PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

9 May 2000

(extract from Book 7)

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By authority of the Victorian Government Printer

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His Excellency the Honourable Sir JAMES AUGUSTINE GOBBO, AC

The Lieutenant-Governor

Professor ADRIENNE E. CLARKE, AO

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

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FIFTY-FOURTH PARLIAMENT — FIRST SESSION

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Deputy Speaker and Chairman of Committees: The Hon. J. M. MADDIGAN

Temporary Chairmen of Committees: Ms Barker, Ms Davies, Mr Jasper, Mr Kilgour, Mr Loney, Mr Lupton, Mr Nardella, Mrs Peulich, Mr Phillips, Mr Plowman, Mr Richardson, Mr Savage, Mr Seitz

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The Hon. S. P. BRACKS

Deputy Leader of the Parliamentary Labor Party and Deputy Premier:
The Hon. J. W. THWAITES

Leader of the Parliamentary Liberal Party and Leader of the Opposition:
The Hon. D. V. NAPTHINE

Deputy Leader of the Parliamentary Liberal Party and Deputy Leader of the Opposition:
The Hon. LOUISE ASHER

Leader of the Parliamentary National Party:
Mr P. J. RYAN

Deputy Leader of the Parliamentary National Party:
Mr B. E. H. STEGGALL

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Kilgour, Mr Donald	Shepparton	NP	Trezise, Mr Ian Douglas	Geelong	ALP
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Langdon, Mr Craig Anthony Cuffe	Ivanhoe	ALP	Wells, Mr Kimberley Arthur	Wantirna	LP
Languiller, Mr Telmo	Sunshine	ALP	Wilson, Mr Ronald Charles	Bennettswood	LP
Leigh, Mr Geoffrey Graeme	Mordialloc	LP	Wynne, Mr Richard William	Richmond	ALP
Leighton, Mr Michael Andrew	Preston	ALP			

[1] Resigned 3 November 1999
[2] Elected 11 December 1999

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TUESDAY, 9 MAY 2000

Tuesday, 9 May 2000

The SPEAKER (Hon. Alex Andrianopoulos) took the chair at 2.06 p.m. and read the prayer.

BUSINESS OF THE HOUSE

Members: conduct

The SPEAKER — Order! I wish to make a statement. Recently I received a complaint from the Premier about an incident involving the honourable member for Monbulk and the Minister for Post Compulsory Education, Training and Employment, which is alleged to have taken place during the evening of Tuesday, 2 May 2000, when honourable members were returning to their seats following a division on an issue of privilege.

I have had discussions with the Premier, the Leader of the Opposition, the honourable member for Monbulk, the Minister for Post Compulsory Education, Training and Employment, and many other honourable members. From the investigations I have concluded that it appears that an incident did occur, although there is a range of differing opinions as to the extent and nature of that incident.

When a division takes place it is inevitable that crowding occurs when honourable members return to their places. While the necessity for a division is indicative of differing opinions, it is imperative that at such times honourable members behave in a proper and cordial manner, no matter what heat exists on the issue that has just been determined.

I wish to take this opportunity to remind honourable members of my expectations, along with those of their colleagues and the broader community, with regard to their behaviour in this house. It is inevitable that there will be times of heated discussion in this chamber. However, I wish to make it clear to all honourable members that their conduct and behaviour ought at all times to be of the highest standard.

I place all honourable members on notice that behaviour that would not be tolerated in any other part of the community or in any other workplace should not and will not be tolerated in this place.

QUESTIONS WITHOUT NOTICE

Alitalia Airlines

Dr NAPTHINE (Leader of the Opposition) — I refer the Premier to the fact that Alitalia, which has resumed flights to Australia, has chosen to fly into Sydney rather than Melbourne. Given that the state government offered Olympic Airlines a significant financial incentive to continue a skeleton service into Melbourne Airport, I ask: what incentives did the government offer Alitalia to fly into Melbourne?

Mr Pandazopoulos interjected.

The SPEAKER — Order! The Minister for Major Projects and Tourism will cease interjecting.

Mr BRACKS (Premier) — As most honourable members would know, big changes have occurred in the airline industry in Australia and around the world. A merger has taken place between Air New Zealand and Ansett, which is of great benefit to Victoria and includes having the head office facility here.

I am pleased that Olympic Airways will again operate direct flights out of Melbourne to Greece. It is legitimate that airlines devise their own hubbing groups for Australia. Victoria's natural advantages are significant and overwhelming. Tullamarine is an excellent 24-hour, curfew-free airport, and the government will ensure that Victoria always bids competitively in line with the airlines' arrangements.

Federal budget: impact

Mr LANGUILLER (Sunshine) — I refer the Premier to the intergovernmental agreement between the former Kennett government and the Howard government. Will the Premier inform the house of the impact on key service delivery areas of the federal government's double blow of a goods and services tax and the continuation of its failure to grant Victoria a fair share of national revenue?

Mr BRACKS (Premier) — I thank the honourable member for Sunshine for his question. Tonight the federal government will introduce its last budget before the full implementation of the goods and services tax on 1 July. The expectation is that the budget will clear up some GST anomalies — in particular, how grants are applied to charities.

For example, an inconsistency exists between the federal Treasurer's treatment of charities such as hospitals that are funded directly by the commonwealth and those funded by the states. The full impact of the

GST on commonwealth-funded charities will be accounted for in additional grants and support. However, the states are still waiting for clarification on state-funded charities. The federal budget will impact on all state budgets, including Victoria's. The issue was raised at a recent ministerial council meeting of Treasurers, and it will be raised at any future Council of Australian Governments meeting between the Prime Minister and the premiers.

The Australian health care agreement is another matter the government hopes will be resolved in tonight's budget. Both the commonwealth and the state governments agreed to abide by an arbitrated decision on a set figure for health system funding on an indexed basis. The decision was accepted by all Labor and non-Labor states, yet the commonwealth walked away and proceeded with its own indexation system which was less than the increase in the CPI and which will see Victoria worse off by $220 million.

Pressure was placed on the federal Treasurer and the federal health minister to revisit that arbitrated decision, and the government hopes that will occur tonight. The government has also had communication with the Prime Minister. The decision is important for future health funding.

The third matter is road funding. As most honourable members will be aware, Victorian motorists contribute some 26 per cent of Australia's total fuel excise but receive back only 18 per cent in commonwealth contributions. The difference is paramount when one looks at a recent assessment by the Office of Local Government, which shows that Victoria will suffer a shortfall of $237 million in the capital required for the state's roads and bridges. The government committed an additional $240 million — an historic level in Victoria — for black spot road funding in last week's budget. It is now seeking from the federal government the return of a greater proportion of the petrol taxes paid by Victorian motorists.

Lastly, the government is seeking from the federal government a commitment to match that given in last week's budget to establish the $170 million Regional Infrastructure Development Fund to boost rural and regional Victoria.

The government also seeks more support from the commonwealth to match its contribution of $60 million to boost rural health, as well as more support for the standardisation of the rail gauge lines that are important for building Australia as a nation.

The government will closely examine the key benchmarks in tonight's federal budget. We look to it being a fair budget which is good for Australia and which honours the commitments the state premiers have been seeking for some time. We look to the federal government for support in building a better regional Victoria, better roads and a better health system to ensure that Victoria receives some contributions to match the commitments it made in last week's budget.

Independents: resources

Ms ASHER (Brighton) — I refer the Premier and Treasurer to his decision to allocate to the three Independent members of Parliament an additional budget of $1 million in 2000–01, which is significantly more than the entire budget for the state opposition. Will the Premier and Treasurer advise the house of the methodology that was used to arrive at that figure and whether it has been subject to an independent review?

Mr BRACKS (Premier) — I just signed off a question on notice on this very matter from another member of the opposition in the upper house. I recall that it involved $350 000 extra in staffing resources. I turn to the matters involved. The arrangements were arrived at in the same period in which negotiations occurred — before 20 October, before the new government was sworn in — between the then opposition, the now government, and the Independents. A similar negotiation process was also going on between the then coalition government and the Independents. As the shadow Treasurer would realise, a very similar offer was made.

The government has now offered one additional electorate officer in the electorates of each of the Independent members, which is in keeping with what is offered federally — —

Ms Asher interjected.

