing and, in particular, say whether any of those complaints relate to the hours when telemarketing takes place.

Hon. M. R. THOMSON (Minister for Consumer Affairs) — I have had no reports on the hours being an issue specifically. There have been some issues in relation to understanding who has made the call and those sorts of things, and a whole lot of inquiries that have been dealt with by consumer affairs, but I certainly do not have any information saying that hours have been an issue, that people have actually complained about the existing provisions in the act being broken and about the times people can call. Again I will take on notice that part of it, and I will verbally inform the member about that situation.

Work Safe Week

Ms CARBINES (Geelong) — My question is to the Minister for WorkCover and the TAC. Can the minister advise the house how the Bracks government is governing for all Victorians and of current activities that will assist Victorian businesses and their employees to improve safety in the workplace?

Mr LENDERS (Minister for WorkCover and the TAC) — I thank Ms Carbines, and I would be delighted to talk at any time at any place on WorkCover and WorkSafe issues. I had the delight yesterday of being in the member's home town of Geelong at the launch of Work Safe Week. Work Safe Week has now gone on for 17 years in Victoria, under various names. It is a celebration that focuses on activities to make workplaces safer.

The theme this year is 'Let's band together to make work safe', and that is why I am wearing these coloured wristbands, which are generally worn by 16 or 17-year-olds. I am wearing this wristband today with pride. I will give Mr Forwood a whole box of them so that he can distribute them to his colleagues and we can have the theme of making work safe. I see that many members in the house are wearing them, and that does not mean they are supporters of the Richmond Football Club; it means they are actually supporting WorkSafe. I will give them to Mr Forwood and hope that he will get all his colleagues to wear the wristbands or our label badges in lieu of the Victoria badges that his colleagues have traditionally worn — and The Nationals as well.

Work Safe Week is important. As I said, I was in Geelong yesterday to launch Work Safe Week. Yesterday was important in that we had a whole group of work safety stakeholders together in Geelong. My colleague Ian Trezise, the member for Geelong in the other place, has traditionally represented the minister at this function, but I thought I should go to Geelong because it is an important place to launch the initiative. We had examples there of people who will on Thursday be amongst the contestants in the WorkSafe for Victoria awards. Representatives from four Geelong regional businesses were there, but I would like to focus very briefly on one of them — that is, Regal Cream, which is based in Colac. Joanne Blurton from Regal Cream actually gave a snapshot — —

Hon. Bill Forwood — Is that why we are going to Colac?

Mr LENDERS — Yes, that is an idea; perhaps when the house visits Colac we should all visit Regal Cream and get a contribution from it on this issue.

Joanne Blurton went through how one can address hazards in the workplace and how by consulting you can address and reduce the hazards not just in the workplace but in the whole community. Joanne Blurton gave a very powerful example of how an injured worker is an injured member of a community. Whether it is someone involved in the football club, the fire brigade, the Country Women's Association or whatever, an injured person is not what we want.

During this week — not just in Geelong and Melbourne, but also in Wonthaggi, Bairnsdale, Korumburra, Morwell, Colac, Bendigo, Yarrawonga, Horsham, Wodonga and Mildura — there will be functions focusing on how, by making workplaces safer, we reduce death and injury rates across Victoria. We know the rates are dropping, but we know we can do a lot better and go a lot further.

The full schedule of events is on the WorkSafe web site. I invite all members of the house to look at it and see what is on in their community and to encourage these activities. By making workplaces safer, we make Victoria a safer place. I commend Work Safe Week to the house.

Alcoa: legislation

Hon. B. N. ATKINSON (Koonung) — I direct my question without notice to the Minister for Resources, who is also the Minister for Energy Industries. I refer to the second-reading speech on the Mines (Aluminium Agreement) (Brown Coal Royalties) Bill, which is currently before the Legislative Assembly. The speech says that the government is currently not proposing to pass the bill without first gaining Alcoa's agreement to the amendments. What obligation is there on Alcoa to agree to changes which are obviously against its commercial interests?

The PRESIDENT — Order! The Minerals Resources Development (Brown Coal Royalties) Bill is

an order of the day before this house. The member cannot refer to it without breaching the rule of anticipation. The question is therefore ruled out of order.

Sport and recreation: government initiatives

Hon. H. E. BUCKINGHAM (Koonung) — My question is directed to the Minister for Sport and Recreation. Can the minister advise the house about how the Bracks government is governing for all Victorians and about any recent actions taken to recognise and reward the hard work undertaken by our dedicated sport and recreation providers in Victoria?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I welcome Mrs Buckingham's particular interest in all areas of sport and recreation. I had the great pleasure only a few weeks ago of hosting the 2005 Go for Your Life sport and recreation awards held in the new dining room of the members stand at the Melbourne Cricket Ground. It was a great night because not only were the lights on so those in the dining room could see the athletics track being installed but the presentation night itself was a great opportunity to promote those highly regarded people who contribute to the sport and recreation sector across Victoria and, in particular, those who deliver it at the coalface. It was a great opportunity to applaud and recognise the depth and breadth of the achievements in the sector.

If you had a harebrained scheme to want to eradicate the Department for Victorian Communities (DVC), this would then be one of the great events you would lose. You would lose the opportunity to acknowledge the fantastic contributions that volunteers make right across the community.

An honourable member — Why?

Hon. J. M. MADDEN — I am happy to have the interjection about why. If you had the opposition's harebrained scheme as part of its half-tolls policy of wanting to eradicate the department, you would eradicate sport and recreation and you would eradicate the awards night. You would eradicate those volunteers, which is what the Leader of the Opposition in the other place has suggested are the measures by which he wants to fund his half-baked half-tolls policy. His scheme of getting rid of the DVC is a half-brained one, but that is the opposition's idea.

It was a fantastic night, which is the difference between the opposition and the government. We are focusing on leading the community on delivering great things. On the other side they are just worrying about taking things away from the community, taking away opportunity and in particular not offering one single bit of leadership, except for maybe Ted Baillieu, the member for Hawthorn in the other place.

Among the characters who were awarded and rewarded on this particular night, I had the great pleasure of awarding the 2005 Minister for Sport and Recreation award to Heather McCoy for her dedication to badminton and grassroots sport. For 40 years Heather has dedicated her time and energy to helping people get involved in badminton in her local community of Strathmerton. As well as Heather, who is affectionately known as Mrs Mac, we also acknowledge that 7 out of the 10 winners were from regional Victoria. The volunteer involvement award went to Lorraine MacDonald. Whether the opposition likes it or not, whether it cares or not, we know we are getting on with delivering for all Victorians, with rewarding Victorians and with showing leadership in making Victoria a better place to live.

WorkCover: costs

Hon. C. A. STRONG (Higinbotham) — My question today is directed to the Minister for WorkCover and the TAC, Mr Lenders. In the spirit of Work Safe Week I refer the minister to the Victorian WorkCover Authority annual reports from 2001 to 2004, which show that total dispute resolution costs have increased from close to $10 million in 2001 to under $19 million last year. I ask the minister to explain to the house why the costs of total dispute resolution have increased by over 87 per cent while the total claims expenses have over that period of time decreased by 35 per cent.

Mr LENDERS (Minister for WorkCover and the TAC) — I am delighted to take a question on WorkCover from Mr Strong, and I am delighted he has been trawling through the annual reports. It is good to see an interest in them. Clearly Mr Strong is tomorrow's man, not yesterday's man. I hear that Mr Honeywood, the member for Warrandyte in the other place, described Mr Walker as yesterday's man, but Mr Strong is tomorrow's man because he is reading the WorkCover annual reports — and that is important. The more people who understand the WorkCover system and read the reports, the more people we will have for the future and the fewer people we will have who are yesterday's people — and I am not saying Mr Walker is yesterday's man, but that is what Mr Honeywood said.

The Victorian WorkCover Authority's annual results have been driven by a strong performance from insurance operations. Part of that is about claims management, and part of it is also about a reduction in injuries and fatalities in the Victorian workplace. This government has been incredibly supportive of the Victorian WorkCover Authority (VWA) and WorkSafe in addressing those areas. An annual report read in its entire context will show a number of things.

As Mr Strong is assiduous in these matters and has read them, he will know the context of the annual reports. Claims management continues to be a tightly measured operation in the VWA, which is important, so we have a lot of resources in place for those people who are injured and that we manage the claims prudently, which assists in the general community having a good scheme.

As part of a sound claims management process, one of the initiatives that is happening in the VWA is to try to bring forward and settle a lot of the common-law claims through procedures that were instigated by my predecessors in the portfolio. Some of those claims are brought forward and assessed earlier, which obviously will appear in the reports. If you are settling claims earlier, the costs will be brought forward; but it will take the costs out of the scheme later on.

That is probably the most fundamental issue in there. The absolute underpinning of that report is the continual driving down of injuries in Victoria. I have taken great pride in my term as minister, and I do not claim credit for this — it is a collective thing that has gone on over time in the VWA — but during my time it has been very fortuitous that we are seeing a lot of those effects of reform from the new act, from a good administration of the scheme, from greater safety in workplaces and from a reduction in industry and claims. That is good for Victoria. We are seeing a safer state. We have a long way to go. We have a culture and the drive to go further. That is my answer to Mr Strong's particular question about some of those figures in the annual reports of the Victorian WorkCover Authority.

Supplementary question

Hon. C. A. STRONG (Higinbotham) — I am interested that the minister says that is a function of the increased common-law claims, but I point out to him that what we are talking about here is the dispute resolution costs that have increased. If these are related to common-law claims, then surely that is indicating a continual blow-out in the common-law claims. Is the minister trying to tell us the common-law claims are in fact decreasing now compared to in the past?

Mr LENDERS (Minister for WorkCover and the TAC) — What I am certainly happy to tell Mr Strong is that what is happening in the WorkCover authority is that claims are being settled earlier. When a person is injured and requires compensation one of the claims management procedures of the Victorian WorkCover Authority is to settle those claims sooner so that, one, uncertainty is removed, two, the injured worker receives their benefits earlier, and three, there is certainty for the authority that the claims are settled. I say quite clearly to Mr Strong that what we are seeing are better claims management, a reduction in injuries, a reduction in deaths, a reduction in premiums, and improved benefits under the sound management of the scheme. This is a very open and transparent report. We have a dispute resolution or conciliation service which deals with a lot of claims, but the fundamentals are that injuries and costs are down and we are settling earlier and quicker to provide certainty for all concerned.

Commonwealth Games: Aboriginal art

Mr SCHEFFER (Monash) — My question is to the Minister for Aboriginal Affairs. Can the minister inform the house of how the Bracks government is governing for all Victorians and in particular how recent initiatives that promote Victorian indigenous talents and achievements are being showcased in the lead-up to the 2006 Commonwealth Games?

Mr GAVIN JENNINGS (Minister for Aboriginal Affairs) — I thank Mr Scheffer for his concern about the intellectual and commercial property rights of Aboriginal artists and producers of goods and services in the lead-up to the Commonwealth Games. As I entered Parliament today, I realised that there are 141 sleeps before the Commonwealth Games begin. It will be one of the great events held in Victoria next year. It will bring 4500 athletes and their support staff from 71 countries and, very importantly, many tourists to Victoria.

What we are interested in doing is trying to provide the maximum commercial opportunity for Aboriginal products and services to be displayed and sold in the context of the Commonwealth Games and maximising the chance of Aboriginal artists, primary producers and people who put together jewellery and other arts and craft work to derive direct benefit from the commercial activities associated with the Commonwealth Games. I am very pleased to say that we are following the work done by the Minister for Commonwealth Games, who instigated a program on the advice of the Respecting

Indigenous Communities task force, which is headed by our friend Kevin Coombes. The task force has provided useful advice on a range of ways that the government can support the commercial and cultural heritage activity in the lead-up to the Commonwealth Games.

As a specific outcome of that strategy, I was very pleased yesterday to join the Minister for Small Business at an event at Museum Victoria to launch a swing tag that has been designed by an Aboriginal artist, Lee Darroch, a Yorta Yorta woman. She has designed a fantastic tag with a possum skin cloak design, which is to be augmented with the Commonwealth Games logo. It will be attached to authenticated Aboriginal commercial products and pieces of art that will be on sale and available to those thousands of people who will come to Victoria in the context of the games. It will be one of the very rare times that the Australian community will be able to authenticate original products and ensure that there is appropriate commercial return to the artists or producers of those goods and services.

I have raised this issue on many occasions during my tenure as Minister for Aboriginal Affairs. I have been concerned about Aboriginal artists and other Aboriginal producers being ripped off by not having appropriate copyright protection of their goods and services and pieces of art. The swing tag will play a very useful role in providing certainty for those commercial arrangements in the lead-up to the Commonwealth Games. It will be a great opportunity for Victoria to showcase its rich talent in the Aboriginal community now and into the future and give due credit to the rich cultural heritage and artistic endeavours of Aboriginal people and provide some degree of economic certainty for them in the context of the games.

QUESTIONS ON NOTICE

Answers

Mr LENDERS (Minister for Finance) — I have answers to the following questions on notice: 2765, 2989, 2991, 2993, 2999, 4975–78.

Hon. C. A. Strong — On a point of order, President, I seek your considered ruling to clarify a particular situation that arose during the committee stage of the Defamation Bill last Thursday, our last sitting day. To set out the issues on which I consider a ruling would be helpful to the house, I will quickly run through the events leading to the situation. The Minister for Sport and Recreation moved two amendments to the Defamation Bill. The first amendment, to clause 24, was to omit one phraseology and replace it with another. That amendment was duly moved and agreed to. Another amendment, to clause 32, was duly moved and agreed to.

During the committee stage there was some discussion on the point that the original amendment — that is, to clause 24 — did not achieve what was intended by the amendment. The Chair took the committee back to clause 24 and recommitted it. That was an action that she took without any resolution by the house to do so; it was on her action. When clause 24 was recommitted, various points of order were raised.

I now come to the nub of the issue on which I seek your ruling. The penultimate part of the last point of order, which was raised by me, asked the Chair how the committee was doing what it was. I refer to *Hansard*, where I am recorded as having said:

> … unless you are ruling that our previous resolution on clause 24 does not stand.

The Chair is recorded as having responded:

> Order! Yes, I am ruling that.

In other words, the Chair ruled that a previous resolution of the house did not stand and then the motion was put again. It seems to me that that issue does need clarification.

The Chair ruled that previous resolution did not stand and then put the motion again. It is necessary for the issue to be clarified. Hence my request that in due course you make a ruling on the issue. If the Chair can of his or her own volition rule that a previous resolution of the house does not stand and then seek to put the motion again, it begs the question of whether you as President could rule that some resolution of the chamber did not stand and then put the motion again. I seek your considered ruling on that particular issue.

The PRESIDENT — Order! It is clear: the will of the committee was obvious, given that it agreed to one motion to omit words and then the second motion to insert different words. It was an inadvertent error, and the Chair clarified it while the house was still in committee. That has been the practice of the house. I do not uphold the point of order. There is no issue with the actions of the Chair. They were quite appropriate.

MEMBERS STATEMENTS

Ararat Golden Gateway Festival

Hon. DAVID KOCH (Western) — Ararat's Golden Gateway Festival, which was held last weekend, is a major event on Ararat's annual social calendar. The community-based event showcases the talent and skills of the district and presents a wide range of activities, including a coronation ball and a grand street procession.