Mr BRACKS — I am coming to that; I will explain it all. That is in keeping with what is offered federally — namely, Independents in federal Parliament are offered a fourth staff member in recognition that they do not have a party backing them. The Victorian government has offered Independent members a third staff member in recognition of their increased responsibility in having the balance of power and that that increased responsibility is accounted for in the increased workload in their offices.

In addition they each have one adviser — that is, a total of three advisers — —

Ms Asher interjected.

Mr BRACKS — I am explaining it.

Honourable members interjecting.

Mr Savage — On a point of order, Mr Speaker, this is an important question. I want to hear the answer but I am unable to because of the noise coming from opposition benches.

The SPEAKER — Order! The honourable member for Mildura has raised an important point of order — that is, the ability of members to be able to listen to and hear questions and answers. I ask the house to quieten down to enable that to occur.

Mr BRACKS — The second arrangement was for an adviser for each of the Independent members of Parliament. The legislation required to be examined by each of the Independents is significant. The government and the opposition have considerable extra resources behind them in achieving assessments of legislation. The arrangements are being made to give the proper resources to good governance in the state, to ensure proper resourcing of democracy and to ensure that the advice the Independent members have is second to none. Those are the major arrangements that contribute to the increased allocation in the budget.

Drugs: government strategy

Mr ROBINSON (Mitcham) — Will the Minister for Health inform the house of the response to the release of the report of the drug expert advisory committee headed by Dr David Penington?

Mr THWAITES (Minister for Health) — There has been strong support for the recommendations of the Penington committee and the government's comprehensive drug strategy, which was funded in the recent budget.

Last year 368 people died of heroin overdose in Victoria and some 102 people have already died this year, 4 in the past week. The government believes, as would many other honourable members across Parliament, that fresh thinking is needed on the drug problem. The status quo has not worked on this issue and scaremongering is not appropriate. It is interesting that a high number of the deaths have occurred in those municipalities where the government is proposing to trial injecting facilities. I have been advised that 26 people have died in the central business district, 22 in St Kilda, 11 in Prahran, 13 in Richmond and 20 in Fitzroy.

As has been indicated, legislation will be introduced in this sessional period to lay over until the spring sitting. It will make it clear that the injecting facilities will be introduced as a trial in only up to five specified municipalities in Melbourne, as has also already been indicated, and will proceed only where the local councils agree to them.

The government has committed $75 million in the recent budget to funding improved drug programs to boost prevention, rehabilitation and treatment programs, and that is the core focus of the government's drug strategy. Extra money is being allocated to schools to increase the number of student welfare officers and school nurses to prevent young people getting into drugs in the first place.

Although it is true that much of the media focus has been on safe injecting facilities, the government's drug strategy is much broader and aims to prevent drug abuse and provide rehabilitation. To reduce deaths, the government is taking other action as well. I have recently approved the distribution to drug users of 50 000 safety kits. They are being distributed through needle exchange programs. They will target information to drug users in an attempt to keep them alive and stop the terrible death rate.

The government is also conducting workshops in the city and in regional areas to provide information about the risks of drug taking and harm minimisation. In conjunction with St John Ambulance, Ravesafe and Vivaids, the government is conducting a harm-minimisation program for young people attending rave parties. It is clear more must be done to prevent the growing number of deaths by overdose. It is worth pointing out that there has been widespread support for the Penington committee recommendations on injecting facilities.

A long-serving police detective, Douglas Potter, wrote to the *Age* on Saturday urging the opposition to show courage and to support the steps being proposed by the government, because the fight against drugs has proven spectacularly unsuccessful. Sir Rupert Hamer, a former Liberal Premier, has also urged the coalition to heed Dr Penington's advice and seize the chance to try something new. Far from sending the wrong message, Sir Rupert Hamer said it would send a clear message of compassion and recognition. He pointed out that the previous coalition government supported heroin trials, a much more radical proposal under which heroin would be decriminalised in certain locations and supplied free to users. It is the only way it can work.

The Bracks government seeks bipartisan support from the opposition on this issue, just as when in opposition the Labor Party gave support to the former Kennett government on drug matters, including the difficult issue of heroin trials. I wrote to the newspapers to back the measures of the previous Premier.

The government has adopted a positive, constructive approach. It is disappointing that for short-term political gain the National Party, presumably with the permission of the Liberal Party, is now scaremongering on the issue in Benalla.

Mr Perton — On a point of order, Mr Speaker, your rules on questions without notice clearly indicate ministers must be succinct in their answers. The minister has now exceeded the time limit you imposed and he is also debating the question. I ask you, Sir, to sit him down. If he wishes to raise the matter in the house he should make a ministerial statement and allow the opposition to respond in the appropriate circumstances.

The SPEAKER — Order! I uphold the point of order and remind the house of the responsibility of ministers to be succinct in their answers. The Minister for Health has been speaking for more than 6 minutes. I ask him to conclude his answer.

Mr THWAITES — It is an attempt by the National Party to divert attention — —

Honourable members interjecting.

Mr Perton — On a point of order, Mr Speaker, it is clear that the minister is attempting to defy your previous ruling and is debating the question. The attitudes of National Party members and the Benalla by-election have nothing to do with the question. The minister should answer the question and not debate it.

The SPEAKER — Order! I do not uphold the point of order. The minister did not have an opportunity to utter half a sentence after he was asked to conclude.

An honourable member interjected.

The SPEAKER — Order! The honourable member for South Barwon should refrain from making comments of that nature. It is not a laughing matter.

Mr THWAITES — The National Party is attempting to divert attention from the real issues of roads, schools, hospitals and ambulances. The Bracks government has done more for the seat of Benalla in seven months than the National Party did in seven years — —

The SPEAKER — Order! I ask the house to come to order. I ask the minister to cease debating the question.

Mr THWAITES — Drug abuse is one of the most critical issues faced by society and it is disappointing that it is now being used for political purposes.

Mount McKay: ski facilities

Mr RYAN (Leader of the National Party) — Can the Minister for Planning explain to the house why he has changed the rules for the Mount McKay ski lift extension at Falls Creek, thus jeopardising a further $50 million tourism project at Falls Creek with the consequent loss of up to 1000 job opportunities and of the order of $40 million in annual local tourism trade, as well as creating uncertainty for business investment in country Victoria?

Mr THWAITES (Minister for Planning) — The Leader of the National Party should have consulted his colleague in Canberra the federal Minister for the Environment and Heritage before asking the question. I will outline the federal minister's important role in the matter.

The Bracks government supports tourism measures but it also supports proper environmental consideration. The previous government did not believe in the environment or in having a proper statutory framework. The proposal for skiing at Mount McKay referred to by the Leader of the National Party is important but must be considered within a proper environmental framework. The government has complied with the statutory requirements under the various acts and called for an environment effects statement (EES), which is something all parties should agree to.

The Leader of the National Party does not have his facts right because he does not know the circumstances, but I will outline them. A technical advisory group had been set up by the previous minister. But the process was not conducted under a proper legislative framework and did not have the public consultation provisions of an environment effects statement. Many requests have been made for proper public input and consultation through an environment effects statement process being implemented by the government. The previous process would not have worked because the technical advisory group does not have a proper statutory basis. Had the government gone down that track the federal minister might have stepped in — —

Honourable members interjecting.

Mr THWAITES — The federal Minister for the Environment and Heritage has written to the Minister for Planning and Local Government in the previous state government, saying:

> I am writing to you to express my concerns about the potential for the proposed ski development at Mount McKay to significantly impact upon the nationally endangered mountain pygmy possum (*Burramys parvus*) and to seek your advice on the proposal.

The letter concludes:

> I would appreciate your urgent advice on how you are intending to address the possible implications of this proposal for the mountain pygmy possum.

The advice received by the government is that after 1 July 2000 the federal Environment Protection and Biodiversity Conservation Act will come into effect. Without a proper EES, the federal minister could have stepped in and stopped the proposal, which is not in the interests of anyone. After the previous minister's decision to have a non-statutory provision a planning permit was still needed. The planning permission request could have taken many months to process.

The government is joining the two processes together so the planning process and the environment effects statement process will be progressed at the same time. The whole process will proceed more expeditiously than if the government had proceeded down a path where it set up a technical advisory group and then sought planning permission, which may have been followed by an argument with the federal minister.

I am happy to announce today that this government has managed to achieve all of its objectives — good environmental practice, consulting with the public, having an open and accountable framework and being as prompt as possible.

Information technology: Internet access

Mr LONEY (Geelong North) — I refer the Minister for State and Regional Development to the government's commitment to Connecting Victoria and ask him to inform the house of the details of the new plan to improve the number of public Internet access sites throughout metropolitan and regional Victoria.

Mr BRUMBY (Minister for State and Regional Development) — A key goal of the Bracks government's 'Connecting Victoria' statement is to ensure that the benefits of information technology and communications are shared across the state. I am pleased to announce that over the next three years the Bracks government will spend more than $14 million on programs to ensure that all Victorians will have access to the Internet, no matter where they live.

Arising from last week's budget, new funding of $9.1 million will be available for programs to improve public Internet access points, including additional terminals in civic locations throughout the state and, importantly, improvements to the existing 3000 Internet bases, many of which are inadequate, do not provide the services for which they were designed and are not available at the hours the public needs them. It will mean that wherever a person lives in Victoria he or she will have access to the Internet and the Victorian government's Multi-Service Express at www.vic.gov.au. That site gives access to 92 online government services — the best service anywhere in the world!

The government is also providing $5.5 million to extend the Skillsnet program which provides training and opportunities to people at 572 locations across the state.

Honourable members interjecting.

Mr BRUMBY — I can hear the interjections. The funding the Bracks government is making available for this program will double the capacity targeted towards rural and regional Victoria, which is where 80 per cent of the technologically disadvantaged live. As part of the program the government will spend $2 million over the next three years to increase dramatically the number of Internet terminals provided through the Libraries Online program — there are currently 600 across the state. After the three-year program the number will have increased by 50 per cent to more than 900. That again shows the absolute commitment of the Bracks government. Wherever a person lives, if he or she needs Internet access, particularly if using the public library system, that access will be available as a result of the Bracks government's Connecting Victoria policy.

The $14-million boost means that wherever a person lives in Victoria — whether it be Burwood or Benalla — that person will have the best access to the Internet this state has ever seen.

Federation Square

Mr CLARK (Box Hill) — I refer the Premier to the fact that the government has reportedly paid Professor Evan Walker $25 000 to produce a nine-page report on the Federation Square shards and to the government's announcement yesterday of the establishment of a working party to address the functional and design consequences of and the additional costs and delays caused by the government's decision to scrap the

western shard. I ask the Premier why the government failed to consider such implications prior to announcing its decision to scrap the western shard and why Professor Walker was not asked to address that issue in the first place.

Mr BRACKS (Premier) — I refer to the government's initial decision to remove the shard on the north-west corner of the Federation Square project. I reiterate that that decision is in place and will not be reversed. In announcing the decision it was understood by the architects and all those involved that they would have some latitude to come up with a design on the relevant corner which would not impinge on the vista of St Paul's Cathedral, which is important.

We now have agreement and support for the architects to do just that — that is, to work towards a mutually agreed arrangement for that corner. The working party had a productive meeting here last week. So long as the requirements of the decision made not to affect the vista are in place, we will discuss the final outcome of that with the architects. The shadow minister raised the question of overruns. The honourable member referred to $26 000 being paid for a nine-page report — —

Dr Napthine — $25 000, nearly $26 000.

Mr BRACKS — Okay, $25 000. The report was not nine pages, as the shadow minister well knows. It was the result of many weeks of work. The report ran to well over 20 or 30 pages. However, that pales into insignificance compared with the $90 million overrun on the project by the previous government. I shall explain it to the house.

When the Labor Party came to government it found that the previous government had doubled the cost of the project. It had not funded it and had required the funding to be taken from the Community Support Fund. Had the government taken the funding from the Community Support Fund the distribution from that fund for this financial year would have been zero — absolutely nothing!

The government had to take the overrun from the budget; there had been no budget provision for it. The project has a $90 million overrun. At a whim the former Premier changed the design without consultation: he changed the size and scope of the project. My government had to fund the overrun out of the budget and keep a capacity in the Community Support Fund. If there is any overrun on the project, it is on that side of the house!

Centres against sexual assault

Ms LINDELL (Carrum) — I refer the Minister for Community Services to the failure of the former Kennett government to adequately fund services for persons who have suffered sexual assault. Will the minister inform the house of details of the government's commitment to improve services in that important area?

Ms CAMPBELL (Minister for Community Services) — When I was sworn in as Minister for Community Services I learnt about the long waiting lists in Victorian centres against sexual assault (CASAs) to provide support for people who have been the victims of sexual assault and who are trying to get on with their lives and to survive. I learnt that the waiting lists extended for up to four months and I was told that in the forthcoming financial year the waiting lists could extend for up to eight months. That is totally unacceptable. I also learnt that in rural and regional Victoria most CASAs are unable to provide peer or group support for adult survivors of childhood abuse.

The Labor government's budget will provide $500 000 to those centres to assist people who have been the victims of sexual assault, to enable them to get on with their lives and to look to the future as survivors. The department is currently identifying a number of centres that are unable to provide peer support for adult survivors. I am disappointed to inform the house that most of the centres that cannot provide peer support are located in rural and regional Victoria. As a result of the injection of the budget dollars, each rural and regional CASA centre, including those in the south-west, Horsham–Wimmera, Ballarat, the Mallee, Gippsland, Shepparton–Goulburn Valley and the Upper Murray, will be able to improve services for the victims of sexual assault.

I place on record the appreciation of the Victorian community for the work of the individuals who engage in difficult counselling and support work in CASAs. Theirs is a most challenging and difficult job. Victorians who have been victims of abuse owe those counsellors a debt of gratitude. I am pleased that their work will be easier because of the Bracks Labor government budget.

Snowy River

Mr McARTHUR (Monbulk) — I refer the Premier to his assurance to the house on 11 April that the New South Wales government was close to agreeing to provide 75 per cent of the water for environmental flows down the Snowy River; and further, to the

statement of the New South Wales Special Minister for State, John Della Bosca, in that Parliament on 14 April, when he said:

> The New South Wales position remains the same. Any contribution to further water flows down the Snowy must be on a one-to-one basis — not three-to-one basis, which has been called for.

Who is wrong — the Premier or Minister John Della Bosca?

Mr BRACKS (Premier) — I can confirm that since that statement was made in the house by the New South Wales Special Minister for State, Mr Della Bosca, the New South Wales position has moved further. It has committed to a 28 per cent environmental flow in the Snowy River. The residual issue to be resolved between the Victorian and New South Wales governments is the timetable.

Firstly, their timetable is longer than we want. Secondly, to respond to the question of the shadow minister about who pays, we are still not in agreement with the New South Wales government on that matter. We are pushing further on the matter.

Dr Napthine — On a point of order, Mr Speaker, to assist the Premier, my point of order is about relevance. The Premier was talking about who pays. The question was about who supplies the water, not who pays. The Premier said in this house that it will be on a three-to-one basis — three parts from New South Wales and one part from Victoria. The New South Wales minister says it will be a one-to-one basis. The question is: who will provide the water?

The SPEAKER — Order! The Leader of the Opposition raised a question of relevance. I do not uphold the point of order. The Premier was relevant in providing information to the question posed.

Mr BRACKS — I am happy not to discuss who pays, as the Leader of the Opposition requested. The residual questions concern the timetable for the 28 per cent. We still require that flow to be 28 per cent, with New South Wales to contribute 75 per cent of that. That is a matter on which we are still negotiating.

Roads: rural maintenance

Mr HARDMAN (Seymour) — I refer the Minister for Transport to the former government's failure to adequately fund road projects in rural and regional Victoria. Will the minister inform the house of details of the campaign by the Mansfield and Whitfield communities to seal the Whitfield tourist road and the government's response to that campaign?

Honourable members interjecting.

Mr BATCHELOR (Minister for Transport) — I feel a great sense of anticipation in the air!

Mr Ryan interjected.

Mr BATCHELOR — You couldn't do it. The National Party failed.

Honourable members interjecting.

The SPEAKER — Order! The honourable member for Doncaster will cease interjecting; I will not warn him again.