A highlight of this year's event was the final public appearance during the procession on Sunday of Eric 'Whirley' Wilson's famous automobile, the *Southern Cloud*. Whirley has entertained young and old across the region for almost 50 years with his colourful and noisy 1927 Dodge. Over the years *Southern Cloud*, which is more affectionately known as the Bomb, won numerous Moomba Festival awards and featured again in Moomba's 50th anniversary parade this year. Sadly, on its final journey, last Sunday the Bomb honked, blew bubbles and hiccuped its way down the main street of Ararat. Whirley has decided to call it a day and is donating the Bomb to Ararat's Langi Morgala museum, where it will become a permanent feature.

I congratulate Whirley Wilson on his ingenuity in creating this remarkable piece of Australiana that has entertained generations of children. My congratulations are also extended to the organisers and volunteers who continue to make Ararat's annual Golden Gateway Festival such a memorable and successful community event.

Geelong: former Premier

Hon. J. H. EREN (Geelong) — I am sick and tired of current and former leaders of the Liberal Party putting Geelong down. In particular, I noted with great interest that the failed former Premier, Jeff Kennett, was shooting from the hip with his rusty guns in the *Geelong Advertiser* yesterday. Mr Kennett talked about a lack of leadership. Obviously the Liberal Party is in a lot of trouble. This is an indication that it has no confidence in its current leader, Robert Doyle, if it has to bring out the old guns to fight its battles for them. Mr Kennett whinged and moaned that not enough was being done in Geelong. This is bizarre coming from a man who called country and regional areas the toenails of Victoria.

Mr Kennett might not think that upgrading existing schools, building new schools and providing more teachers is important. He might not think that providing more nurses in our hospitals or providing new police stations and more police is important. He might not think it is important that Geelong has received record amounts in the last few budgets handed down by the Bracks Labor government or that the ring-road is important. But let me tell him that they are important for Geelong, because people in Geelong still remember the closing of schools and the sacking of teachers; the huge hospital waiting lists and the sacking of nurses; the rampant crime, police shortages and the sacking of police; the lack of social services; and the privatisation of essential services — and the list goes on and on.

But let us give credit where credit is due. In the seven dark years of the Kennett government we did get Smorgy's on Cunningham Pier. Thanks, Mr Kennett. I thank the *Geelong Advertiser* for taking the time to remind the Geelong public what the place used to be like under Jeff Kennett.

Jazz at the Farm festival

Hon. RICHARD DALLA-RIVA (East Yarra) — I congratulate the Rotary club of North Balwyn for the coordination it has undertaken to conduct the Jazz at the Farm festival to be held at the Collingwood Children's Farm on Saturday and Sunday, 26 and 27 November. This is a program which has been organised to support the Bob Rose organ donor appeal and other Rotary community projects.

It is important to acknowledge the great work that the club is intending to do. It is also about encouraging some of Australia's top jazz bands and performers. Bob Barnard will be playing with Stevensons Rockets, the Sweet Lowdowns and The Pippa Wilson Jazz Band. There will be about 15 hours of continuous jazz. Also playing are Bob Sedergreen's Usual Suspects, New Melbourne Jazz Band, Soul Sister Swing, Gypsy Swing, Syncopators, Mainstem, Swing It, the Creole Bells and even the Balwyn High School and Wesley jazz bands.

This will be a fantastic day. I encourage people in the Melbourne region to go along and be part of this Jazz at the Farm. This is a great community event. I encourage all members in the chamber, and indeed the people of Victoria, to support the Rotary Jazz at the Farm festival at the Collingwood Children's Farm on 26 and 27 November. I look forward to it.

Work Safe Week

Hon. KAYE DARVENIZA (Melbourne West) — I remind members that 23 to 28 October is Work Safe Week. The theme for Work Safe Week is how to band together and make work safe. WorkSafe has been

bringing Victorians together for the past 17 years to develop new and more effective ways to make workplaces safer for all workers regardless of the industry they work in. Work Safe Week involves employees and employers banding together to organise and participate in a whole range of activities and events that bring the issue of workplace safety to the fore. Workplace safety is an important issue, so I encourage all members of Parliament to wear their wrist bands and ribbons and familiarise themselves with the activities that are being undertaken throughout the week. A whole range of activities are taking place in the metropolitan area as well as in rural and regional Victoria. Workplace safety is for all workers, so let us get involved and help make all our workplaces safer.

Remembrance Day

Hon. R. H. BOWDEN (South Eastern) — Last Friday I had the pleasure of attending the ceremony at the Cenotaph conducted by the Returned and Services League to launch this year's Poppy Day appeal. As everyone knows, 11 November is a sacred and important time in the life of this nation, and last Friday at the Cenotaph the RSL launched its multimillion dollar fundraising appeal based on the Poppy Day program. Honourable members may note that I am already wearing my poppy. I encourage honourable members to buy a poppy when they become available in remembrance of the fine Australian men and women who made major sacrifices, often the ultimate sacrifice, in the service of our country.

I congratulate the RSL on once again being highly organised and professional. I commend the RSL and look forward to a great and successful fundraising appeal in this important two or three weeks prior to the sacred day of 11 November that we hold dear in our community. I urge honourable members to be mindful of the approach of Poppy Day and to support the RSL in this very worthwhile exercise.

Victims Support Agency: information initiative

Ms MIKAKOS (Jika Jika) — On 27 September I was pleased to chair a community forum to discuss criminal justice projects and what they mean for culturally and linguistically diverse (CALD) communities. As part of the forum, the Attorney-General in the other place, Rob Hulls, launched a range of brochures and fact sheets produced by the Victims Support Agency which have been translated into 11 community languages. People from CALD backgrounds can encounter many barriers when seeking help. They may be unfamiliar with the available government services and, in some cases, may fear the authorities because of negative experiences in their home countries.

The Victims Support Agency translated material that relates to the following: reporting a crime, applying for an intervention order, what happens if someone needs to go to court, local support and financial assistance for victims of crime. The translated material also includes the basic principles of a proposed victims charter, on which consultations with CALD communities will be undertaken across the state. The translated materials will complement the Victims of Crime Helpline, a telephone service which can provide immediate access to interpreters in 150 languages. The Bracks government is committed to ensuring that all Victorians, regardless of their background, have fair and equitable access to justice and victims services. These brochures and fact sheets will make a significant contribution to meeting that commitment. I congratulate everyone at the Victims Support Agency for their work on this very useful initiative.

Relay for Life: Shepparton

Hon. W. A. LOVELL (North Eastern) — Over the weekend of 22 and 23 October I had the pleasure of participating in Shepparton's fourth annual Relay for Life. This year's event attracted 110 teams made up of more than 2000 individuals who gave up their weekend to participate in an event that brings the community together to remember those who have lost their lives to cancer, to celebrate the lives of those who have survived, to show support to those who are still battling the disease and to encourage the carers who provide the much-needed support along the way. With this year's event raising in excess of $335 000, the Shepparton Relay for Life became the first Victorian Relay for Life to raise in excess of $1 million in less than five years.

I was honoured to present the trophies to this year's winners in the various prize categories. For the second consecutive year the Telfords Building Supplies fundraising team, which raised $22 647.80, took out the prize for the highest amount raised. The highest individual fundraiser award went to Faye Alexander, who raised $10 367. The best dressed team went to Shepparton Family Day Care for its Mary Poppins theme. The Goulburn Valley register of the Jaguar Club took out the prize for the best dressed tent. The midnight madness award was presented to the team from the *Shepparton News*. I congratulate Gwen Parsons and the Shepparton Relay for Life committee for organising an amazing weekend.

Andrew Fildes

Mr PULLEN (Higinbotham) — This morning I had the honour to present the monthly Tattersalls enterprise and achievement award to my constituent Andrew Fildes. Andrew was born with a language and learning disability resulting in him not forming his first word until he was three and a half years old and in his having difficulty understanding what others were saying. This impacted on his early learning capacity resulting in an inability to make friends easily, and it meant that he always had difficulty with reading, writing and spelling.

In 1994 Andrew found inspiration in a movie called *Rudy*, which was about a man who also suffered from a language learning disability and whose determination resulted in great personal achievement. At age 21 Andrew decided to work towards starting a foundation that would help others struggling with language learning disability. In 1996 the Andrew Dean Fildes Foundation was created and since its inception approximately 1150 children have benefited from the screening programs, in-depth assessment, and specialised education and intensive multidisciplinary treatment programs. Further, approximately 500 teachers have benefited from professional development workshops, over 300 families have benefited from intensive programs and parent support groups, and over 350 university students have benefited from volunteering with various programs within the foundation. I congratulate Andrew on his magnificent achievement.

Athenaeum: 165th anniversary

Hon. W. R. BAXTER (North Eastern) — Yesterday I had the pleasure of attending the 165th anniversary of that venerable institution in Collins Street, the Melbourne Athenaeum, in the company of Mr Baillieu, member for Hawthorn in another place, and in the conspicuous absence of anyone from the Labor Party. It was a very interesting afternoon to mark 165 years of the Athenaeum. The function was attended by Governor Landy who unveiled two plaques to mark the heritage of that building. The Melbourne Athenaeum was first founded as a mechanics institute in the 1840s, soon after Melbourne's establishment, and it subsequently became the Athenaeum. It is a measure of the foresight of the founders that they bought a block of land which subsequently turned out to be right next door to the Melbourne town hall and in Melbourne's premier street.

Athenaeum members wrote to members of Parliament inviting them to provide a book to mark the anniversary. I was pleased to be able to do that and I am sure that some other members did as well. As you go around Victoria it is extraordinary to see mechanics institutes in many towns. Few are now used for their original purpose. I was very pleased from a country perspective to acknowledge the importance of mechanics institutes in the history of Victoria.

Industrial relations: federal changes

Hon. H. E. BUCKINGHAM (Koonung) — Forty million dollars is the entire amount spent by all political parties on advertising during the last federal election. It is also the amount of taxpayers money that, by his own admission, John Howard has said his government is spending to promote the Liberal Party's policy of industrial reform. This is not reform — it is draconian legislation. For 100 years Australia has had an independent umpire in the area of industrial relations. Over that time Australian workers have achieved a minimum wage, annual leave, sick leave, long service leave, maternity leave, paternal leave, a 38-hour week and superannuation — conditions that we all now take for granted and that were all opposed by employer organisations and their representatives.

This despicable legislation is aimed at creating a working poor. I applaud those church leaders who have aired concerns about this legislation. It will affect all workers, but particularly unskilled and lower skilled women and the young. How will a 16-year-old be able to successfully negotiate their working conditions with their first employer?

There has been unprecedented growth in industrial harmony, so what is the driver behind this legislation? It is the Howard government's agenda to obliterate the rights of the ordinary worker. I condemn this legislation. I do not want to see Australia become like America, where there has been no increase in the minimum wage for eight years. Australia has been served well by the Australian Industrial Relations Commission for — —

The ACTING PRESIDENT (Hon. Andrew Brideson) — Order! The member's time has expired.

Isik College: Ramadan dinner

Hon. B. W. BISHOP (North Western) — Last Saturday evening my wife Brenda and I attended that the Ramadan Iftar dinner put on by the Isik College to celebrate the breaking of the fast of Ramadan. The principal of the Isik College, Muhsin Canbolat, and his council did a great job presenting the school, which was established in 1997. The school is a primary school

with 53 students who were recently involved in a project that recognised the Murray River, the environment, irrigation, production of the area, transport, migration and the Turkish community. This colourful project was displayed on six panels at the school to remind everybody of the importance of the river and also how those who come to our country from different lands, different cultures and different religions can understand and integrate into our communities.

Ramadan, which is an important time in the Islamic religion, dictates that no food or liquid will be consumed during daylight hours during the month of Ramadan. There is a practical description of Ramadan — those who have fasted will be hungry and thirsty and will therefore be reminded of the suffering of the poor throughout the universe. Followers of Islam believe Ramadan brings self-control and discipline, and it is a time of spiritual devotion. I am able to relate to Ramadan because when I was a director of the Australian Wheat Board we did not travel during Ramadan. Respect was one reason. The other was that it is not a very good time to do business because people have been fasting during the daylight hours. My congratulations to the Isik College, its teachers and supporters. They are doing a good job — —

The ACTING PRESIDENT (Hon. Andrew Brideson) — Order! The honourable member's time has expired.

Taiwan National Day celebrations

Hon. S. M. NGUYEN (Melbourne West) — I was delighted to represent the Premier in attending the national day of the Republic of China (Taiwan) on 10 October this year, along with Ron Bowden, who is the chairman of the parliamentary Taiwan and Victoria association, and representatives from South Australia and Tasmania. I would like to thank Jack Cheng and Jennifer Cheng, representing the Taiwanese government, for organising such an important event. As we know, Taiwan is an important country in South-East Asia. Taiwan has a very strong economy which has grown in the past few decades. It is very good for Australia to have strong links with Taiwan in terms of trade, cultural exchange and tourism.

Taiwan is a new democratic country. It has an elected president, cabinet and members of Parliament. Taiwan should be recognised as an independent country able to raise the concerns of its people. I wish the Taiwanese government all the best in the future. It is important for Australia and Victoria to have a good relationship with Taiwan.

Customs: computer system

Ms ROMANES (Melbourne) — I want to say in response to Mr Baxter's statement that as a member for Melbourne Province I made my apology for not being able to attend the 165th anniversary celebration at the Athenaeum Library, due to a clash of meetings, but that only a few weeks earlier I had lodged my gift of a book for the Athenaeum Library's collection.

What I most want to say today is that I condemn the federal government's ineptitude in bungling the implementation of the new Customs computer system for freight clearance and its failure to act to fix this crisis. As members who have seen items in the news would know, instead of taking minutes electronic freight clearance at the port of Melbourne is now taking several hours under the new integrated cargo system. This is putting at risk Victoria's economic lifeblood. In particular it is affecting the port of Melbourne, which handles 40 per cent of the container trade and $10 million in trade every day. Containers are backing up at the port and cargo is also piling up at Melbourne Airport. There are fears that ships will be delayed and that the harm will spread to farmers, manufacturers and businesses.

This is an urgent matter, and it is imperative that the federal government act to fix it now.

PETITIONS

Baxter-Tooradin–Fultons–Hawkins roads, Baxter: safety

Hon. R. H. BOWDEN (South Eastern) presented petition from certain citizens of Victoria requesting that the Victorian government urgently upgrade the Baxter-Tooradin, Hawkins and Fultons roads intersection in the suburb of Baxter so that Hawkins Road and Fultons Road are aligned and that the railway crossing along Baxter-Tooradin Road is widened to safely accommodate pedestrian traffic (58 signatures).

Laid on table.

Taxis: rural and regional

Hon. P. R. HALL (Gippsland) presented petition from certain citizens of Victoria requesting that the Government immediately introduce measures that will lift the subsidised operation of country taxi services to the level given to Melbourne-based taxis and to initiate reforms that will enhance the viability of country taxi services so that they can continue to

meet the needs of country Victorians (118 signatures).

Laid on table.

PAPERS

Laid on table by Clerk:

Environment Protection Authority — Report, 2004-05.

Intellectual Disability Review Panel — Report, 2004-05.

National Parks Act 1975 — Report on working of the Act, 2004-05.

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

Casey Planning Scheme — Amendment C79.

Greater Bendigo Planning Scheme — Amendment C58.

Melbourne Planning Scheme — Amendment C112.

Port Phillip Planning Scheme — Amendment C41.

Small Business Commissioner's Office — Report, 2004-05.