Mr BATCHELOR — There is much interjection from National Party members opposite because they could not do what the government is to deliver for the people in this area. The Mansfield–Whitfield road is an important link in the King Valley. For some time local residents and businesses have been concerned that a 7-kilometre stretch of that road has not been sealed.

I am pleased to announce today that the Bracks government will provide funding of $980 000 to seal the remaining section. That will improve the safety of the road, enable year-round access to the area for vineyards, tourism — particularly for new adventure tourism — and other local industries.

Honourable members opposite are sensitive about this project because in 1996, on the eve of the last election, the former Leader of the National Party, Pat McNamara, promised the road would be sealed by the former coalition government, but the National Party failed to deliver.

Recently I visited the area to inspect the current condition of the road, and I met with local residents and businesses to hear the reasons why the road should be sealed. It is an important piece of infrastructure — that message came through loud and clear. Following my inspection people wrote to me, and in the many dozens of reports that came back to me three themes emerged: that local people believe sealing the road would improve road safety; that the improved road would bring considerable economic benefits to the area; and — coming through time and again — that the former local member, the former Leader of the National Party, Pat McNamara, had failed to deliver on his 1996 promise about the project.

Today I received a media release from the chief executive officer of the Rural City of Wangaratta, Mr Graeme Emonson — —

Honourable members interjecting.

The SPEAKER — Order! The honourable member for Murray Valley!

Mr BATCHELOR — He welcomed the Bracks government decision to provide that funding and outlined how he and the local community had been lobbying for it for a number of years. It is clear from what he said that had it not been for the Bracks government and its recent budget nothing would have happened, because the National Party had ignored regional Victoria.

It is not surprising that the decision to seal the road should be so strongly supported by the local community. On the front page of the Wangaratta *Chronicle* — —

Honourable members interjecting.

The SPEAKER — Order! The honourable member for Mordialloc!

Mr BATCHELOR — In its front page heading the *Chronicle* of 5 May describes the project as a $1 million tourism bonanza, and the article includes the statement that the grant follows years of broken promises and disappointments.

This decision has been welcomed by the Whitfield Action Committee, the King Valley Grape Growers Association and the King Valley Tourism Association — all because the Bracks government is prepared to listen to the local community.

In 1996 when the former Leader of the National Party got up in the local pub and, with apparent sincerity, promised to deliver the road, he made a commitment that he subsequently failed to deliver on. When the people of Benalla make representations to their local member and he makes promises to them in the local pub — promises that should be believed but are subsequently broken — things get serious. He let them down, as is typical of National Party members.

Honourable members interjecting.

The SPEAKER — Order! The honourable member for Murray Valley!

PERSONAL EXPLANATION

Mr COOPER (Mornington) — During the adjournment debate on 4 May the Minister for Education made statements about me that were incorrect.

In responding to a matter raised about the asbestos-lined portable classrooms which the government installed at Somerville Rise Primary School in February the minister said that I had known about this scandal in February but had done nothing about it until raising the matter in the grievance debate of 3 May. That allegation was made more than once by the minister.

The minister had been told the previous afternoon by the aggrieved parent, Mr David Ferguson, that he had informed me of the scandal just before Easter and after he and the school council had given up hope of receiving a reply from the minister to a letter of complaint they had written to her some six weeks before. That information was conveyed to the minister by Mr Ferguson during an interview she and he had on the Steve Price program on 3AW on the afternoon of 3 May.

The facts are that Mr Ferguson contacted my electorate office at 1.00 p.m. on 13 April, the last sitting day prior to Easter. Later that afternoon Mr Ferguson faxed to my electorate office a copy of the consultant's analysis that proved that his concerns about asbestos were valid.

I raised this serious matter in the house at the very first available opportunity, which was the grievance debate on 3 May during the following sitting week of the house. The facts show that the allegations made by the minister about me are not true.

PETITIONS

The Clerk — I have received the following petitions for presentation to Parliament:

Public transport: Wangaratta–Yarrawonga

To the Honourable the Speaker and members of the Legislative Assembly in Parliament assembled:

Your petitioners therefore pray that public transport be provided to Wangaratta from Yarrawonga and return.

And your petitioners, as in duty bound, will ever pray.

By Mr JASPER (Murray Valley) (886 signatures)

Water: rural infrastructure

To the Honourable the Speaker and members of the Legislative Assembly in Parliament assembled:

The humble petition of the Porepunkah Sewerage Plan Working Party and the undersigned citizens of the state of Victoria sheweth that we have an unacceptable sewerage system which poses a threat to the public safety and potential development of the area.

Your petitioners therefore pray that the sewerage treatment system should be relocated away from the growth area of Porepunkah, also that the new system be odour free and produce the cleanest possible waste water.

And your petitioners, as in duty bound, will ever pray.

By Mr HELPER (Ripon) (527 signatures)

North West Hospital

To the Honourable the Speaker and members of the Legislative Assembly in Parliament assembled:

The humble petition of the undersigned citizens of the state of Victoria sheweth the concern raised by the proposal of the Department of Infrastructure to sell or otherwise transfer by private treaty the Crown land, and all buildings thereon, which is the site currently known as North West Hospital, Greenvale campus. There is concern with the apparent refusal of the relevant government department to consider alternate bids and to consider the impact of the proposed development on the neighbourhood character and amenity given the close proximity of the site to the local community, the Weeroona Koori cemetery and the Woodlands Historic Park.

Your petitioners therefore pray that the members of the Legislative Assembly resolve that the site currently known as the North West Hospital, Greenvale campus, be publicly sold, either by auction or tender and that the sale or disposition not take place until an environmental impact study is undertaken for the area. Further that there be a requirement that the successful tenderer or bidder submit plans for the proposal prior to acceptance of the bid or tender price and that any development be required to conform with the neighbourhood character and amenity as referred to in the new *State Planning Agenda*.

And your petitioners, as in duty bound, will ever pray.

By Ms BEATTIE (Tullamarine) (237 signatures)

Rail: Werribee service

To the Honourable the Speaker and members of the Legislative Assembly in Parliament assembled:

The humble petition of the undersigned citizens of the state of Victoria sheweth that the train service between Werribee and the city is slow and inefficient.

Your petitioners therefore pray that the government ensure that Bayside Trains or any other operator of trains on the Werribee–city route be required to schedule express services in the morning and evening peaks that have a maximum journey time of 30 minutes.

And your petitioners, as in duty bound, will ever pray.

By Ms GILLETT (Werribee) (1625 signatures)

Laid on table.

FILMS, VIDEOTAPES, COMPUTER GAMES AND PUBLICATIONS

Classification guidelines

Mr HULLS (Attorney-General) — By leave, I move:

That there be presented to this house a copy of:

(a) printed matter classification guidelines (amendment no. 1),

(b) guidelines for the classification of films and videotapes (amendment no. 2),

(c) guidelines for the classification of computer games (amendment no. 1), and

(d) guidelines for the classification of publications 1999.

Motion agreed to.

Mr HULLS (Attorney-General) presented documents in compliance with foregoing order.

Laid on table.

PAPER

Laid on table by Clerk:

Financial Management Act 1994 — Report from the Minister for Health that he received the 1998–99 annual report for the Kilmore and District Hospital.

ROYAL ASSENT

Message read advising royal assent to:

Administration and Probate (Dust Diseases) Bill
Gambling Legislation (Responsible Gambling) Bill
Trade Measurement (Amendment) Bill

APPROPRIATION MESSAGES

Messages read recommending appropriations for:

Arts Legislation (Amendment) Bill
Children and Young Persons (Appointment of President) Bill
Dairy Bill
Electricity Industry Acts (Amendment) Bill
Emergency Management (Amendment) Bill
Health Services (Governance) Bill
Land (Revocation of Reservations) Bill
National Parks (Amendment) Bill
Psychologists Registration Bill
State Taxation Acts (Miscellaneous Amendments) Bill

Superannuation Acts (Amendment) Bill
Tobacco (Amendment) Bill
Victorian Law Reform Commission Bill

BUSINESS OF THE HOUSE

Program

Mr BATCHELOR (Minister for Transport) — I move:

> That, pursuant to sessional order 6(3), the orders of the day, government business, relating to the following bills be considered and completed by 4.00 p.m. on Thursday, 11 May 2000:
>
> Accident Compensation (Common Law and Benefits) Bill
>
> Witness Protection (Amendment) Bill
>
> Planning and Environment (Amendment) Bill
>
> Local Government (Governance) Bill
>
> Federal Courts (Consequential Amendments) Bill

To assist honourable members on both sides of the chamber with forward planning I wish to make some preliminary comments about the legislative program.