Subordinate Legislation Act 1994 — Minister's exemption certificate under section 9(6) in respect of Statutory Rule No 127.

Tattersall's — Financial statements, 2004-05 (including Club Keno Pty Ltd, Footy Consortium Pty Ltd, Tattersall's Gaming Pty Ltd and Tattersall's Sweeps Pty Ltd).

Treasury and Finance Department — Report, 2004-05.

VicFleet Pty Ltd — Minister's report of receipt of 2004-05 report.

Victorian Government Purchasing Board — Report, 2004-05.

Victorian Multicultural Commission — Report, 2004-05.

Proclamations of the Governor in Council fixing an operative date in respect of the following acts:

Land (Miscellaneous Matters) Act 2005 — Part 2 — 21 October 2005 *(Gazette No. G42, 20 October 2005).*

Victoria State Emergency Service Act 2005 — Part 1 (other than sections 1 and 2) and Parts 2 to 5 — 1 November 2005 *(Gazette No. G42, 20 October 2005).*

BUSINESS OF THE HOUSE

Program

Hon. M. R. THOMSON (Minister for Consumer Affairs) — I move:

That, pursuant to sessional order 20, the order of the day, government business, relating to the following bill be considered and completed by 4.30 p.m. on Thursday, 27 October:

Congestion Levy Bill.

It is proposed that the Leader of the Government undertake discussions with opposition members and The Nationals in relation to allowing debate to commence tomorrow and allowing, if necessary, two days on this bill.

Hon. PHILIP DAVIS (Gippsland) — In response to the minister inviting us to debate one bill for two days, it seems to be overly excessive.

Hon. M. R. Thomson — Are you saying you appreciate it?

Hon. PHILIP DAVIS — What I should say is that obviously as a matter of principle the opposition is opposed to a government business program. I can succinctly say that this has been our consistent position. It is evident that the government business program does nothing to improve the harmony and working of the house. We have so far, for most of this year, managed without a government business program and in fact I have not noticed any delay to the passage of government legislation.

However, if the government insists on abusing the members of this house in terms of their tolerance and cooperative approach to dealing with the government's legislative program, then that will be reciprocated. Therefore, the opposition is absolutely opposed to the business program this week because it is a slight on the goodwill of the members of this place which has been consistently demonstrated and for which there is absolutely no need. No case has been put by the government that this is an urgent bill and that it must be passed this week. There are plenty of days left in the week; we are at day one of a three-day scheduled sitting week. I say it is rot for the government to put one bill on the business program and suggest that it has some primacy of carriage because there is a great matter of state dependent upon it.

Obviously I will not speak to the contents of the bill, but clearly the opposition has some issues with this particular bill; those issues will be well canvassed during the course of the debate.

I put it to the house that the minister's motion to establish a government business program for this week is highly unnecessary and more particularly, provocative. During the course of the week it will be met with the sort of derision it deserves. I therefore oppose the business program.

Hon. P. R. HALL (Gippsland) — I also put on the record that I believe this house has operated pretty well without having to set a business program. We have not had to stand up and debate the motion to establish a government business program, so it has been working well, due to the cooperation of all sides of this Parliament. That has been evident in the past, and there was really no reason why it would not be evident again this week.

I agree with the Leader of the Opposition in that it seems unnecessary to simply put one item of legislation on the government business program. I also agree with the Leader of the Opposition that the government is more likely to get its legislative program through in an appropriate, efficient and timely fashion with the good sense, cooperation and goodwill of all the parties rather than achieving a mandate for getting its bill through by a certain time through imposing a government business program.

The record of the Liberal Party and The Nationals in cooperating with the government on this issue has been first class, and it surprises and disappoints me that the government sees the need to move a motion to establish such a program today.

House divided on motion:

Ayes, 23

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

Noes, 20

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

Motion agreed to.

JOINT SITTING OF PARLIAMENT

Victorian Health Promotion Foundation

The PRESIDENT — Order! I have received a letter from the Minister for Health requesting that arrangements be made for a joint sitting for the purpose of appointing three members to serve on the Victorian Health Promotion Foundation for a three-year term, following the expiry of the terms of Mr Hugh Delahunty, the Honourable Bill Forwood and Ms Maxine Morand.

I have received the following message from the Legislative Assembly.

> The Legislative Assembly has agreed to the following resolution:
>
> That this house meets the Legislative Council for the purpose of sitting and voting together to elect three members of the Parliament to the Victorian Health Promotion Foundation and proposes that the time and place of such meeting be the Legislative Assembly chamber on Wednesday, 26 October 2005, at 6.15 p.m.

Ordered that message be considered forthwith on motion of Hon. M. R. THOMSON (Minister for Consumer Affairs).

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

> That this house meets the Legislative Assembly for the purpose of sitting and voting together to elect three members of the Parliament to the Victorian Heath Promotion Foundation and as proposed by the Legislative Assembly that the time and place of such meeting be the Legislative Assembly chamber on Wednesday, 26 October 2005, at 6.15 p.m.

Motion agreed to.

Ordered that message be sent to Assembly acquainting them with resolution.

GROUNDWATER (BORDER AGREEMENT) (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

Read first time for Ms BROAD (Minister for Local Government) on motion of Hon. M. R. Thomson.

MINERAL RESOURCES DEVELOPMENT (BROWN COAL ROYALTIES) BILL

Second reading

Ordered that second-reading speech be incorporated for Hon. T. C. THEOPHANOUS (Minister for Resources) on motion of Hon. M. R. Thomson.

Hon. M. R. THOMSON (Minister for Consumer Affairs) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Mineral Resources Development (Brown Coal Royalties) Bill amends the Mineral Resources Development Act 1990 to enable an increase in royalties for brown coal to occur.

The payment of royalties recognises that minerals are owned by the state and, as such, that the state and the people of Victoria should share in a proportion of the benefits that flow from the extraction and use of minerals, including brown coal.

The government considers that it is timely to undertake these amendments which will standardise the mechanism for setting and varying brown coal royalties into the future. These amendments will apply to companies currently paying brown coal royalties as a condition of their licences or in accordance with the Mineral Resources Development Regulations 2002. It is also proposed that this mechanism would apply to Alcoa. One consistent rate would be used to calculate coal royalties for all companies while any future variations to that rate would be undertaken through regulations.

There are two bills before the house. This bill will amend the Mineral Resources Development Act 1990 to apply the new rate and standardised mechanism to the majority of brown coal companies operating in Victoria. The second bill will amend the Mines (Aluminium Agreement) Act 1961 to apply the changes to royalties for lignite (otherwise known as brown coal) to Alcoa. These two bills represent cognate legislation.

It is important to note the context within which these bills are now being considered by Parliament.

Section 12 of the Mineral Resources Development Act 1990 states that mining licensees must pay royalties and enables royalties to be specified in a licence, after consultation by the minister with the licensee, or prescribed in regulation. The three major mines located in the Latrobe Valley have royalties specified as a condition of licence. Currently there is no provision, which enables royalties specified as a condition of licence to be varied without first obtaining the consent of the company.

Over the past months, the government has attempted to gain the agreement of the companies to an increase in coal royalties to better reflect the underlying value of the resource. The government would prefer to increase coal royalties via agreement in preference to making legislative changes. Unfortunately this has not been possible and a number of companies prefer this legislative option on the basis that this assists them to pass on some of the costs of royalty increases.

The bill will insert a new section 12A into the act that sets out specific arrangements for royalties for lignite (otherwise known as brown coal). This section establishes that the new arrangements introduced by this legislation will apply despite anything to the contrary in licences or regulations.

As a result of these amendments a new base rate of 5.88 cents per gigajoule unit of coal produced will be introduced. The new base rate will be subject to annual adjustment for the consumer price index. This formula will replace arrangements for calculating brown coal royalties set through licences and regulations and will apply from 1 January 2006.

Alcoa's coal royalties are established under its agreement with the state ratified by the Mines (Aluminium Agreement) Act 1961. The government believes that it is an appropriate point to bring Alcoa's brown coal royalties into line with other companies paying brown coal royalties in Victoria. The Mines (Aluminium Agreement) (Brown Coal Royalties) Bill introduced during these parliamentary sittings will enable this to occur. The two bills will work together to apply a new base rate for coal royalties and a standardised mechanism for varying rates into the future. However, as Alcoa has a legislated agreement with the state the amendments to its legislation will come into operation on a date to be agreed with the company.

The new base rate will be an increase on the base rates currently applying to brown coal mining companies. As a result additional coal royalties of the order of $16 million to $17 million per annum will be returned to the people of Victoria.

The government has committed to transitional arrangements for the payment of the incremental increases. Deferred payment of the incremental increases will be available to companies that incur an increase from 1 January 2006. The transitional arrangements will be available until 30 July 2009.

The government has made a commitment that the rate of coal royalty will not increase for a minimum of four years, starting from 1 January 2006. Annual adjustment in line with the consumer price index will continue to apply. However, the base rate of 5.88 cents will not change during this four-year period.

The new arrangements will also ensure that any future variations that may be introduced following 1 January 2010 will occur via a regulation-making process. The government will consult broadly on any changes to the formula for calculating coal royalties (including any changes to the base rate). The potential impacts for industry and the community will be assessed in accordance with the requirements of the Subordinate Legislation Act 1994.

Royalties are collected in arrears. As such it is important that the legislation clearly express that the changes to coal royalty calculations will only apply to coal produced after the commencement of the bill. This will ensure that there is no retrospective application of the rate.

I commend the bill to the house.

Debate adjourned on motion of Hon. BILL FORWOOD (Templestowe).

Debate adjourned until next day.

MINES (ALUMINIUM AGREEMENT) (BROWN COAL ROYALTIES) BILL

Second reading

Ordered that second-reading speech be incorporated for Hon. T. C. THEOPHANOUS (Minister for Resources) on motion of Hon. M. R. Thomson.

Hon. M. R. THOMSON (Minister for Consumer Affairs) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Mines (Aluminium Agreement) (Brown Coal Royalties) Bill amends the Mines (Aluminium Agreement) Act 1961 to introduce new arrangements for the calculation of coal royalties that are paid by Alcoa to the state of Victoria.

The payment of royalties recognises that minerals are owned by the state and, as such, that the state and the people of Victoria should share in a proportion of the benefits that flow from the extraction and use of minerals, including brown coal.

The Mines (Aluminium Agreement) Act ratifies and gives effect to an agreement between the state of Victoria and Alcoa. The agreement sets out the terms and conditions applying to Alcoa's aluminium production activities in Victoria.

Clause 10 of the agreement sets out the coal royalties that will be paid by the company to the state of Victoria. These arrangements are unique to Alcoa. Arrangements for all other brown coal companies are governed by the Mineral Resources Development Act 1990 which enables coal royalties to be established as a condition of licence or through the rate prescribed under the Mineral Resources Development Regulations 2002.

The government considers it is now timely to put in place a single mechanism to set coal royalties which would apply to all companies including Alcoa. One consistent rate would be used to calculate coal royalties for all companies while any future variations to that rate would be undertaken through regulations.

There are two bills before the house. This bill will amend the Mines (Aluminium Agreement) Act to apply the changes to royalties for lignite (otherwise known as brown coal) to Alcoa. The second bill will amend the Mineral Resources Development Act to apply the new rate and standardised mechanism to other brown coal companies operating in Victoria. These two bills represent cognate legislation.

It is important to note the context within which these bills are now being considered by Parliament.

Alcoa has a longstanding agreement with the state of Victoria, which has been ratified in legislation for over 40 years. The payment of royalties was set within the agreement, specifying a rate per tonne of coal. The rate applicable decreases once the production exceeds 100 000 tonnes. During the last 40 years, the rates applying have been adjusted in line with the consumer price index but the actual base rates have not been reviewed.

The government believes that now is an appropriate point to bring Alcoa's brown coal royalties into line with other companies paying brown coal royalties in Victoria. This bill will enable that to occur. The two bills will work together to apply a new base rate for coal royalties and a standardised mechanism for varying rates into the future.

It is important to note that as Alcoa has a legislated agreement with the state, the government is not proposing to pass this bill without first gaining Alcoa's agreement to these amendments. Therefore, a commencement date for this bill has not been set. Once Alcoa's agreement has been gained, steps will be immediately taken to proclaim this legislation.

It is the government's intention to gain Alcoa's agreement as swiftly as possible to ensure that brown coal royalties apply equally to all companies in Victoria.

The bill introduces a new section 11 into the Mines (Aluminium Agreement) Act that will override all other arrangements for setting brown coal royalties. The effect of this amendment is to apply the method for calculating coal royalties, which is being introduced into the Mineral Resources Development Act, to Alcoa. The base rate of 5.88 cents per gigajoule unit of coal produced introduced through amendments to the Mineral Resources Development Act will apply to Alcoa as will the annual adjustment for the consumer price index. The method for varying the rate via regulation will also be applicable to Alcoa.

The government has made a commitment that the rate of coal royalty will not increase for a minimum of four years, starting from 1 January 2006. Annual adjustment in line with the consumer price index will continue to apply. However, the base rate of 5.88 cents will not change during this four-year period.

The new arrangements will also ensure that any future variations that may be introduced following 1 January 2010 will occur via a regulation making process. The government will consult broadly on any changes to the formula for calculating coal royalties (including any changes to the base rate). The potential impacts for industry and the community will be assessed in accordance with the requirements of the Subordinate Legislation Act 1994.

Royalties are collected in arrears. As such it is important that the legislation clearly express that the changes to coal royalty calculations will only apply to coal produced after the commencement of the bill. This will ensure that there is no retrospective application of the rate.

These changes, once enacted, will ensure that the manner in which coal royalties are calculated and varied is consistent across all brown coal companies including Alcoa.

I commend the bill to the house.

Debate adjourned on motion of Hon. BILL FORWOOD (Templestowe).

Debate adjourned until next day.

Hon. Bill Forwood — On a point of order, President, we have been given a second-reading speech which is headed 'Replacement'. I wonder if the minister could explain why it has 'Replacement' across the top, seeing we have just included it in *Hansard.*

Hon. Philip Davis — Does that mean the word 'Replacement' will appear in *Hansard*?

Hon. Bill Forwood — It will now.

Hon. M. R. Thomson — I will very quickly endeavour to ascertain why that word is there.

PRIMARY INDUSTRIES ACTS (FURTHER AMENDMENT) BILL

Second reading

Debate resumed from 19 October; motion of Hon. T. C. THEOPHANOUS (Minister for Energy Industries).

Hon. PHILIP DAVIS (Gippsland) — I rise to speak to the Primary Industries Act (Further Amendment) Bill, which primarily deals with issues relating to pet animals — cats and dogs — but there are some other aspects to it. The bill has two parts. Its amendments to the Prevention of Cruelty to Animals Act clarify what exactly constitutes an offence or a breach of the act and seek to protect animals from any activity that may cause them harm, so pre-empting any possible damage to animals. The amendments expand the grounds on which a permit for a rodeo may be refused and to also place conditions upon the issuing of permits where animal welfare concerns have not been rectified.

The bill outlines how samples of animals are to be taken and establishes the rights of both inspectors and owners with respect to samples, ensuring equal access to relevant tissue samples. The amendments will give inspectors the power to seize impounded animals and animals abandoned on private property and allow for the sale or destruction of the animals if their owner cannot be located. The amendments will give inspectors the power to seize and impound animals if the owners cannot be located.

The opposition has no particular difficulty and indeed would support those amendments, but unfortunately we do not have the choice of supporting one part of the bill and not another. Therefore, I foreshadow that I will be introducing a reasoned amendment which can be circulated now. I formally move:

> That all the words after 'That' be omitted with the view of inserting in their place 'this bill be withdrawn and redrafted — (1) to retain the provisions relating to the Prevention of Cruelty to Animals Act 1986; and (2) following the government undertaking consultation, to reflect the outcomes of such consultation with key stakeholders, including the Municipal Association of Victoria and individual local councils, regarding the financial impact of the legislation on local councils.

I will speak about the reasoned amendment and the provisions of the second part of the bill which deal with amending the Domestic (Feral and Nuisance) Animals Act 1994. It is these matters with which the opposition has some very real concerns. These amendments will result in a significant additional cost impost to both local government and pet animal owners. Of particular concern is the fact that whilst the minister's second-reading speech suggests — indeed clearly implies — that the minister consulted with local government before preparing these amendments, that is clearly not the case. The minister said in the second-reading speech:

> Councils prefer that there be a default starting date across Victoria rather than not have one.

Irrespective of what that particular comment relates to, it clearly and implicitly indicates that the minister consulted with local government in Victoria. I will demonstrate absolutely and unequivocally that this is not the case. Whatever claims have been made by the government to the effect that this bill has been introduced following consultation with one of the primary stakeholder groups which will be dramatically affected is frankly just rubbish. For that reason we believe that the bill should be amended and split so that the Parliament can choose to support the Prevention of Cruelty to Animals Act amendments. Generally speaking the opposition is always inclined to support any measures that will improve the health, safety, welfare and protection from cruelty of creatures that really are so dependent on human beings.

What I would like to do is quickly outline the principal provisions of the amendments to the Domestic (Feral and Nuisance) Animals Act and then go to the reasons for our difficulty with this bill as a whole.

The amendments will require that all pets registered as at 1 May 2007 be microchipped as a more reliable method of identification than collar tags, but will allow councils to make exemptions for a particular class of animals on veterinary advice. The amendment will make it a requirement that all cats and dogs sold from pet shops, breeding establishments, pounds and shelters be microchipped, making them readily identifiable.

The amendments will require local councils to develop a domestic animal management plan to provide greater transparency of the use of funds collected by local councils annually through animal registration fees. The plans will include the policies of the councils on the administration of the act and regulations and other mechanisms for the management of domestic animal populations. The amendments will clarify that animals are either to be sold in accordance with the requirements of the code of practice for the management of dogs and cats in shelters and pounds or destroyed, and the amendments will require that councils accept surrendered animals at council pounds. The minister will be allowed to revoke or suspend the registration of a council-operated pound or shelter or of other service providers where they have failed to comply with the act, regulations or relevant codes of practice.

In a contribution like this, other than reading the bill in detail into *Hansard*, we try to summarise the principal points, which I have attempted to do. However, there are aspects of these proposals which on the face of it may seem meritorious initially and to the enthusiast who would think, 'Yes, this is another step forward in the management of our domestic animal population', but in reality this establishes a regime of bureaucratic responsibility for local government to administer in a way which will burden them with a significant cost.

As I said, whilst the minister in his second-reading speech made the effective assertion that councils had been consulted on this, let me say that the evidence is compelling that that is not the case. I have consulted with every council in Victoria on this matter, and those councils who have responded to me have made it absolutely clear that until the legislation was introduced into the Parliament, they had no idea that these proposals were afoot, and councils have put that clearly in writing. I received one, for example, from the Wyndham City Council. Wyndham is not within my electorate and therefore I do not have a natural constituency affiliation with it, but I am pleased to have received correspondence from the Wyndham City Council. The chief executive officer advises in his correspondence to me that council is disappointed at the imposition of the requirement for a domestic animal management plan without consultation. That seems to be quite emphatic.

Secondly, another of the limited number of examples I will use to prove the point, although there are others, is in a letter the South Gippsland Shire Council wrote to me regarding whether this matter had been canvassed with local government. It says:

> A joint meeting of five Gippsland council representatives on 19 September 2005 highlighted the fact that none of these councils had been consulted in any way prior to the bill being introduced into Parliament. Clearly the first communication was in the *Herald Sun* page 3 dated 9 September 2005

There are parliamentary reasons why I will not use the description of the minister that I would ordinarily be entitled to use of a minister who claimed to have consulted with local government but who had not. It seems to me there is a logical inconsistency here. The minister has claimed to have consulted with local government in relation to this bill and its extraordinary imposts in bureaucracy, accountability and administration — the burden of having to develop management plans every three years and review them every year, and the burden of putting in place protocols and procedures, employment policies, training policies and a whole lot of other requirements which may be fine for a state government department with 5000 or 10 000 people but which create a bureaucratic nightmare for local councils with a handful of staff who are directly involved in their responsibilities for administering local arrangements for domestic and feral animals. That is what councils say.

The two councils I cite firmly make the point that irrespective of a claim made by a minister of the Crown to have consulted with them, that minister has not done so. There is only one word I know to describe a person who knowingly makes an untrue claim, but as much as I want to use that word, I am restrained by the good order of the Parliament. However, that does not get away from the fact that there are members of the government who trifle with the truth; there are members of the government who lie; there are members of the government who consistently tell lies; there are members of the government who lie repeatedly; there are members of the government who introduce legislation into Parliament, claim to have consulted with stakeholders and tell lies about it; there are members of the government who introduce second-reading speeches that contain lies; and there are members of the government who have the effrontery to come into this place and flat out lie.

It is a disgrace that the Minister for Agriculture in the other place purports to have consulted local government — has introduced a second-reading speech that made that claim — when that has been totally repudiated by councils across Victoria. I will not call the Minister for Agriculture in the other place a liar, because that would be unparliamentary. Members of this house can form their own view about that.

Moving along, there are reasons why councils are not enthused about this legislation. One of the reasons is

that there is a provision in what I regard to be a poorly drafted bill in some respects. Clause 14 is headed 'Insertion of section 33A'. New section 33A is headed 'Council animal shelters and pounds must accept surrendered animals'. On the face of it that sounds pretty easy, but there is a significant flaw in the drafting of this bill. New subsection (1) says:

> A Council of a municipal district must accept any dog or cat kept in that municipal district which is given to the Council by the owner of the animal because the owner is no longer willing or able to care for that animal.

I see that the members of the government who are in the house for this debate in large numbers are listening attentively to this debate so that they can understand the complexity of this bill and are focused on every word! I also note their stalwart defence of their minister! In any event, I make the point that new section 33A(1) does not say that those animals must be delivered up to a shelter or pound. It says that a council must accept any dog or cat where the owner wants to give it to the council because they are no longer interested in it.

If I were a customer service officer in a local council, I would be absolutely appalled at the notion of getting boxes of kittens across the counter at the principal office where I was serving customers. I would be appalled at the notion that a large slobbering dog could be brought in on a piece of string and handed across the counter so that I, as the junior officer working as a customer service officer at the front desk of the council building, would be obliged to actually take charge of the animal with no knowledge or experience of or affinity for the handling of large slobbering dogs on binder twine.

This is a bizarre provision. It is the sort of provision that Monty Python would draft — and I am starting to think that the person who drafted this provision is probably the same person who lied about local government being consulted about the bill. Maybe it is the same person, I do not know. All I know is that this bill is seriously flawed and should not proceed in this form. For the reason that local councils are concerned about this provision and others, we believe absolutely the bill should be withdrawn and redrafted.

There are other provisions I have alluded to that councils have expressed real concern about. Clause 20 inserts part 5A, which is headed 'Domestic animal management plans'. The highlight of this section is in new section 68A(1), which states:

> Every Council must, in consultation with the Secretary, prepare at 3 year intervals a domestic animal management plan.

You would not mind doing that perhaps if it involved an A4 sheet of paper and gave some bullet point opportunities to review and reflect about the way you were managing in that municipality, but this sets out a very prescriptive regime which applies to every council in the state. It says further that the management plan must:

> (a) set out a method for evaluating whether the animal control services provided by the Council in its municipal district are adequate to give effect to the requirements of this Act and the regulations; and
>
> (b) outline programs for the training of authorised officers to ensure that they can properly administer and enforce the requirements of this Act in the Council's municipal district; and
>
> (c) outline programs, services and strategies which the Council intends to pursue in its municipal district —
>
> (i) to promote and encourage the responsible ownership of dogs and cats; and
>
> (ii) to ensure that people comply with this Act, the regulations and …

It goes on and on for pages and provides for reviews and reports. The councils will be so busy writing reports they will not be spending any time dealing with animals. This is just bizarre. The reality is that not every council has the same number of employees and the same revenue base. There is a disparate range of councils across the state. For example, Mr Bishop might consider how small rural councils in north-western Victoria, such as the Shire of Buloke, would get on preparing to implement such a detailed and comprehensive management plan.

Hon. B. W. Bishop — It would probably have to put someone else on.

Hon. PHILIP DAVIS — It would probably put on someone to write the plan and do the reviews, and sack somebody who is actually doing a productive job of work, like fixing roads?

Hon. B. W. Bishop — All paid for by the ratepayers!

Hon. PHILIP DAVIS — Indeed as Mr Bishop interjected, perhaps the council could increase the rates. That is how this will be paid for. Either the ratepayers who are owners of pets will be forced to pay more at the end of the day or services in other areas of municipal administration will be cut. The government has made a proposal to increase the burden on local councils again without providing any financial support. Ultimately the minister is responsible, but this is the brainwave of people who have no understanding of

how the real world works outside the bureaucracy of the public sector.

The reality is that a huge financial liability is being imposed by what is proposed in this bill on local councils, their ratepayers and the owners of pet dogs and cats. It is outrageous that this bill should be presented to the Parliament in this form and with the claim being made that local councils have been consulted. The government has lied about this, and it is a disgrace. For that reason, if there were no other reasons, there would be a case to say Parliament should reject such a bill.

There are other matters of concern regarding this legislation. My concern is that these increased costs will be passed on to people who have quiet enjoyment from their pets; in many cases companionship through a pet is a critical part of their wellbeing. There are many people who live alone and whose enjoyment of life is enhanced enormously by their companion animals. Many of those people are not in good financial circumstances, and that is a reflection of their lifestyle; they have limited social opportunities and therefore they are lonely; their pets form a significant part of their well-being.

Hon. J. A. Vogels — And security for a lot of older people.

Hon. PHILIP DAVIS — Indeed, as my colleague Mr Vogels interjects, older people also find comfort and security in their companion animals. This will increase the costs to those people of keeping animals. That is exceedingly disappointing.

Having said all that, let me go to a few other issues. I had representations from a number of organisations. I regret that in the course of a debate like this one cannot deal with all the matters raised by the many people who have responded to a request for advice. I understand the Australian Companion Animal Council provided advice to all members of Parliament and had something to say in regard to the legislation:

> The Australian Companion Animal Council is concerned that some of the proposed amendments will create laws that are overly complex, unnecessary and a financial impost to pet owners. This will reduce the direct benefits that pet ownership has for the majority of Victorians and the broader benefits for the community as a whole.

It is quite reasonable for them to say that.

It is also useful for us to consider other aspects of the bill. One matter that is always controversial is how to deal with dangerous dogs. Unfortunately it would seem that the government has fallen for the placebo of trying to remedy a perceived problem by dealing with breed-specific legislation as its only device to deal with the significant community concern about dangerous dogs.

The primary issue with dogs and dog attacks is that of responsible pet ownership. There are a lot of irresponsible pet owners; there are a lot of people who do not control their animals. There are people who allow their animals to be a nuisance by barking endlessly in the suburbs and disturbing the quiet enjoyment of people in their homes because they do not take control of their animals, consequently disturbing the neighbours. There are people who are grossly irresponsible by allowing their pets to run free in public parks where clear council controls require animals to be on the leash.

For my own sake I will make a personal observation. I regularly enjoy the early morning sunshine, at this time of the year at least, while strolling through the Carlton Gardens, which is one of the more scenic parts of Melbourne. At every entrance and pathway there is a clear and unambiguous sign saying dogs must be on leashes. I am a farmer by background and I cannot ever remember walking around the farm with a dog on a leash but it was only me and the dog.

When you mix people and dogs, often people feel for good or bad reasons somewhat intimidated. Their quiet enjoyment, their passive recreation of strolling through a beautiful park can be disturbed by large, slobbering dogs which are roaming free. At 5.30 in the morning, when you are not yet quite fully awake, a large slobbering dog bouncing up to you is a little disturbing.

Hon. J. A. Vogels — Better than a barking savage one.

Hon. PHILIP DAVIS — I will pick up Mr Vogels's interjection, because I was actually just leading into it. Even more disturbing is the slobbering, barking, aggressive dog which also indicates some displeasure at having its quiet enjoyment of the park disturbed by a pedestrian. I have to say there are many people in the community who are irresponsible pet owners, who do not understand their obligations to their fellow human beings to control their dogs.

The predominant theme in the circumstances in which people are regrettably assailed or physically attacked by a dog, of which we regularly read reports, is when the person who has been attacked by a dog is the victim of an irresponsible pet owner. Action should be taken to deal with irresponsible pet owners. Responsible pet owners should be supported, and therefore I believe it is

an obligation on the government to address irresponsible pet ownership rather than dealing with this issue as a placebo, through using breed-specific legislation which will have absolutely no impact on the number of victims that annually suffer dog attacks.

I am interested to note this is the view of the Australian Veterinary Association. Comments from the AVA include these:

> In the last year about 50 attacks by American pit bull terriers or crossbreeds were reported, amounting to less than 4 per cent of attacks that required a hospital visit so this legislation will leave the larger problem of dangerous dogs unresolved.
>
> While there are occasional incidents of dog attacks involving a dog that is normally well behaved and which has a responsible owner, the vast majority of serious dog attacks involve irresponsible or illegal behaviour on the part of the owner resulting in a situation where a potentially dangerous dog actually attacks someone.
>
> …
>
> Countries including the UK banned pit bulls about 15 or so years ago and the incidence and severity of dog attacks in these countries has not changed as other breeds took their place …

The comments from the AVA conclude:

> Sadly governments are merely taking the politically easy option of wanting to be seen by the public to be doing something but failing to provide a solution that addresses the underlying problem …

I make the point that responsible pet ownership is more than just having a pet in a backyard; it is actually ensuring that the animal is properly socially integrated — that is, the animal is trained to behave appropriately in the presence of people. Too often we see that the irresponsible pet owner is the causal factor in dog attacks because they have not dealt with the proper training and socialisation of the animal.

I do not believe that a placebo in the form of breed-specific legislation will have any real impact on the number and severity of dog attacks. It is almost certainly true that the people involved in preparing this legislation do not believe that. As the AVA says, the government is taking an action to be seen to be doing something, which will appeal to an uninformed but populist view of the issue. While I do not intend to spend a lot more time on the issue of breed-specific legislation, I note further that legislation introduced in other jurisdictions has proved to be inadequate. As we speak, similar legislation has been repealed in the US state of Ohio and is currently being repealed in the city of Vancouver in Canada. They have found that this type of legislation is neither needed nor works.