On Thursday the shadow Treasurer and Deputy Leader of the Opposition will give her response to the budget. Her response will commence the formal debate on the budget, which will flow into the following weeks.

I alert honourable members to the fact that in the following two weeks the budget will be processed and a large number of bills will be passed through the house. As a consequence of that it may be necessary for the house to sit some additional hours, which may be achieved in a number of different ways. One way is to sit for an additional week at the end of this parliamentary session. Alternatively, the house could sit on Fridays.

Honourable members should be aware of those contingencies and be on stand-by so that they can rearrange other commitments. The government hopes discussions this week will provide a definitive position.

An honourable member interjected.

Mr BATCHELOR — One suggestion is to start sitting at 8.00 a.m. and continue until late in the night.

An honourable member interjected.

Mr BATCHELOR — Anyone with small kids is up and at work by 8.00 a.m. You may have forgotten what it is like to be up at that time, but the rest of us are well and truly up by 8.00 a.m.

An honourable member interjected.

Mr BATCHELOR — Some of us have religious obligations on Saturdays, and others have them on other days of the week. The government is placing people on notice so they can be on stand-by. Formal notice will be given as soon as the arrangements are finalised. However, honourable members should note that the suggestions I mentioned are real possibilities.

Mr McARTHUR (Monbulk) — The opposition will not oppose the government business program. I welcome the willingness of the Leader of the House to discuss the two sitting weeks at the end of this month and the press of legislation the house faces during those two weeks. The need for additional sitting hours is a result of the government's inability to get its legislative program in order and bring bills before the house in an orderly manner.

Nevertheless, the opposition will be happy to discuss the issue with the government to come to an arrangement which would allow for reasonable debate on the legislation, and which would also allow honourable members reasonable time to prepare their contributions and consult with their communities.

Some significant bills are listed for debate this week, particularly the bill dealing with accident compensation, which is listed for debate today. In discussions yesterday I advised the Leader of the House that the opposition wishes to consider some of the accident compensation issues in committee. I hope that can be arranged by agreement during the course of the day, because opposition members have questions about the detail of the legislation on which they seek answers.

The Leader of the House has said that Thursday will be devoted to the budget debate. Particularly important is the response to the Treasurer's speech by the Deputy Leader of the Opposition. I remind the government of the opposition's wish for an even-handed approach to the web broadcast of the Treasurer's speech and the requirement approved in this place in May 1999 that any broadcast by a media organisation from this place should be even-handed and cover contributions from all parties in a balanced context.

In that light, the opposition reiterates its call for the Department of Treasury and Finance to provide the facilities at its cost to make possible the web broadcast of the response of the Deputy Leader of the Opposition on the budget. People in the community are just as interested in the response to the budget as they were in

the budget. It is reasonable that it be done that way. Because government and taxpayers' resources were used to broadcast the budget they should also be available to broadcast the response.

Motion agreed to.

MEMBERS STATEMENTS

Seal Rocks Sea Life Centre

Mr PERTON (Doncaster) — I raise the failure in government policy and communication that has put under threat some $30 million in investment and 80 jobs in regional Victoria. I refer to the Seal Rocks issue, which blew up on the weekend.

The issue is a difficult one. Three government policies have been expressed. The first was the policy of the Minister for Environment and Conservation announced before the election, which was the red light. Then came the policy of the Minister for State and Regional Development, which was the green light. Then there was the approach of Minister Davies, the honourable member for Gippsland West, which was active sabotage of the project.

Subsequent to the election the management of Seal Rocks has sent or made over 30 emails, faxes, telephone calls and letters to the government seeking meetings with ministers. In March this year officers from the environment and conservation ministry wrote to the developers saying that the minister or another minister would meet with them. Instead, on the last day of the four weeks they received a letter from the Minister for Environment and Conservation saying she would not meet with them and that they should immediately pay alleged arrears in fees. That might have been a sensible approach if the government had been adhering to its policy, which was to actively sabotage the development. But this morning on 3AW — —

The ACTING SPEAKER (Mr Nardella) — Order! The honourable member's time has expired.

Project BIRDS

Ms LINDELL (Carrum) — On Sunday 30 April I had the honour of representing the Minister for Environment and Conservation at the launch of the Bayer international regeneration and development scheme, which is known as Project BIRDS.

I would like the house to join with me in congratulating Bayer Australia on its commitment to a significant conservation project that will ensure that as many as 20 000 migratory water birds will continue to find a safe haven at Western Port Bay. The wetlands around Warneet on Western Port Bay are of international significance and are listed under the Ramsar convention on wetlands.

With the generous support of Bayer Australia and in partnership with Parks Victoria, Greening Australia, the Tooradin Primary School and the Warneet community, Project BIRDS will focus on the long-term conservation of habitat in the northern half of Western Port Bay. A number of improvements will be made over the coming year, including revegetation, fencing of sensitive areas, building of low-impact walking tracks and boardwalks, and interpretive signs to explain the special features of Warneet's wetland areas.

My congratulations and appreciation go to Bayer Australia on becoming involved in the significant environmental program. I am sure that with its continued commitment Project BIRDS will be a huge success.

The ACTING SPEAKER (Mr Nardella) — Order! The honourable member's time has expired.

Rotary Club of Templestowe

Mr KOTSIRAS (Bulleen) — I pay tribute to the Rotary Club of Templestowe, a club that has served the Bulleen electorate well over the years. Recently I had the pleasure of being the guest speaker at a club meeting and was surprised and pleased to see the make-up of the membership. Such organisations have an important role to play in the community and it is important that they remain strong, vibrant and relevant.

From my discussions during the evening I found that the club has a strong desire to encourage all people, especially young people and others from backgrounds other than English, to become members of and participate in the club. I pay tribute to the president, Mr Dennis Young, the chairman for the evening, Mr Graham Kane, and all the members who have shown a strong commitment to multiculturalism. It is important to believe in a fair go for all and to encourage those who live in the electorate to have an active role.

I look forward to working with the club to ensure not only that Bulleen residents understand and appreciate the work it does but also that its membership continues to remain representative of the Bulleen electorate.

Banks: closures

Mr LANGUILLER (Sunshine) — I inform the house that last Friday the Commonwealth Bank in Glengala Road, Sunshine, bailed out of the area. It was the last bank to leave the area, which now has no bank. It saddens me that the branch closed despite much community outrage. Recently there were protests by 700 people from a community of 15 000. About 25 businesses have been affected and must now use Australia Post facilities to do their banking.

The closure is a big problem for people in my electorate. Many are from non-English-speaking backgrounds and cannot use electronic banking. Many are elderly and are not used to new technology. In addition, travelling by public and/or private transport alone to other branches is not always adequate. Using Australia Post is also a problem for the business community in the area because there are not enough services to facilitate business banking. The Commonwealth Bank has turned its back on businesses and residents again.

Together with the federal Labor members in the area, Nicola Roxon and Julia Gillard, and Brimbank ward councillor Sam David, I have worked to help the people in the area. A petition containing 3500 signatures has been delivered to the bank. Following the public outrage and the representations of local parliamentarians the bank has been forced to keep open the automatic teller machine. I understand that traders, with the help of the community, are investigating setting up a community bank.

I call on the Commonwealth Bank, which has recorded a profit of $1.42 billion, to put people before profit and keep its Glengala Road and Sunshine North branches open. I commend the community's initiatives — —

The ACTING SPEAKER (Mr Nardella) — Order! The honourable member's time has expired.

Police: Geelong

Mr PATERSON (South Barwon) — I raise for the attention of the Minister for Police and Emergency Services policing numbers in Geelong. I particularly refer to an article reported in the *Geelong Independent* of Friday 5 May 2000, which states, in part:

> State government will be unlikely to send more police to Geelong despite an 800-strong increase for the force in this year's state budget …

I must say that 400 of them were committed by the previous Kennett government. The article continues:

> Their admission followed warnings from other officers that staff shortages were jeopardising public safety in Geelong.
>
> A Geelong officer, who did not want to be identified —

which, under the current regime, is not surprising —

> told the *Independent* police had suspended foot and bike patrols in Geelong since Christmas because of staffing problems.
>
> The officer said police were cancelling divisional van controls because low morale was prompting staff to take regular sick leave.
>
> Patrols were also cancelled as police were forced to remain in the watch-house to monitor convicted prisoners awaiting prison beds.

The officer, who did not want to be identified, is quoted as saying:

> There are some parts of Geelong that patrols never get to unless there's been a crime reported.

The issue of police numbers is significant for the people of Geelong and all Victorians.

Father John O'Reilly

Mr SEITZ (Keilor) — I pay tribute to and congratulate Father John O'Reilly, who has done so much for the Keilor electorate during my youth and during the years I have been a member of Parliament.

Father O'Reilly turned up at St Albans some 30 years ago. He is an Irishman full of energy and commitment to the area. I recall that at first we found it difficult to understand his Irish accent, particularly during church services. Father O'Reilly has developed a growth area in Keilor by assisting with the development of new schools, services, churches and parishes. Father O'Reilly has been at the forefront of providing palliative care in the west through the Mercy Hospice, in particular in my electorate of Keilor. The hospice also operates in Geelong.

When the service was close to losing funding, Father O'Reilly was a driving force behind maintaining those services. It is to his credit that our district services all denominations. Father O'Reilly does not look after only the Catholic community but people of all denominations.

Ballarat: electorate office parking

Mr RICHARDSON (Forest Hill) — I wish to convey to the house my anguish at the outrageous and distressing invasion of personal car-parking spaces in Ballarat. The female Labor member for Ballarat Province in the other place has complained of

intimidation and harassment of herself and her staff by the male Labor member for Ballarat East and his staff. So serious is the matter that the honourable member for Ballarat Province has been forced to write a strong letter to the honourable member for Ballarat East demanding that he immediately desist from any further breach of her quiet enjoyment of the electoral car-parking spaces. The honourable member threatens that any further breaches by either the honourable member for Ballarat East or his staff will be deemed to be trespassing on her electorate car-parking spaces.

It is therefore incumbent on the Premier, as the head prefect in charge of both those children, in effect, to try to resolve the unseemly conduct and reassure the citizens of Ballarat that their members of Parliament are and in future will behave like grown-ups.

Schools: retention rates

Ms DAVIES (Gippsland West) — I request that the house take note of the very considerable problems still facing many young people in south-west Gippsland. Gippsland has one of the lowest school retention rates of any area in Victoria. It has an overly academic VCE that still fails to provide for a full range of interests and aptitudes among the kids. The TAFE facilities in the area are still and will continue to be inadequate. Currently at any one time approximately 40 youngsters in Wonthaggi alone are homeless or live away from their parental homes. Children as young as 14 are in transitional housing or drifting between the homes of extended families or friends. Programs to encourage apprenticeship take-up, such as is provided by Gippsland Group Training, are no good to the many people in south-west Gippsland without licences and vehicles to get them to the Latrobe Valley.

South-west Gippsland must be able to offer a wider range of secondary and tertiary courses, apprenticeships and traineeships. It must be able to offer genuine alternative education settings for troubled kids with challenging behaviours. We want our kids to know that we care about all of them and that we will do everything necessary to help them over some of the big hurdles life throws at them.

Mount McKay: ski facilities

Mr JASPER (Murray Valley) — I bring to the attention of the house my concern for the future development of the Falls Creek alpine resort with legislation proposed by the Victorian government. The management committee has been working to develop Falls Creek as an all-year-round resort for sport and recreation activities. It must be recognised that Victoria is in a competitive situation for attracting tourists and sporting people and that assists the economic development of Victoria.

In its support for the alpine resorts in Victoria the previous government transferred 285 hectares to the Falls Creek resort to allow for the extension of ski lifts to provide access to skiing areas at Mount McKay and to land around Rocky Valley Dam to allow for development of water sports within the resort area. The proposal to return the area to the national park would be a monumental disaster for the future expansion of the resort and its ability to attract greater numbers of snow skiers and other sporting enthusiasts. The changes would effectively strangle further development and investment and the resort would be jeopardised. The lifts company plans to spend $50 million on new ski lifts and associated investment totalling a further $50 million, which would provide employment for up to 1000 additional people.

The proposal by the Victorian government to return that small area of 285 hectares to the national park must not proceed.

Blackwood Easter Carnival

Mr HOWARD (Ballarat East) — I mention a very important community event recently held in my electorate — the Blackwood Easter Carnival. It was a terrific event, like so many other community events I have been able to share information about with honourable members during my time in Parliament.

The carnival includes a street parade, where I had the pleasure of presenting awards to the winning groups, such as the best decorated bike and other categories. I was pleased that one of the main events was the woodchop. I thank all members of the Blackwood community for running such a great event, which is terrific for its community members and the tourists who are attracted to Blackwood for the carnival.

I commend all those involved in the carnival for the great day that was held during the Easter period.

ACCIDENT COMPENSATION (COMMON LAW AND BENEFITS) BILL

Second reading

Debate resumed from 13 April; motion of Mr CAMERON (Minister for Workcover).

The ACTING SPEAKER (Mr Nardella) — Order! As the required statement of intention has been

made pursuant to section 85(5)(c) of the Constitution Act, I am of the opinion that the second reading of this bill requires to be passed by an absolute majority.

Government amendments circulated by Mr CAMERON (Minister for Workcover) pursuant to sessional orders.

Mr CLARK (Box Hill) — Despite all the warnings and advice it has received from all quarters, and despite many honourable members opposite knowing in their heart of hearts that they are not doing the right thing, the government is determined to press on with the Accident Compensation (Common Law and Benefits) Bill. Caught on the hook of the government's opportunistic, expedient and unprincipled policy stance, which it adopted in 1997 and carried through to last year's election, the contorted, anomalous, flawed and destructive bill now before the house is the seemingly inexorable outcome of that process.

In the relatively limited time it has had to consult on the bill, the opposition has studied it in depth and spoken with a wide range of interested parties, including union representatives, employer organisations, individual employers, self-insurers and individuals, self-insuring businesses, and representatives of the legal profession. I refer in particular to the Victorian Employers Chamber of Commerce and Industry, the Victorian Automobile Chamber of Commerce, the Australian Industry Group, the Self-Insurers Association, representatives of the Trades Hall Council, the Law Institute of Victoria, the Australian Plaintiff Lawyers Association and the Victorian Farmers Federation.

Without exception, those meetings were positive and constructive. Approached in a spirit of goodwill, there was general agreement by almost all parties on the key policy issues facing workers compensation. There was also a striking degree of consistency in the list of serious flaws, ambiguities and injustices in the bill. Surprisingly, there was a high degree of explicit agreement on or tacit acceptance of the ways in which things could be better carried out. Almost everyone agreed there were better ways. There was also a striking degree of overlap in the detail and the extent to which the parties explicitly agreed or tacitly acknowledged that improvements to the bill could be made.

The opposition would be happy to agree to changes that in the light of experience are identified as providing a better system of protection for injured workers. In government the opposition was never afraid of making changes that would improve the system; likewise, in opposition it is not afraid of supporting beneficial changes.

The environment is ripe for changes to the bill that will make all parties happier and provide for substantially better compensation and protection for injured workers while improving the position of employers and taking account of the general economic consequences. In other words, there are significant opportunities for win-win-win improvements to the government's scheme as outlined in the bill.

The opposition knows that the advice it received was in similar terms to that given to the government. The government knows the flaws, weaknesses and absurdities in the bill. If it is determined to do the right thing by both injured workers and Victorian employers, the best way for it to proceed to implement changes to workers compensation would be to adjourn the debate and sit down with all interested parties to work through the issues.

However, if the government is determined to put politics and point scoring before outcomes for injured workers and if it is determined to press on with the bill, the opposition will not oppose either the bill or the reintroduction of so-called common-law legal actions.

Despite the government's failure to spell out any coherent response to the many criticisms levelled against the so-called common-law system and instead to rely on simple sloganeering about restoring common-law rights to seriously injured workers, the opposition accepts that the outcome of the electoral process and the decisions of the honourable members for Mildura, Gippsland West and Gippsland East was to deliver government to the Australian Labor Party.