It is an absolute shame that we are avoiding dealing more appropriately with ensuring that people who wish to own a pet will undertake the appropriate form of management of that animal, just as farmers are expected to properly manage their animals. Anyone who has grown up in a farming environment understands that at the end of the day beyond family obligations the most important function farmers of livestock have is to tend their animals. Obviously that goes to meeting the feed, water and other health needs of sheep, cattle and other animals in our care. Most of us who have been farmers have had a number of dogs. One makes certain assumptions. Working dogs behave absolutely appropriately in all circumstances because farmers invest time in ensuring that the animals are part of the farm and family environments and behave in a way that supports the activities of the farms on which they are working dogs. Unfortunately, often I see around the town people who take a very cavalier approach to their responsibilities in regard to the proper management of their pets.

In conclusion on the breed-specific aspects of the bill, I note that the Victorian Canine Association wrote an open letter to all members of Parliament confirming that it opposed breed-specific legislation in any form and again stating that what is needed is a better approach to managing irresponsible pet owners, rather than trying to look for a placebo that may be particularly popular.

I do not intend to go much further because I am cognisant of the fact that time is on the wing, but I will say a couple more things briefly, coming back to my central point about the cost burden on local communities. It is clear that the legislation will indisputably increase the costs of keeping animals — it will increase the local government costs of administering the registration system for pets and will burden local government with an insidious bureaucratic arrangement — none of which will be compensated for with any contribution by the state; they will all be borne by local councils, ratepayers and pet owners.

Therefore I urge the house to support the opposition's reasoned amendment, which proposes that the bill be split — that is, that it be withdrawn and redrafted, retaining the provisions relating to the Prevention of Cruelty to Animals Act, which are sensible, with the other provisions put out for detailed consultation with local councils. Councils deserve that courtesy, which has been denied them, notwithstanding the claims made by the Minister for Agriculture.

Therefore I indicate absolutely clearly that if the opposition's reasoned amendment were to fail we

would consider that we had no recourse but to oppose the bill in its entirety. That will be disappointing. Given that the government has no interest in anything the opposition has to say — as was demonstrated earlier today in its response to the urgency motion — I predict that the government will not take into account this reasoned amendment and therefore at the end of the day the opposition will oppose the bill. It is with regret that we will oppose the bill because if it had been possible we would have liked to have supported simply the amendments to the Prevention of Cruelty to Animals Act. By presenting the bill in this form, the government does not allow us that opportunity.

Sitting suspended 6:28 p.m. until 8:02 p.m.

Hon. B. W. BISHOP (North Western) — I am pleased on behalf of The Nationals to make a contribution to the Primary Industries Acts (Further Amendment) Bill. The purposes of the bill are to amend the Domestic (Feral and Nuisance) Animals Act 1994 and the Prevention of Cruelty to Animals Act 1986. As is usual The Nationals have consulted widely on this bill. As the Honourable Philip Davis said, that consultation was not reciprocated by the government because there is a drought in the government's consultative process, which is a great pity because these bills are often complex. A number of people in our communities would have liked to have made a contribution. The Nationals have had some strong responses from the community and municipalities as well. It was disappointing that the consultative process did not take place at the level that most people thought it should have. I will not go through all the people who responded to The Nationals in that consultative process, but I hope in my contribution tonight I can raise the issues they brought to our attention.

I know this house has spent some time on the subject of dogs and cats. I often wonder how big the section of the department is that deals with these, because we certainly love making amendments to these particular acts relating to animals. I am not suggesting for one moment that the treatment of animals in our community is not important, but we have certainly had a fair lick at these amendments over time.

The government may have missed an opportunity in this bill by not going out and talking to the municipalities to ensure there was a far better understanding of the issues raised and the effect of the reasoned amendment moved by the opposition which, obviously, The Nationals will have no difficulty supporting. Further, in the committee stage The Nationals will move amendments which I now ask to be circulated in my name and which will deal particularly with working farm dogs.

The Nationals amendments circulated by Hon. B. W. BISHOP (North Western) pursuant to sessional orders.

Hon. B. W. BISHOP — We have dealt in this house many times with dogs and cats. The Honourable Graeme Stoney and I have many times recounted the farm dogs our families have owned for many years. Certainly anyone who has come from a farming or country background has fond memories of the dogs they have had, particularly the working dogs on our farms. It was brought home to me the other day when I attended the Swan Hill show where I saw some superb working dogs that were tremendously keen, enthusiastic and well trained. I also went to the Hopetoun show where the same process was being applied with the dog trials. Those dogs performed superbly at the Hopetoun show. Working dogs are a real feature of the country shows now. Even the talents of the young working dogs are amazing, which reflects on the breeding over many years. I shall talk about that later.

I suspect there is some difficulty in keeping our country shows going. There are certainly a lot of horses at the country shows now. The Hopetoun show was opened by Jacinta Allan Gaines of ABC fame. Jacinta was born around that particular area and she did an excellent job of opening the show. It was a great day for everyone who was there. I congratulate all the committees that worked so hard to put on those country shows.

The amendments The Nationals wish to move are straightforward. We simply want a clear definition of a primary producer and a farmer. If they are fair dinkum primary producers we want, through these amendments, working dogs exempted from certain requirements in the bill. I say 'working dogs' because most of us with a country background have had many working dogs on our farms. I will resist the temptation to talk about working dogs tonight because of the shortness of time available.

I am talking about a genuine primary producer and a genuine working dog. Those dogs are quite valuable. They take a lot of training and are worth an extraordinary amount of resources on a farm because of the time they save the farmer and the ease with which one can work one's stock. There is no doubt that any farmer who has had a good dog cares for that dog as well as humanly possible. In talking about caring for farm working dogs I make the point that farm working dogs are tied up if they are not working. One could ask,

'Why wouldn't you let the dog run around and have much more freedom?'. The point is that the dogs are well cared for. They are not only loyal companions and part of the farm, indeed many of them are part of the family. They are cared for extremely well and are generally tied up when they are not working.

We are suggesting through our amendments that farm working dogs should not have to be microchipped in relation to their registration. We put to the house that our farm working dogs will not wander and end up in the pound, for a number of reasons. Anyone who has been on a farm and seen the good dogs would know that they are a valued commodity, so you would need to keep a close check on them for that very reason. They are certainly the opposite to town dogs which are supposedly pets. If you, as a farmer, talk to anyone close to the town — —

Mr Viney — What is the problem with microchipping them?

Hon. B. W. BISHOP — I will get to that now. Microchipping is an added expense. Farms are far away from the town, and the dog has got to be taken in there, microchipped and brought back again. We are suggesting quite strongly to Mr Viney that those dogs are cared for, they are generally tied up and not likely to be wandering around, and they are certainly nowhere near a pound because most of them would be on properties a substantial distance from the town. I do not want to pick on town dogs but the fact is that if farmers live close to towns, they certainly become concerned particularly about their sheep if dogs are wandering around. We think it most unlikely that a farm working dog would wander to the same extent that a town dog would.

The next exclusion we are suggesting strongly through our amendments is the requirement to have the dogs desexed. We do not want the council to have that discretion in the case of farm working dogs. We know that councils have the discretion but we are suggesting in the instance of farm working dogs that councils should not be loaded with that responsibility. I will come back to that.

I make the point too that most farmers are not registered dog breeders. Most farmers breed their own dogs. I would suggest that not many working dogs on farm are bought. I have seen it all my life — you might have a good dog and your neighbour has a female dog, and both are good working dogs. Often neighbours will put those resources together. There have been some tremendous dogs bred out of such a cooperative activity, but I remind the house that farmers are not registered breeders.

I make an appeal to the house to take a practical look at this issue. I believe the arguments are quite sound and quite strong. We will further those arguments in the committee stage. I make an appeal to members of the house to have good commonsense and show understanding of this issue that is prevalent in country Victoria. I am sure that will be sympathetically dealt with in the committee stage.

It is a reasonably big department, which is reasonable when you consider how our animals need to be cared for throughout the state. I think that is fair enough. We love amending these couple of bills and each time we do that, we are keen on telling our municipalities what they can and cannot do but with no monetary assistance. I am sure, after talking to the municipalities, that however we amend these bills will cost more for the municipalities. Someone once said, 'It will mean that pet owners will pay more'. It is not only the owners of pet dogs and cats who will pay more; it is obviously the general ratepayer as well. I would like to discuss some of that cost-shifting which this government has got down almost to an art form.

On page 17 of the bill is proposed section 68A, which is headed 'Councils to prepare domestic animal management plans'. Without my going into too much detail, it provides:

> (1) Every council must, in consultation with the Secretary, prepare at 3 year intervals a domestic animal management plan.

The description of what they need to do is listed on the remainder of that page, over the next page and halfway down the following page. A substantial task is involved there, and I suspect it would take many hours to complete. It might even take having another person on the municipal staff to fulfil responsibilities in that area. It is a cost-shifting exercise for the municipalities in relation to the amendments the house is discussing.

On page 13, clause 14, which inserts proposed section 33A, is an absolute ripper. It says:

> Council animal shelters and pounds must accept surrendered animals.

Members should listen to this:

> (1) A Council of a municipal district must accept any dog or cat kept in that municipal district which is given to the Council by the owner of the animal because the owner is no longer willing or able to care for that animal.

Therefore if someone turns up and just hands the animal over, it is at the cost of the municipality, because it goes on:

> (2) On the Council taking possession of a dog or cat under sub-section (1) —
>
> (a) ownership in the dog or cat passes from the owner to the Council …

The council is responsible at that stage, and:

> (b) the Council must deal with the dog or cat in accordance with this Act, the regulations and any relevant Code of Practice made under section 59.

That is quite a responsibility to be lumped onto a council. As the Honourable Philip Davis said in his contribution, a person could turn up there because they have found a dog wandering around their place. They could drag it in on a bit of string, baling twine or a lead and, I suspect, simply tie it up at the front counter of the council. If it is a big dog, they will not be able to lift it over the counter. I do not know how they will get it in there. It is then the responsibility of the person at the desk to manage that dog if there is no officer in attendance. We would suggest these amendments amount to a substantial cost-shifting exercise onto a municipality.

As I said previously, we are keen on amending the bill; we had a go in 2003. We then set the standards on how microchips should be implanted as well as the standards of the microchips themselves being implanted in cats and dogs. At that time, if I remember rightly, we recognised there was a tremendous amount of database space available for registering our animals but a lot of the databases were different; I think the approximately eight databases in operation were not compatible. The amendments we made in 2003 were aimed at making them much more compatible.

As I understand it, in the past we have had a mixed bag of performance by local councils. Some did not scan microchips. Some animals were impounded, sold or destroyed, and some might have be returned to their owners. It was a bit of a mixed bag. I fervently hope that those databases are now compatible and moving with the modern age so that owners of pets that stray, particularly in a town, will be able to recover their animals without too much trouble.

On the subject of dangerous and declared dogs, we added ‘menacing and restricted breeds’ to that central register. It was a good idea that a central register be available so we can ensure better tracking of those dogs. I certainly hope there is compatibility on the database on that issue, because it is better to keep track of animals in the municipalities. A track needs to be kept of an animal belonging to a person who may shift from one municipality to another.

We had another look at these amendments in the bill in August this year. It was excellent that ministers could agree to have an order of one state served in another. I have stood in this house many times when I have been concerned about the lack of compatibility over state borders. I remember the amendments passed that have made the act a lot better.

The amendments in this bill propose that if you want to register a dog or a cat, as from May 2007 it must be microchipped. Councils have the power to make exceptions, but as I understand it you will be unable to sell a dog or a cat unless it has a microchip installed. In fact it will be an offence to do otherwise, and you will not even be able to give it away. That is a strong amendment. I suspect that provision may well increase the number of dumped cats and dogs, but a study of history after this act comes into force will clarify that.

There is still a lot of work to be done on responsible pet ownership. The owners who look after their animals as well as possible are annoyed when they see people not taking care of their animals and not facing up to their responsibilities.

There is always the vexed question in this issue of how long a council should keep an animal which is handed over to it and which becomes its property. As I said, the council must accept ownership of the animal, so whatever happens to it at that stage there will be a cost to the council — whether it maintains and cares for the animal for a while, destroys it or finds the owner.

This bill requires the compulsory desexing of dangerous and restricted dogs but there are some exemptions for guard dogs and dogs that are trained to protect. It allows councils to set registration fees for dangerous, menacing or restricted breeds, and it prohibits new registrations of restricted breed dogs but allows previous registrations to continue. With that sort of issue, no doubt over time some breeds of dog will be effectively removed from the community. Some breeders have expressed concern to us about that issue, and that is something that will need to be worked out over time as the legislation takes effect.

When we had a briefing on the bill we struck an interesting issue about the routine incorporation of documents and regulations. It is obvious that that may save time and may be more efficient, but we have heard complaints during debate on this bill about the lack of a

consultative process. We are concerned that if that routine incorporation of documents and regulations goes too far, we could lose that consultative process and may even lose the regulatory impact statement process as well. Whilst it might seem a reasonable thing to do, the important principle is to ensure that the checks and balances, and democracy, are carried through in this bill.

The Prevention of Cruelty to Animals Act is a real grab bag. I was very interested to see that it deals with permits for rodeos. They need to have a permit 28 days before a rodeo. You would wonder why, when people go to such expense and trouble to organise a rodeo, some of them leave getting a permit until the last minute. This makes clear that they must have a permit 28 days before the event.

It also allows inspectors to sample carcasses, to impound animals and deal with animals that may have been abandoned. Unfortunately we again come back to the responsibility involved in owning animals. Some people do not care for them, so that is a good clause in the bill which will ensure that animals can be looked after, one way or another, if they have been abandoned.

In conclusion, I urge the house to firstly support the reasoned amendment put up by the opposition — The Nationals certainly will. Secondly, if that is defeated I urge the house in the committee stage of this bill to support the amendments I have proposed on behalf of The Nationals, particularly those related to farm working dogs, in order to inject some practicality and sheer commonsense into the debate on that issue. I look forward to that support later this evening.

Mr VINEY (Chelsea) — I am very pleased to stand in support of the Primary Industries Acts (Further Amendment) Bill which represents the continuation of a suite of reforms and improvements that have been made during the life of the Bracks government in respect of the protection and management of domestic animals in Victoria.

A number of important changes have been made to this legislation. The first of these is the compulsory microchipping of domestic animals. This is an important reform and one that has been significantly acknowledged by the Royal Society for the Prevention of Cruelty to Animals. On the RSPCA web site, in a report headed 'Victorian government introduces compulsory microchipping from 2007', is a paragraph which says:

> The RSPCA is delighted with the new legislation and congratulates the Victorian government for being proactive in this matter. Chief executive officer, Maria Mercurio stating 'we support this legislation 100 per cent'.

This quote was of course picked up by both metropolitan and suburban newspapers, and an article in the *Frankston Standard Leader* of 19 September picked up on the RSPCA's support for this project. The article says:

> RSPCA president, Dr Hugh Wirth, said the move was 'the last step before the compulsory microchipping of all pets'.

The article went on to quote Dr Wirth as having said that microchipping was:

> … 'the only legal marker for registered cats and dogs' which they should do at the start of next year.
>
> 'The law's already in place, it's just a case of councils doing it. It just takes a bit of political will …

That political will is being demonstrated in this legislation.

While I am talking about the proposal in this legislation for compulsory microchipping, I pick up the point raised by Mr Bishop about the cost. He expressed concern that the cost of microchipping is a further impost on farmers who have, as he pointed out, quite valuable working dogs on their farms.

Hon. B. W. Bishop — Good working dogs.

Mr VINEY — Good working dogs. In fact Mr Bishop and I have talked about good working dogs in this chamber, and I talked about my experience with a good working dog on the dairy farm we had many years ago.

It is true that for people who own pets there will be a cost for microchipping, but responsible pet owners accept that there is a cost involved in owning domestic animals, whether they be working animals such as working dogs, or, as Mr Bishop said, domestic town dogs. Working dogs are often very valuable because they do excellent work. I understand that the cost of compulsory microchipping is about $50 per animal if done through a veterinary surgeon, and about $25 per animal if done during regular council days that are often run by councils for this purpose. I suggest to Mr Bishop that a cost of $25 or $50 for microchipping valuable working dogs is not much of a cost and in fact offers further protection for the farmers who own working dogs because they are, as Mr Bishop pointed out, valuable dogs.

I advise Mr Bishop that what needs to be remembered is that to offset that cost, nearly every council offers a discount on registration fees for animals that are

microchipped; frequently of the order of $30 or $40. Therefore, it would not take more than a couple of years to recoup the cost of microchipping valuable animals through that process.

The legislation also covers the powers of councils in managing the overpopulation rates of domestic animals, and the act has been amended to provide that councils may make an order under the legislation requiring the compulsory desexing of cats and dogs on registration or re-registration. That of course does not apply to animals kept as part of a domestic animal business or registered with an applicable organisation of which the owner is currently a member. Councils can also exempt certain dogs from these requirements — for example, working dogs.

The legislation also introduces some very welcome changes in the controls for dangerous, menacing and restricted breed dogs. I know there is substantial concern in the community about the management of these kinds of dogs, and matters related to them are frequently brought to the attention of members of Parliament. People come into electoral offices to complain about dangerous and menacing dogs or the housing of menacing breeds in suburban areas or in towns, and these changes will be widely welcomed by the community.

In particular, it is time to cut out some of the quite dangerous breeds associated with this legislation. We need to remember that there are, and I have forgotten the figure, many thousands of cases of dog bites in Victoria each year where people have to go to hospital. My memory is that it is of the order of 30 000 people, but I stand to be corrected on that. It is a substantial number and it is important that governments minimise this damage which occurs all too often to children and other vulnerable people in our community.

There are other amendments in relation to animal shelters and pounds. Mr Bishop raised the requirement for councils to accept surrendered cats and dogs at council pounds. He was concerned that this was a further impost on local government. As I understand it, almost all councils already do this; there are only a small number that do not. The problem is that those councils which refuse to do it are placing the burden on charitable organisations which are not able to recoup the cost. Councils can recoup the cost of this requirement through dog and cat registration fees. The difficulty is that if a council does not accept surrendered cats and dogs and they are inappropriately disposed of, then they may be taken to charitable organisations which cannot recoup the cost. On balance this is a welcome change, particularly given almost all councils in Victoria already provide that service.

There are also some changes in relation to the Prevention of Cruelty to Animals Act, covering a range of areas, including some changes to fix up the law in relation to the excessive confinement of an animal and making it an offence to fail to provide an animal with sufficient food, drink and shelter. There are changes in relation to an act or omission causing or likely to cause pain or suffering and the like.

As Mr Bishop pointed out, there are other changes in relation to rodeo permits. The act currently provides limited grounds on which the department head may refuse to issue a permit to conduct a rodeo or a rodeo school. These grounds are to be expanded to provide that a permit may be refused in a number of circumstances, including where the application is not lodged 28 days before the proposed event or where the applicant has been found guilty of animal cruelty, aggravated cruelty or of non-compliance with the regulations relating to rodeos. Currently the act requires a conviction of more than two offences. The act will also be amended to enable the department head to place special conditions on permits to address the situation where inspectors advise stock contractors of particular problems with the management of rodeos which have not been rectified at the next rodeo.

Along with some other minor amendments in relation to persons in charge of animals and various notices, this is a raft of reforms that continue this government's commitment to ensuring the proper management and care of domestic animals, and ensuring that dangerous dogs and the overpopulation of dogs and cats in our community are managed more effectively. I commend the bill to the house.

Hon. J. A. VOGELS (Western) — This is another ill-thought-out piece of legislation introduced by the Bracks government. It will not work and will have to be amended in the not-too-distant future. We have moved a reasoned amendment, and if that is not accepted we will be opposing this bill.

When going through the bill previously the Leader of the Opposition covered most of the issues very thoroughly. I would like to concentrate on a couple of issues: the impact on local government; and the desexing of certain cats and dogs deemed to be dangerous. As usual, councils were not consulted. They first heard about this bill when it was introduced into this house. It reminds me of the old saying that, 'Mad dogs and Englishmen go out in the midday sun'. I suspect whoever cobbled this legislation together was

out in the midday sun because this is going to be a huge impost on local government.

The amendments contained in this bill will mean that if you have a pet — and it could be a very much loved pet — it could be costly if it gets to an age where it needs to be put down. Under this legislation a pet owner says, 'Okay, poor old Bluey' — or Fluff — 'has reached his use-by date'. They would go to the vet and get their pet put down and then have to dispose of it. I understand that under this legislation you would take the animal to the front office of the local council and leave it there, and the council would have to pay for the vet to give it a needle and the council would have to dispose of the remains. That would have to be a cost on ratepayers. It is going to cost money. All these things cost money, so there will be a direct cost shift onto local government.

Councils will now have to draw up management plans every year, and that is going to take time. I do not think a lot of people in this Parliament understand how it works in rural Victoria. The West Wimmera, Alpine or Corangamite shire council areas might cover 10 000 square kilometres. How in the hell is a council officer going to work out which dogs are dangerous and which are not dangerous, which are on people's properties and which need desexing? I have no idea, and I do not think it is at all possible. This legislation cannot and will not work, and at the end of the day it will have to come back into this house.

I was talking to the local vet in Timboon not long ago. He said to me, 'John, under this bill pit bull terriers need to be desexed because they are a dangerous breed'. We are going to breed them out of existence because obviously if you desex an animal it is not going to breed; we all understand that. The Australian Veterinary Association does not consider breed-specific legislation to be necessary. It says that pit bull terriers and crosses only account for 4 per cent of attacks requiring hospitalisation. It says there is more evidence that irresponsible ownership of any large dog is more likely to be the factor for most serious dog attacks, and I can understand that.

If you look at a lot of suburbs, rural towns and regional cities you see there are people with a small house or a unit who have an Alsatian or a working dog sitting in their little backyard. A dog should not be there. It will get bored, bark all night and upset the neighbourhood. If it gets out it will probably bite someone because it is frustrated. I believe irresponsible ownership causes most of the problems with dog attacks rather than the dogs themselves.

The interesting thing is that this vet told me similar legislation has gone through the Queensland Parliament and apparently is being challenged in the courts at the moment, because the question is: when is a dog is a dog is a dog? He has told me there is no test available to identify a specific breed of dog. A DNA sample will tell you it is a dog but it will not tell you whether it is a pit bull, a German shepherd, a blue heeler or a Maltese terrier. How are you going to test so you are able to say, 'This is a pit bull terrier' especially when you start getting into cross-breeds?

I could probably say, 'Let's have a look at the human race'. There is probably a DNA test that shows we are human, we are homo sapiens. Then there are Dutch, English, French, Italian and Irish humans — and members of some races are more short-tempered than others. The Dutch are very amiable and very nice people, but some people out there are more short-tempered. Then we have Asian, African, Turkish and Italian humans — you name it. How do you test what breed we are? We are all humans. The vet has told me that with dogs it is not possible through testing to say, 'This is a pit bull terrier', or, 'That is a German shepherd'. It is a dog. How are you going to enforce this legislation when there is no test available to prove that this dog needs to be desexed because it is a pit bull terrier? You cannot prove it. You can look at it and say, 'Yes, that looks like a pit bull terrier', but can you prove it?

My understanding is that breed-specific legislation has been used in other places, such as Ohio in the USA, the city of Vancouver in Canada and also Queensland. The Queensland legislation is currently being repealed because it did not stack up. I think the Labor Party has as usual rushed into introducing this legislation knowing absolutely nothing about the issue and has shifted the costs to local government without even talking to local government about it. I think it is more the people on the other side of this house who are barking mad, not the dogs in people's backyards. The opposition will be moving a reasoned amendment and then opposing the bill if its amendment is not accepted.

Hon. KAYE DARVENIZA (Melbourne West) — I am pleased to make a contribution in this important debate on the Primary Industries Acts (Further Amendment) Bill. All of us in this house and in the general community have only to read the newspapers, watch television or access other forms of media to see the many stories about the number of domestic animals that are roaming our streets, the cat population being out of control and the many disturbing stories of individuals, often children, being attacked and even killed by out-of-control dangerous dogs to know that

dangerous animals are a menace. People are afraid for their own safety as well as for the safety of their families and pets, because sometimes these dangerous animals attack not only people but also other domestic animals. I am very committed to seeing that the proper laws and controls are put in place to govern domestic animals. I am a dog owner and a dog lover, and I have two dogs called Cully and Maeve. I spend a lot of time walking and training my dogs and being involved in the care of animals.

I am always pleased to speak in support of a bill such as this, which will ensure that laws are in place for councils to insist on controls to restrict dangerous or menacing dog breeds. I am also very pleased to see provisions on microchipping included in this bill. Microchipping is very important in returning lost animals to their owners. When animals stray or get lost owners can become very distressed and concerned. This bill will ensure that microchipping is put in place for all animals as part of their registration so that if they become lost their owners can be located.

Microchipping will also stop people dumping animals. People often dump dogs when they are no longer the little fluffy pup they first purchased or were first given as a gift. The bill amends the Domestic (Feral and Nuisance) Animals Act and the Prevention of Cruelty to Animals Act. We want restrictions put in place so that animals will be bred only by licensed breeders and the numbers and types of animals will be controlled. We also want councils to have the power to deal with stray animals that are roaming the streets. They need the power to collect and impound them, hopefully find their owners and, if necessary, destroy the animals. I am pleased with the way the bill clarifies that councils may make orders that cats be confined to particular properties in parts of their municipal districts. Roaming cats and dogs are a risk to native birds and animals. I am also pleased that the bill provides for councils to require the compulsory desexing of cats and dogs within their municipalities and allows exemptions for registered domestic animal breeders.

I am also pleased to see that under the bill councils will be required to develop a domestic animals management plan directed at addressing the overpopulation of unowned cats. Unowned cats and cats that are not properly restrained are a menace and cause a great deal of damage. We want to prevent cruelty to animals in any way we can. I am pleased to see that this bill does that by clarifying and improving the enforcement provisions under section 9 of the Prevention of Cruelty to Animals Act, which deals with cruelty offences.

It is also pleasing that the bill provides for offences relating to the overloading and overcrowding of animals — whether they are being housed or transported in an overcrowded situation. We have all seen dreadful examples of this when driving along a highway or byway. It is very distressing to see animals crushed into trucks, with legs and heads sticking out; the animals are obviously down. Transportation is really important, as is their housing.

The bill amends the powers of inspectors so that they will be able to do their job, and do it well. That includes being able to take photos, make video recordings and sketches, and being able to enter a person's premises under a warrant.

This is a very good bill. It adds to the other legislation our government has introduced to prevent cruelty to animals. It also strengthens provisions for managing domestic, feral and nuisance animals in the community. This is a very real issue on so many different levels and fronts. The bill addresses many of the issues that are of great concern to the community. They certainly concern me, and they concern many others in the community. I know this bill will be welcomed, and I am sure that it will be embraced by councils and the community alike. It is a very good bill. I commend it to the house and wish it a very speedy passage.

Ms HADDEN (Ballarat) — I rise to speak on the Primary Industries Acts (Further Amendment) Bill. It is a shame the government and the Minister for Agriculture in the other place, the Honourable Bob Cameron, have not fully, thoroughly and properly consulted, because, had they done so, they would not have presented such a flawed bill to Parliament.

The bill amends the Domestic (Feral and Nuisance) Animals Act 1994 and the Prevention of Cruelty to Animals Act 1986. It provides for the desexing and permanent identification of dogs and cats, it prohibits the keeping of restricted-breed dogs, it prohibits the sale of dogs and cats unless they are permanently identified, it requires councils to prepare domestic animal management plans and it generally provides for improvements to the administration and enforcement provisions of the principal act.

The provisions amending the Prevention of Cruelty to Animals Act 1986 are very sensible. They deal with rodeos and the confinement of animals. The bill makes confinement an offence if it causes or is likely to cause unreasonable pain or suffering to an animal. The offences in section 9(1)(c) and 9(1)(e) of the principal act will be made out where the act or omission results in unreasonable pain or suffering being caused to an

animal. Part 3 of the bill also requires permits to be obtained at least 28 days before the rodeo or rodeo school is to be held. That part of the bill is sensible, but other than that it is flawed. The minister and government should go back to the drawing board.

Clause 20 requires councils to prepare domestic animal management plans every three years. That would place quite an onerous task on a local council, which would also be required to review its domestic animal management plan annually and, if appropriate, amend that plan, provide the secretary with a copy of the plan and any amendments made to it and publish an evaluation of its implementation in its annual report.

Clearly this is only cost-shifting by this government, which has become very adept at shifting not only costs but also responsibilities to local government. Quite honestly if the government actually consulted, it might find that rural councils are in a very different position to Melbourne and metropolitan councils. For example, many dog, cat or cattle officers are also part-time by-laws and parking infringement officers, whose hours are from 9.00 a.m. to 5.00 p.m. at rural councils. So if a cat, dog or cow escapes outside those times, it will have a lovely time roaming the countryside. In the shire where I live, Hepburn, the by-laws officer spends most of his or her time in the town of Daylesford, booking all the tourists who come and flout the parking rules. The government certainly has not thought this through at all.

The other problem in the bill is clause 14 because it provides that a council must accept any dog or cat that is handed over to the council because the owner is no longer willing or able to care for it. Council offices are open only between 9.00 a.m. and 5.00 p.m. generally, so what happens if a person says, 'I am no longer willing or able to care for my animal or animals'? What will they do with them? Will they drop the animal at the front door of the Daylesford town hall; if so, what happens then? Will the animal wander the streets of Daylesford until the by-laws officer comes on deck at 9.00 a.m. the next morning? It simply will not work. It is all about responsible pet ownership — it is about managing the deed and not punishing the breed.

The minister announced this so-called reform on 4 September but he forgot to consult with the major stakeholders who should have been consulted. I have checked the Victorian Local Governance Association and the Municipal Association of Victoria web sites, and there is nothing on those sites about this bill. I would have thought this would have been a major issue that the VLGA and the MAV would have had in their media releases and bulletins.

There was plenty of information on the Glen Eira council sacking by the Minister for Local Government and about community building, but this bill should have been prime time on the MAV and VLGA web sites. I can only presume that they were not consulted; otherwise this certainly should have formed part of their bulletins and their press releases, but there is nothing to be seen.

The other issue is in relation to the education of dog and cat owners and responsible pet ownership. This bill does not address that — and let us not be in cloud-cuckoo-land, it simply will not. I have had a major group come and complain to me that it was not consulted; in fact is has complained to me that not only did the Minister for Agriculture in the other place ignore them and refuse their requests to meet with him but also the member for Ballarat East in the other place refused to meet them.

Members of the American Pit Bull Terrier Club of Australia are responsible owners of their pit bulls. The club has contacted me in recent weeks and was very pleased that I had made the effort and took the time — as of course I should as the local member — to meet with it and discuss and listen to its concerns. Its concerns about this bill were numerous. Specifically it said this bill targets an individual dog breed. It had prepared a briefing paper for the minister, with the phrase at the bottom saying 'Punish the deed, not the breed' but unfortunately the Honourable Bob Cameron will not have read that because he refused to meet with them as did Mr Howard, the member for Ballarat East.