The opposition also accepts that the reintroduction of those so-called common-law legal actions into the workers compensation area was probably the most prominent legislative issue on which the Labor Party campaigned hard and won support. Thus, the opposition will not block the government's move to reintroduce so-called common-law legal actions, nor will it attempt to rewrite the detail of the new arrangements put forward by the government. The opposition does not have access to the detailed actuarial, legal, accounting, occupational health and safety and compensation expertise which it would need to do so and without which it would run a serious risk of producing unintended impacts on costs, benefits and even safety.

Rather, it will put on the public record as part of an extensive debate in this house and in the other place the numerous illogicalities, flaws, weaknesses and inconsistencies in the bill and in the government's overall approach to workers compensation.

The opposition would be happy for the government to adjourn the debate at any stage or to take the time to consider the issues while the bill is between houses in an attempt to reach an agreement that all parties could concur was an improvement. However, if the government insists on pushing the bill through the Parliament and ignoring the concerns raised by the opposition, it must accept full responsibility for all that flows from its doing so.

The tragedy is that everyone associated with workers compensation knows the bill is inferior to what could readily be achieved with only a modicum of further discussion. The minister and his advisers, most of the union membership, the legal profession, employers and workers compensation professionals all know that a far better outcome could be achieved.

I will give a brief outline of the opposition's concerns and then provide some detail. One of the fundamental absurdities of the debates that have taken place over recent years and led to the bill before the house is that the focus was on the wrong end of the injury scale.

Whereas, if one sits down and talks with the people who work at the coalface of workers compensation, and indeed with the union movement, it turns out that their main grievance is the way in which the 1997 changes have turned out at the lower end of the scale — that is, there is a massive separation between the rhetoric on the one hand and what really concerns people on the other hand. Much of the focus in the government's working party and its approach to this issue has been misdirected.

It is also worth making the point, and it is one the government and the union movement have tried to slip over, that the legislation is what one could describe as a triple dip for the union movement. Not only does the government want to bring back the 1997 benefits, it wants to add a common-law scheme on top of that and further increase the no-fault benefits. The simple statement, 'We want to go back to 1997', is completely misconceived. Certainly there is a reintroduction of a so-called common-law scheme, but that has been on top of the 1997 no-fault benefits, and as I said the 1997 no-fault benefits are being increased under the government's package.

On the other hand, while the government's package is favourable to the union movement it also fails to honour Labor's promise to restore what it termed as the common-law legal rights. The scheme of so-called common-law rights that is introduced in the bill is not a restoration of the regime that existed in 1997. There are significant restrictions on that regime, and I will detail particulars of that.

Furthermore, there has been a manipulation and ultimately a betrayal of workers who were injured in the period between 1997 and 1999. Their expectations of change were raised, including expectations of retrospective legislation. What has happened in the end? There is no retrospectivity to 1997.

Mr Cameron interjected.

Mr CLARK — The minister interjects that the government never promised retrospectivity. I never accused the government of promising retrospectivity, but the point I made and continue to make is that there was a lot of raising of expectations. Later I will refer to correspondence that I have received from people whose expectations have been raised in that way.

Further, the proposed scheme in the bill is a breach of an International Labor Organisation convention, convention 121. On top of that, there is significant potential for a return to the bad old days of rorts and rip-offs, and consequently serious blow-outs in cost. The government has failed to make public any assessment of the economic impact of its legislation or whether it will result in the loss of jobs. The bill is riddled with drafting and substantive other anomalies that many legal firms and others have drawn to the opposition's attention.

The minister has introduced some house amendments that attempt to deal with some of them, but I have not in the time available had the opportunity to determine whether or not they adequately address the problems they are intended to address. I note that a large number of other concerns about the structure of the government's scheme are not addressed by the house amendments, and in one respect the amendments increase concerns about some of the possible injustices contained in the legislation.

The bill involves a surreptitious shifting of cost for workers compensation from employers to motorists. The bill imposes a serious burden on the operation of the Court of Appeal due to the greatly increased number of cases that it is likely to have to deal with and the manner in which they will have to be addressed.

Mr Cameron interjected.

Mr CLARK — The minister interjects and says that the chief justice says it is okay. I will return to that point later.

There is also a concern as to whether the bill retrospectively takes away some of the legal rights of workers, employers, motorists and road accident victims through the amendments it makes to the Sentencing Act.

For all of these reasons, which I will discuss in more detail, the bill is inferior to what could readily have been achieved as a result of a review of the current legislation in line with the principles that were adopted in 1997 and in light of experience since 1997. As I indicated earlier, this bill is also inferior to what the major parties could readily have agreed on with or without so-called common-law legal actions.

I turn to say a few words about the history of workers compensation. It is a topic that the government does not like very much — it would rather expunge large slabs of history — because the historical element is inconvenient for the government's present policy and political stance. The government has put a lot of effort into trying to convince the public that the so-called common-law legal actions for workers compensation are some sort of time-hallowed civil right that was removed only by the act of a tyrannical and repressive coalition government.

Mr Cameron interjected.

Mr CLARK — The minister interjects and says that would be right. However, the impetus to remove the common law from workers compensation has traditionally come from the Labor side of politics because of the perceived deficiencies for injured workers of the so-called common-law regime.

By way of background, most honourable members would know that the common law in its pure sense is the system of legal judgements developed by the courts that attempts to interpret and expound on principles of law that were held in common throughout England dating back to Saxon times, prior to the Norman Conquest. By a process of evolution, which legal scholars can readily expound on at great length, that body of law progresses at least notionally on the basis of courts expanding and declaring the existing law. In many respects that is a worthy system, and legal scholars debate the relative merits of the United Kingdom-based common-law system as compared with the code-based, purely legislative system that applies through much of continental Europe.

During the 19th century it became apparent that the system of common law did not deliver justice to injured workers. One of the consequences of following common law was that an injured worker could not recover damages against an employer for injuries due to the negligent acts of a fellow worker. Initially that was based on the judicial ruling of what is referred to as vicarious liability — that is, the responsibility of one person for the acts of another — but generally did not extend to the responsibility of a master for the wrongs — or torts, to use the legal term — of the master's servants.

Later, the doctrine of common employment was developed with a similar consequence based on the legal maxim of volenti non fit injuria — that is, to one who consents an injury is not done. In other words, the worker was taken to have consented to the risk of being injured by a fellow worker during the course of employment. That caused significant injustice and required remedy by statute.

Further anomalies include the fact that if any degree of contributory negligence on the part of the worker could be identified, the worker's claim failed, which was the principle of the law of negligence generally. This required change by statute. Further, if the injured worker died, the right to sue for negligence ended and his or her dependants could not recover. Again legislation was required to change that.

What is now held as a hallowed civil right to be put on a pedestal similar to the Magna Carta is a recent hybrid of common law and statute. It cannot command allegiance based on its antiquity but must stand or fall on its merits.

In 1897 in the context of common-law and statutory modifications a scheme of workers compensation was introduced in Great Britain. The scheme provided a scale of statutory benefits to sit alongside the continuing common-law right — whatever it happened to be worth to the employee concerned.

In 1914 a scheme of legislation following similar principles to those adopted in Great Britain was picked up in Victoria. Other parts of the world were going down different paths: Germany adopted a system of workers compensation before Great Britain; and from January 1915 Canada introduced its own workers compensation act. The Canadian system did away with common law totally and replaced it with statute, which is the path followed by many states of the United States of America.

The system adopted in 1914 in Victoria continued in concept for many years. There have been continuing challenges to the approach of providing compensation for accidents. One worthy of mention is the report by the Woodhouse committee in the 1970s recommending

an across-the-board abolition of negligence actions in relation to accidents. The committee listed a number of reasons:

1. Neither the issue nor the attribution of responsibility can be justified by implications of personal fault that are tested quite impersonally. Nor does the fault philosophy have any rational bearing upon the distribution of awards that are really a charge upon the community.

2. The negligence concept is not used to assist the injured but to exclude numerous claimants on grounds of economy. The ostensible purpose of the system is to measure real losses in order to provide equal damages in return: but by permitting the fiction to survive that the trial is a contest between individuals the process becomes an attempt to achieve not the fairest solution but the best possible bargain.