The American Pit Bull Club of Australia said to me and wrote in its letter to the Minister for Agriculture dated 10 September — which was a Saturday, so that is how serious it was about getting its views across — that it had been attempting to contact the minister about the problem of dog attacks in the community. It said it was disappointed that it had been unsuccessful in these attempts and:

> … you have now put a bill before the Victorian Parliament that will have no effect in reducing serious dog attacks but will have a significant effect on responsible dog owners and their well-behaved dogs.

That is what this debate is all about. The club went on further to say:

> How can a government elected on promises of accountability and community consultation fail to consult with those who must be considered as the major stakeholder

and the emphasis is on 'major stakeholder' —

> in this issue?

> The only conclusion we can draw is that you are aware your restricted breed initiatives are flawed and you are attempting to avoid scrutiny — I can assure you we will not go away until this government acts responsibly in providing legislative responses that will reduce dog attacks in the community.
>
> Breed-specific legislation is nothing more than a political 'fix' aimed at creating the perception that the government is addressing the issue —

when in fact it is not addressing the issue. It said further:

> Legislation aimed at specific breeds of dog have been attempted both internationally and in Australia. In all cases this has failed to achieve any reduction in dog attacks, but has resulted in moving much-needed resources and focus away from reducing dog attacks.

The resources and focus should be on responsible pet ownership and education of owners, not on punishing the breed when the government should be punishing the deed of irresponsible dog ownership. The club went on to say of the government's own department:

> … the Bureau of Animal Welfare) suggests that there [have] been in excess of 3000 dog attacks reported by councils. Fifty of these are recorded as American pit bull terriers. This data is unreliable for many reasons …

because they were alleged to be pit bulls; they were not positively identified as such. We know that a DNA test will only say it is a dog or a cat; it cannot determine the breed. Even if these reported dog attacks are accurate, this represents about 1.5 per cent of attacks.

> This is even more disturbing when you consider this legislation is based on allegation rather than fact!

The American Pit Bull Terrier Club of Australia asked what the minister claims as the community concerns that require these measures. The letter also asks:

> Why has the government failed to consult stakeholders?
>
> Why has there been no public comment opportunity prior to the bill being introduced to Parliament?
>
> What is the basis of support for this legislation in empirical research, expert opinion or factual data?
>
> What is the expected outcome in dog attack reduction?
>
> What compensation will —

responsible pet owners —

> receive to offset the cost of compliance with the microchipping and desexing?
>
> What compensation will APBT breeders receive for lost income?

These are all legitimate questions. The minister has not answered them. Certainly from what I have heard from government members so far in this debate, those questions have not been answered by them either.

If this government is really serious about stopping, preventing and eliminating dog attacks in our communities, the government needs to target laws to tackle irresponsible ownership of dogs and cats irrespective of breed. The government needs to put proper resources into enforcement and education. Unless it does that, these measures are not going to work.

As far as the government pushing the responsibility and cost shifting to local government, quite frankly local government has had enough. It cannot cope with the amount of cost shifting that is being put on it by both federal and state governments at the moment, and this will only add another round of nightmares for it. I do not know if it is going to cope with it. People in local government will need psychological counselling before the year is out.

In Ballarat if people do not want an animal or if they take someone else's animal as a joke — it used to be a joke some years ago and probably still is by some in the community — they put the dog down the Royal Society for the Prevention of Cruelty to Animals chute. As the RSPCA is not council owned or funded, it operates by the good-natured generosity of the community which donates food, time and money. Often those dogs and cats are euthanased, as we know. This bill will not address that issue. It is not going anywhere near answering the questions that the American Pit Bull Terriers Club asked.

The Victorian Farmers Federation wanted the government to amend the legislation to exempt working farm dogs from any compulsory desexing and microchipping programs, which will be part of The Nationals proposed amendments. Again, there is no compensation for the cost of this. It is a cost. It is about time the government started giving a bit back from the huge grab of money it takes from the community. It is getting worse with all the fees and charges that will be indexed come 1 July every year. I think it was something like $100 million that the Treasurer, Mr Brumby, pulled into the coffers on 1 July this year from the increase in fees and charges. Then there is a grab for what he calls a congestion levy on city car parks. It has to stop. The government has to put something back into communities. It is not doing that and it is creating greater resentment, especially across country Victoria.

I am not going to support the bill. I oppose it. It is deeply flawed and the government has not properly

consulted with all major stakeholders, including the Municipal Association of Victoria and the Victorian Local Governance Association, nor with members of Parliament. It has not consulted with me and I would have thought as an Independent member for Ballarat Province, which is a pretty large, influential electorate, it should jolly well have consulted with me. The government member for Ballarat East in the other place could not be consulted with because he would not meet with the American Pit Bull Terrier Club, but that is par for the course for that member. This is just not good enough. The government should be advocating and resourcing responsible pet ownership and education for that purpose — —

The ACTING PRESIDENT (Hon. J. G. Hilton) — Order! The member's time has expired.

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

Ayes, 21

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

Noes, 19

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

Amendment negatived.

House divided on motion:

Ayes, 25

Argondizzo, Ms
Baxter, Mr
Bishop, Mr
Broad, Ms
Buckingham, Mrs (*Teller*)
Carbines, Ms (*Teller*)
Darveniza, Ms
Drum, Mr
Eren, Mr
Hall, Mr
Hilton, Mr
Jennings, Mr
Lenders, Mr
McQuilten, Mr
Madden, Mr
Mikakos, Ms
Mitchell, Mr
Nguyen, Mr
Pullen, Mr
Romanes, Ms
Scheffer, Mr
Smith, Mr
Theophanous, Mr
Thomson, Ms
Viney, Mr

Noes, 15

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

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 and 2 agreed to.

Clause 3

The CHAIR — Order! Mr Bishop on his amendment 1, which will test his amendments 2 to 11.

Hon. B. W. BISHOP (North Western) — I invite the committee to vote against this clause. Amendment 1 circulated in my name seeks to omit clause 3 and replace it with the definition clauses at the bottom of the page of the foreshadowed amendments. If I can have the flexibility, as indicated by the Chair, of discussing the suite of amendments that The Nationals will put forward to test clause 3 and take it from there, then I shall proceed. The amendment seeks to omit clause 3 and replace it with the proposed clause set out under my foreshadowed amendment 11, which clearly defines that:

> 'primary producer' means a person engaged in primary production within the meaning of section 3(1) of the Duties Act 2000.

We believe that definition is suitable. It is clear and ensures that no-one else would achieve any advantage out of it unless they are a practising primary producer.

On the second leg of the suite of amendments, The Nationals' intention is to insert subsection (1)(f) into proposed section 10B. Proposed section 10Bis headed 'Dogs and cats that are exempt from desexing' and subsection (1) states:

> The following dogs and cats do not have to be desexed to be registered or to have their registration renewed by a Council —

The Nationals proposed amendment 3 would slot in paragraph (f), which states:

> a dog that is owned by a primary producer that is being used, or that is to be used, as a farm working dog …

If that is inserted it would ensure that a farm working dog is exempt from desexing, the reason being that most farmers who breed their own dogs are not registered breeders. The fact is that it has been a farm practice over many years for farmers to breed their own dogs, and it may be in cooperation with their neighbour. Many good farm working dogs have been bred under those circumstances. I have seen many an example on our own farm, and many others. This takes the load off the municipalities from being charged with the responsibility of exempting these farm working dogs, and it would create certainty by having that particular amendment inserted into proposed section 10B.

I turn to amendment 6, which proposes to insert into proposed section 10D, subsection (3) regarding dogs and cats that are exempt from permanent identification. The proposed subsection states:

> A dog that is owned by a primary producer and that is being used, or that is to be used, as a farm working dog is exempt from any requirement to be implanted with a prescribed permanent identification device for the purposes of registration or the renewal of registration.

The reason for moving that amendment is that we do not believe farm dogs would be wandering around as other dogs might do. We have a strong view that our farm working dogs are valuable animals, are well cared for and are generally tied up on farms. I know in his contribution to the second-reading debate Mr Viney said he thought the cost was minimal. The cost might be one thing in relation to microchipping of farm working dogs, but quite often these properties are well out of town. It may take at least an hour's run to take the dog to the particular area where it has to be microchipped. That is a real cost when you add that to the cost of microchipping, and it is an inconvenience. The Nationals believe there is no reason to do it.

We suggest strongly that these dogs are well trained and they will not leave the farm. We certainly believe these three tranches of amendments, which will be tested by our first amendment, are sensible, practical and appropriate for farm working dogs. It would certainly reduce the cost to farmers, and we urge the committee to support these amendments.

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — It is unlikely the government will agree to the arguments put during the course of this debate by The Nationals, although we understand those arguments. We believe the bill in its current form does all of the things that The Nationals are seeking. Clause 7, which inserts proposed section 10D into the Domestic (Feral and Nuisance) Animals Act, gives power to a council for it to resolve any exemption of an animal from any requirement to be implanted with a prescribed permanent identification device for the purposes of registration. The council will have the power to exempt, either under proposed section 10D(2) in relation to the health of the animal, or proposed section 10D(3) and (4) in relation to the particular classes of dog of which, of course, working dogs could be one class that might be so exempted.

Moreover, clause 5, which inserts proposed section 10B into the Domestic (Feral and Nuisance) Animals Act, a similar power is given in relation to desexing for local councils to be able to exempt a class of dog under proposed section 10B(2), or cat, from any requirement to be desexed for the purposes of registration or the renewal of registration.

What The Nationals in this instance are saying is that they ultimately do not trust local councils to judiciously implement these proposals, that somehow the local councils that cover these regional and rural areas would be irresponsible in the implementation or in the use of these kinds of powers and would therefore finish up prejudicing these farmers or doing things that were not supported or not in the interest of farmers. We do not take that view. We think this is a responsibility more rightly in the hands of local councils that may want to look at individual circumstances in a particular situation and use that power in relation to those individual circumstances.

But we would go further. We do not want a blanket ban on implanting dogs or cats with devices for their identification because it may well be that in certain circumstances the owners of many of these animals even on the farm might actually value it. It might work in their favour in certain circumstances.

I can think of at least one example where it would. No-one is perfect. There is no perfect dog and there is no perfect owner of a dog. It is quite possible for a dog to get lost. If the dog were lost and found its way to a pound, and if it could be identified as a working dog, I am sure the owner would be very pleased that it had been identified through an implantation device.

The local council will be able to make judgments about in which circumstances it is most appropriate to exempt classes of dogs or individual dogs. Councils are much closer to the ground and much more able to identify the circumstances in their own area and their own region

when the exemption should apply. We have confidence that the councils will use that power appropriately.

The Nationals, by their amendment, are indicating that they do not have that confidence, and that is a point of disagreement we might have. Similarly that applies in relation to the desexing of animals. The local councils are the closest to be able to actually implement these exemptions. It may well be that in some circumstances and for reasons that are particularly localised, a council might want to include desexing of some classes of animals, even including some working animals. That will be a decision for the local council, and it will be made in the context of that local knowledge, local information and the best application of the law at the local level. We on this side of the house have confidence that councils will implement those exemptions in the most appropriate way.

Hon. W. R. BAXTER (North Eastern) — In some respects the minister has acknowledged the strength of The Nationals amendments proposed by Mr Bishop because the minister has said quite rightly that the bill provides for local government to make a decision and give an exemption if it so desires. I consider that amounts to the government saying, 'We are not advocating all animals, dogs in particular, be desexed or chipped; the council can take its decision'. I appreciate and welcome that.

On the other hand the bill is dealing basically with domestic animals and in the normal course of that phrase it is about household pets. Mr Bishop's amendment is talking about anything but a household pet. It is talking about a working dog, an integral part of the farm operation. Those of us who have practical experience in stock husbandry know full well how important working dogs are to the operation of the enterprise and how it would be much more difficult to run the enterprise without those dogs.

The government should say, as this government has often said in the past, that some special note needs to be taken of the requirements of the primary producers in this state. In the past, for example, there has usually been a lesser fee set for registration of farm dogs than for the registration of dogs in urban households. It seems to me that sets a precedent for making a differentiation as we should do on this occasion. The minister suggests or romanticises that The Nationals do not trust local government to take that sort of decision when it is warranted. Yes, we do trust local government.

We also acknowledge that since the local government restructure in the 1990s, as desirable and beneficial as that has turned out to be, we actually have few if any of what might be called rural councils in Victoria now. Most councils are predominantly made up of membership from the urban areas. For example, Wodonga has a very productive, important hinterland surrounding it. In the council of five at this point only one of them is not a town person, and that particular councillor is retiring at the election in any event. We could see a council in Wodonga composed entirely of people from the urban areas of Wodonga.

I can think of numerous others in electorates that I represent that may not have the feeling and the understanding — or in fact it may never come to the council table, if there is not a farmer representative on that council, that the provision the minister has alluded to should actually be exercised by the council. It may well be just a decision taken within the bureaucracy of these councils that they are going to apply this legislation across the board and require all dogs to be desexed and all to be inserted with an identifying chip.

That would impose a severe injustice on quite a few people, particularly if it means a lot of travelling. The nearest vet to my family farm who would be able to execute either of these procedures is about an hour's drive away and not in a direction that is normally travelled. That is a cost that should not need to be borne because it is not going to achieve anything. Take a relatively remote farm. How is it going to advantage anyone to have that dog desexed? How is it going to advantage anyone to have that dog microchipped when such dogs are chained up, except when they are let off for exercise each day or involved in farm work?

The fact is that The Nationals amendment does not preclude voluntary desexing or the insertion of an identifying chip. If the owner wants to go down that path we are not putting any impediment in their way, but it seems to The Nationals that Parliament has an opportunity here to acknowledge the importance of working dogs to the Victorian economy. It has a chance to acknowledge that farmers in this state are having imposed on them all sorts of additional costs and regulations, whether they go to the cutting down of a tree or how they restore their fertiliser. An example is the likelihood of significant costs being imposed on farmers through absolutely no fault of their own by the introduction of new regulations on the storage of fertiliser.

You can go through a whole range of examples of farmers now having to bear costs that are imposed for purposes that are for the good of the community but from which farmers themselves gain absolutely no direct benefit at all. These amendments are an

opportunity for the government to acknowledge that farmers are in special circumstances, that working dogs are an integral part of farm operation and that there should be a clear direction to municipalities that the Parliament does not believe working dogs should be subject to this act, which deals mainly with pets in towns.

Hon. T. C. THEOPHANOUS (Minister for Energy Industries) — I do not want to extend this debate, but I will take up one point made by Mr Baxter. I think we have acknowledged there are some special circumstances, and that is why there are provisions in the bill to allow councils to make exemptions in the circumstances identified by the honourable member. On the one hand he said, 'We do not necessarily not trust local councils', but on the other hand he went on to say that maybe local councils that are based in cities would have a different view. It is ultimately about a general exemption outside of allowing local knowledge to also play a part in that decision.

It is a bit simplistic to say that this bill is aimed at domestic or household pets and has nothing to do with working dogs. In fact I would argue that farmers love their working dogs every bit as much as any household pet is loved by its owner. Dogs and other pets on farms probably play a dual role, but in any case that is not the point. The whole point is that there is an exemption available that is most likely to be applied by local councils in the circumstances that have been referred to. There are quite a lot of farm dogs that are on-sold when their working days are over, and it may well be that councils want to see those dogs desexed before they are sold. There are all sorts of varying circumstances that could come into play. We are not going to agree with Mr Baxter, but I understand the point The Nationals are making and why he thinks their amendment provides a better way to go. On balance, having considered the arguments, we have taken the view that it is better to allow local councils to make those decisions.

Committee divided on clause:

Ayes, 20

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

Noes, 19

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

Clause agreed to.

Clauses 4 to 37 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

The PRESIDENT — Order! The question is:

That the bill be now read a third time and that the bill do pass.

House divided on question:

Ayes, 25

Argondizzo, Ms	McQuilten, Mr
Baxter, Mr	Madden, Mr
Bishop, Mr	Mikakos, Ms
Broad, Ms	Mitchell, Mr
Buckingham, Mrs	Nguyen, Mr
Carbines, Ms	Pullen, Mr
Darveniza, Ms (*Teller*)	Romanes, Ms
Drum, Mr	Scheffer, Mr
Eren, Mr (*Teller*)	Smith, Mr
Hall, Mr	Theophanous, Mr
Hilton, Mr	Thomson, Ms
Jennings, Mr	Viney, Mr
Lenders, Mr	

Noes, 15

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

Question agreed to.

Read third time.

Remaining stages

Passed remaining stages.

Business interrupted pursuant to sessional orders.

ADJOURNMENT

The PRESIDENT — Order! The question is:

That the house do now adjourn.

Aboriginals: Won Wron rehabilitation centre

Hon. RICHARD DALLA-RIVA (East Yarra) — I wish to raise a matter for the Minister for Corrections in the other place. It relates to the proposed indigenous adult residential diversion program to be established at the former Won Wron prison site in Yarram in Gippsland. I am very much in favour of such a program. I believe it is an appropriate mechanism for reducing the number of adult offenders in our correction system.

However, I am concerned about the proposed site at Won Wron. As the minister would be aware, the original proposal was to establish this diversion program at a green site at Mount Tenerife. Opposition from the community made it clear that there were significant concerns about it being an appropriate location. However, it was very clear that it would be the most appropriate location in terms of connections for the local Koori community and the Shepparton and Broadmeadows Koori courts.

After the Won Wron prison was closed in February it came as a surprise when at 4 o'clock one day in the middle of April we received notification of its reopening. This was of concern to the residents because they had not received notification in Yarram of this reopening. It has been brought to my attention that what has arisen in recent weeks and months is that despite the commitment from the government that the existing prison would be used for the diversion program, $1.75 million will be spent on razing the existing facility and rebuilding a new one. This move astounds me because it is not the right location. If we are going to raze a facility, then we are starting from another green site and that does not make sense.

Will the minister take action to ensure that appropriate consultation and review has taken place before demolishing the existing Won Wron prison and provide details of that consultation to the people of Yarram?

Tuong Van Nguyen: death penalty

Hon. S. M. NGUYEN (Melbourne West) — I want to raise a matter for the attention of the Premier in the other place. Last week all legal avenues to save Mr Tuong Van Nguyen from the death penalty ran out when the President of Singapore, Mr S. R. Nathan, refused to grant clemency, which means Mr Nguyen will be executed within a few short weeks, if not within days.

In December 2002 Mr Nguyen was caught at Changi Airport with 396.2 grams of heroin. He was trying to help pay off his twin brother's heroin debt to a Sydney drug syndicate; I believe the amount to be $25 000. Mr Nguyen has no prior criminal convictions and without doubt would never commit any future offences. His crime must be seen as an act of desperation to help a family member, especially as he was trying to help his twin brother. Mr Nguyen is a Melbourne man who was trying to help his brother. He does not deserve to die because he has a mistaken sense of loyalty to a family member.

Hanging someone is a barbaric way to punish a crime such as this. Mr Nguyen has been working with police authorities to help capture the real criminals. For this reason alone his life should be spared. He would be the first Australian citizen to be executed over drug charges since 1993.

Let me make this clear: Mr Nguyen was trying to help his brother. The ones who should be punished are the people who spend their lives continuously dealing in the drug trade and it is they who set up young people as the so-called 'front men' to take the risks. We are punishing the wrong people. We need to get the money men behind the scenes. They are the real crooks.

I am happy to see that Amnesty International is working hard to save Mr Nguyen's life. We need the Australian public to write, email or fax the Singaporean government asking that he be shown clemency. I call on the Premier and the state government to write to the Singapore government on behalf of a fellow Victorian asking that he be shown clemency. I also ask the Premier to contact Mr Alexander Downer, the federal Minister for Foreign Affairs, and ask him to continue his efforts with the Singaporean government to grant clemency to Mr Nguyen.

Finally, I ask the Premier to encourage the Prime Minister, John Howard, to contact the President of Singapore, Mr Nathan, and ask him to review his previous decision and grant Mr Nguyen clemency.

WorkCover: premiums

Hon. BILL FORWOOD (Templestowe) — I would like to raise an issue with the minister at the table, the Minister for Consumer Affairs, for the Minister for WorkCover and the TAC who is in his room listening.

Hon. M. R. Thomson — He might not be.

Hon. BILL FORWOOD — He is. I have been approached by Mr Mark Schatz of Treadmaster who has written to me about a matter which I would like the minister to deal with. He quotes from the Treasurer's budget speech. The letter says:

> With effect from 1 July this year, the government will cut the WorkCover average premium rate by 10 per cent — equal to the lowest in the scheme's history and saving Victorian businesses $170 million a year.

He has attached to his correspondence to me his WorkCover notice, which shows that this year he is paying exactly the same amount as he paid the year before. The letter further says:

> I have today received my WorkCover account and there is no saving. Conclusion — the Treasurer's statement in the budget to Parliament is a lie! No doubt this trick was to try and placate small business. I am certainly not one who is fooled by this kind of stuff.
>
> Another conclusion, this Labor government has no idea about small business — whilst performing with 'smoke and mirrors' to create an impression of being a small business-friendly government from whom it harvests obscene amounts of GST, there is a minister who is prepared to sign off on a $100 000 project to paint trees blue! How absurd! What [a] joke! What a waste of hard-earned taxpayers funds!

The issue he would like addressed, of course, is why his bill has not seen the benefit of the lowering of premiums. The letter goes on to say:

> I have wanted to send this email to Minister Lenders but cannot raise anyone in his office to get his email address. Maybe the opposition can tackle this one.

The letter continues:

> The minister's office has a message that says it is open from 9.00 a.m. By 9.10 a.m. this morning there was no reply from his phones! As a small business if I were to treat my customers like that, I'd go out of business very quickly!
>
> Minister Lenders also should know and get to understand the number of hours that small business proprietors work and that it should be incumbent on him and his staff to at least make an effort to be available when they say they are.

I ask Minister Lenders, firstly, if he can ensure that his office is open at the times that it ought to be open, and, secondly, if he could take action to address the concerns about the premiums raised by Mr Schatz.

The PRESIDENT — Order! The Honourable Bill Forwood asked two questions. The question about the office times is ruled out of order, but his substantial request for the minister to take action is in order.

Local government: rate concessions

Hon. J. A. VOGELS (Western) — I raise an issue for the Minister for Local Government, Ms Broad, concerning pensioner concession rebates on council rates. Currently rate-paying pensioners are entitled to a concession equal to 50 per cent of their rate bill up to a maximum of $160. In reality it is extremely rare for the concession to be worth less than $160. The Bracks government, when announcing an increase in pension rebates, tied increases to the consumer price index, which is running at around 2½ to 3 per cent thanks to the excellent management of Peter Costello, the federal Treasurer.

Council rates across Victoria have increased by approximately 10 per cent per annum since the election of the Bracks government, in large part due to the cost-shifting responsibilities from the state to local government and a continued reduction in grants and transfer payments to councils. The action I seek from the minister is to ensure that the rate rebate concessions for those eligible at least rise with the average increase in rates across Victoria. In many cases our frail and elderly have found that as their property values have increased their rates have skyrocketed, and the concession received is nowhere near keeping pace with the rate increases. Action needs to be taken.

Aged care: service audit

Hon. B. W. BISHOP (North Western) — My adjournment issue tonight is directed to the Minister for Aged Care. I attended an aged care industry government relations meeting recently in Mildura where the majority of the issues were the responsibility of the commonwealth. However, the state has certain responsibilities in its delivery of aged care services across the state.

I would like to put on the record that I have written to the Auditor-General requesting him to conduct an audit of the state's aged care provision and quality of patient outcomes. The action I require from the minister is to support this initiative. The initiative was put forward by Cr Vernon Knight, who is an enthusiastic advocate for aged care throughout the region, and who, in his role as chair of the Mildura Base Hospital advisory board, plus the fact he heads up Mallee Family Care, places him at the coalface of such issues across the region.

I am sure all members would agree that aged care is one of the most important issues facing us in the future. I suspect that is more so in country areas, where it is becoming increasingly difficult to place our frail aged in accommodation close to families. In recognising this

as a complex issue that runs across a lot of jurisdictions, there are many issues increasing the pressure on our capacity to deliver appropriate aged care. It might be the ratio per thousand — —

Hon. M. R. Thomson — On a point of order, President, I am having a bit of difficulty in understanding. Mr Bishop mentioned that he had written a letter to the Auditor-General. I want to clarify that he is talking about the Victorian Auditor-General and ask what the connection is; it was a bit hard to understand.

Hon. B. W. BISHOP — Yes, it is the Victorian Auditor-General that I have written to, and I am asking the Minister for Aged Care here to support that initiative.

The PRESIDENT — Order! Thank you for that clarification.

Hon. B. W. BISHOP — Where do our aged care people go if they are not at a hospital and are not able to go home, because there are no high-care aged care beds available? They stay in the hospital until a bed becomes available, which through no real fault of anyone restricts the hospital's capacity to provide services, be they medical or surgical, to the wider community.

There were a number of other issues raised at the meeting, including staffing levels and the level of competency required in both high and low-care aged care facilities. It was reported that there are different sets of rules relating to administering medication between high and low-care patients. Another issue was training or upskilling of staff which was to be achieved by regular training sessions, particularly dedicated to our aged care staff members. The issues are numerous and complex. There is a mix of commonwealth and state responsibilities. However, the state is charged with the responsibility of delivering the services and there is no doubt that the skill and capacity of the Auditor-General will give us a blueprint for the future. I ask that the Minister for Aged Care support an audit into the delivery, provision and quality of patient outcomes of aged care which would be beneficial for the future.

Rural and regional Victoria: dental and podiatry services

Hon. DAVID KOCH (Western) — I raise a matter for the Minister for Health in another place about delays experienced by country patients accessing public dental and podiatry services. The minister claims that Victoria's $7 billion health system is one of the best in the world, yet even with enormous increases in health funding, much of it going to pay for the 17 per cent increase in the number of bureaucrats employed in the department, she still passes the buck when the system fails, accusing the federal government of not picking up the tab.

The Bracks government has had six years to reduce waiting lists and improve access to much-needed public dentistry and podiatry services, yet many patients — especially elderly patients — still wait in long queues to access these essential services. Patients are being told to expect to wait, some for up to four years, if they want to access public dental services at Hamilton. One elderly lady recently told me that she had to wait nine months to see a dentist. She assumed she would automatically then be put on the waiting list for her next check-up. Eventually she rang to find she was not on the waiting list and would now have to wait a further three and a half years before she could have the check-up. Surely elderly patients have a right to expect that once they have reached the front of the queue they will be advised of and receive a timely check-up.

I also received a plea from another very concerned constituent whose wife needs constant foot care. She was told she would have to wait 12 months before she could see the hospital podiatrist. I wrote to the Minister for Health in August. The Acting Minister for Health, the Minister for Community Services in the other place, wrote back. She initially responded by blaming the federal government for not increasing the number of undergraduate health places. She went on to say the state government has:

> … committed $6 million over four years … to fund a rural work force strategy … designed to attract and retain health professionals in rural and regional Victoria.

However, she did not say if this or other strategies were successful in reducing waiting times in Western Province. The bottom line is that the Bracks government is neglecting the needs of older regional Victorians by denying them access to timely public dental and podiatry health care.

My request is that the minister advise the house of the number of additional dental and podiatry health care professionals employed in the last five years to assist in servicing unwell patients at regional centres across Western Province, as the reality is different from the rhetoric about budget allocations and proposed programs.

VicSwim: East Gippsland

Hon. P. R. HALL (Gippsland) — I raise a matter for the attention of the Minister for Sport and Recreation concerning the VicSwim 2006 summer holiday program. Most of us would be familiar with VicSwim and the excellent work it does in providing swimming programs and teaching young children to swim, particularly over a period of three weeks in the summer holidays in January. This year this very valuable program is celebrating its 30th anniversary.

I have been contacted by people from Orbost and Cann River informing me of their disappointment that no VicSwim program is planned for Orbost this year. I looked into it and found out that not only is no VicSwim program scheduled for Orbost but none are scheduled for Bairnsdale or Lakes Entrance. In fact the only VicSwim programs east of Sale will be a one-week program at Metung beach, a one-week program at Mallacoota beach and a program for two of the three weeks at the Mallacoota Hotel Motel pool.

There will be very limited opportunities for young people in East Gippsland to participate in VicSwim programs this summer. This seems incongruous given that much of the population of East Gippsland lives very close to the coast. I would have thought it was important to provide young people in East Gippsland with the opportunity to learn to swim. In the past there has always been a VicSwim program at Orbost. I am not sure about Bairnsdale and Lakes Entrance, but I would be extremely surprised if there had not been programs there because both towns have excellent indoor pool facilities that are ideal for the conduct of VicSwim programs.

I ask the minister to enter into dialogue with the Victorian Aquatic Industry Council, which runs the VicSwim program, to determine what impediment there is to the scheduling of programs in East Gippsland and, if necessary, to provide financial assistance or help with resources to allow more VicSwim sessions to be scheduled so that East Gippslanders have the same access as people in the rest of the state to these very important learn-to-swim programs.

Responses

Hon. M. R. THOMSON (Minister for Consumer Affairs) — The Honourable Richard Dalla-Riva raised a matter for the Minister for Corrections in the other place concerning the proposed placement of the indigenous adult diversion program at Won Wron and seeking that appropriate consultation occur prior to the commencement of construction at the site.

The Honourable Sang Nguyen raised a matter for the Premier concerning Tuong Van Nguyen and the sentence he has received. He urged the Premier to contact Mr Downer, the federal Minister for Foreign Affairs, to see what could be done to try to avert the sentence.

The Honourable Bill Forwood raised a matter for the Minister for WorkCover and the TAC concerning a constituent who wishes to have his WorkCover premium explained.

The Honourable John Vogels raised a matter for the Minister for Local Government concerning pensioner rebates on local government rates.

The Honourable Barry Bishop raised a matter for the Minister for Aged Care and called on him to support the initiative of having the Auditor-General investigate aged care facilities and the provision of aged care services.

The Honourable David Koch raised a matter for the Minister for Health in the other place concerning public access to dental and podiatry services in rural Victoria.

The Honourable Peter Hall raised a matter for the Minister for Sport and Recreation concerning VicSwim programs operating in East Gippsland and particularly in Orbost. He asked the minister to raise this issue with the Victorian Aquatic Industry Council.

These matters will be passed on to the respective ministers.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 10.23 p.m.