3. Lump sum awards are required not because future losses ought to be paid for at once but because future payments cannot be controlled conveniently by the courts. The disembodied attempts needed to prophesy the future in terms of a once-and-for-all payment now, can only fortuitously avoid over-compensation on the one hand or under-compensation on the other.

4. The attraction of capital in hand is illusory; and if the fund should be exhausted too readily, there could be calls upon the social security system for relief and a consequential second payment for the one injury.

5. In more serious cases, at least one-fifth of successful plaintiffs have their assessed losses reduced by average amounts that range from no less than 30 per cent in Queensland up to a figure of 49 per cent in New South Wales.

6. The system leaves at least half of all the claimants with permanent disabilities waiting for their damages for more than two years; significant numbers are still unpaid after four years; and in some instances the cases have not been finalised after five.

7. The adversary system hinders the rehabilitation of injured persons after accidents and can play no effective part beforehand in protecting them.

The report laid the groundwork for reform of workers compensation that developed momentum during the 1980s. In Victoria the Cooney report — which will be familiar to honourable members opposite — was presented. The Cain Labor government looked to replace the old common-law-based workers compensation system with a statutory no-fault scheme.

On 8 June 1984 the report of Senator Barney Cooney was submitted to the government. It was a wide-ranging report putting a lot of argument and containing insight into the history of workers compensation. Honourable members and others interested in a good summary of common law relating to workers compensation are referred to section 9 of the report.

The significant fact for today is that with some qualification as to timing and extent the majority of the committee took the view that the abrogation of common-law negligence actions should be considered in the context of a national accident compensation scheme. At that stage the weaknesses of the so-called common-law system were recognised. I remind the house that that report was commissioned by a Labor government.

Having received the report, the Labor government itself moved on to develop its own policy in relation to reform of the workers compensation system. It was a policy that resulted in the Workcare legislation. In December 1984 the government of the day published one of its series of well-known green and yellow booklets entitled *Victoria — Workers Compensation Reform*. It was number five in a series of government statements, which were subtitled ‘Economic initiatives and opportunities for the 1980s’.

In that report the government highlighted a number of weaknesses in the common-law system, and I will refer to some of them. Page 4 of the booklet states:

> At present injured or ill workers are forced to depend on lump sum settlements both under the Workers Compensation Act and the common-law process to obtain some form of income compensation. In a large number of cases this means that the injured worker is unable to maintain his or her standard of living. Subsequent to the Cooney report, further research has become available which reinforces the serious employee concern about the ability of the current system to provide adequate income security. For example, a study conducted by the Victorian branch of the Federated Liquor and Allied Industries Employees Union found that lump sums awarded were at best arbitrary and inadequate and at worst discriminatory. Employees have frequently expressed to the government concern about the role of lump sum settlements in the present system.

Later on at page 19 the report, having detailed other reasons why the proposed reforms were beneficial, states:

> Fourthly, there is much evidence that the present emphasis on lump sum payments short-changes injured workers and provides inadequate long-term benefits for those who are severely injured. The establishment of a more realistic system of periodical payments with restricted provision for lump sums will provide a better response to the needs of those whose workplace injury or disease has left them with continuing long-term disabilities.

Later on the report addresses specific deficiencies in the so-called common-law system. I refer to pages 30 and following of the report, where it states:

> The available Victorian data indicates the significant cost impact of common-law claims. The survey of claims received by the State Insurance Office between 1 July 1979 and 30 March 1984 showed that common-law claims comprised

> only 0.97 per cent of total claims. Broken down into government, local government and private employer categories, the percentage of common-law claims to total claims was 0.76 per cent, 0.58 per cent and 1.75 per cent respectively. This small percentage of claims amounted in 1982–83 to 13.89 per cent of total claims payments. The incidence of common-law claims in part reflects the nature of the State Insurance Office's employers' liability portfolio, the data for one of the major private insurers show common-law claims as representing 3.75 per cent of total claims but constituting 24 per cent of the total amount of paid claims, excluding legal costs. Common-law claims represent 58 per cent of this company's provision for outstanding liabilities.

The report is making the point that common law is skewed toward a very small section of the total range of injured workers. It goes on to state:

> The transaction costs, that is the costs entailed in delivering benefits, are particularly pronounced with regard to common-law negligence actions. There are costs involved in the establishment of responsibility for the accident, the assessment of the plaintiff's injuries and other losses, and in determining the appropriate level of compensation. Thus, as well as pure legal costs, there are the expenses of loss assessors, specialist medical opinion and expert consultants retained to reconstruct the accident events. In addition, there are the administrative costs of the liability insurance industry which underpins the whole system. The Pearson Commission in a survey of United Kingdom claims between 1971 and 1976 found that the annual administrative costs of the common-law system amounted to about 85 per cent of benefits paid, compared with a figure of about 12 per cent of benefits for the British industrial injuries scheme.

The report gives similar evidence of costs and experience in Victoria and elsewhere in Australia. Just to reinforce the point, at page 63 the report states:

> The common-law action is largely a product of 19th century legal development and reflects the dominance of the laissez faire ethos of Manchester liberalism. Functionally, the fault concept served to protect the newly emergent corporate enterprises — particularly the developing railway companies — whose progress it was felt would be stultified if burdened with the costs of 'inevitable accidents'.

On the same page the report further states:

> As mentioned above, the government's concern about the role of lump sum payments rests upon both social and economic grounds. A major social consequence of lump sum comprises and redemptions in the statutory system and of common-law damages awards is that they constitute a major disincentive to rehabilitation. Indeed there is now extensive medical literature documenting the relationship of such payments with the developments of neurasthenia or functional overlay. Major Australian studies such as those by Balla and Moraitis, Mendelson and Stagoll show that such conditions are not 'cured by a verdict' and can remain lifelong afflictions. Lump sum payments can pressure an employee who may be under financial, physical or emotional strain to accept the attraction of a relatively large sum when it may not be in their best long-term interest to do so. As well, these lump sum payments can be the source of financial and social problems. Some lump sum recipients are not able to manage their long-term financial requirements. A study for the New South Wales Law Reform Commission, attempted to trace all recipients of significant lump sum awards in New South Wales in 1976. Included in the survey were all recipient of large workers compensation redemptions in 1976 …

It goes on to specify the way in which they were determined, and concludes:

> The survey results indicated that by 1983 two-thirds of the persons in each of these groups were reliant upon the social security system for their financial support.

The booklet sets out other evidence that leads to similar conclusions. It includes evidence of the regime that prevailed in the 1980s and the context in which the Labor government developed and implemented the then Workcare scheme. The former honourable member for Sunshine, Ian Baker, was heavily involved in the development of the Workcare model, which largely eliminated common-law legal actions. The model totally abolished so-called common-law legal actions for economic loss. Claims could be made only for pain and suffering.

At that time that line of reform won editorial support from the *Age*. On 13 December 1984 the *Age* editorial concluded, after examining the pros and cons of the scheme:

> However, the new scheme promises significant economies, is more sensitive to the needs of its beneficiaries and has the support of the business community. It deserves a fair trial. The claim that it will mean nationalised insurance seems odd: a similar system already operates in Queensland, the anti-socialist heartland of the nation. The emphasis on prevention and rehabilitation is particularly welcome, although which two separate bodies are needed to pursue this objective is by no means clear. Despite its limitation, the new scheme is a substantial improvement on the existing one.

That editorial is from the same newspaper that more recently has concluded that any legislation that abrogates the right to common-law legal actions somehow produces a heinous injustice.

In any event, the Cain Labor government proceeded with its legislation, taking advantage of temporarily having the numbers in the upper house, a circumstance with which honourable members will be familiar. It meant that legal actions could be mounted only for pain and suffering. In his contribution to the debate on the 1985 Accident Compensation Bill, the Honourable Rob Jolly, the then Labor government Treasurer, is reported as saying:

> The government has resisted the forces of lawyers on this matter because common-law action on income loss has been an enormous financial bonanza for lawyers in the state. A common-law action is a long process which, if the injured worker is to win his or her case, requires the lawyers to

> present a case which would demonstrate that the injured worker is not capable of active work again. The whole approach to common-law action completely distorts the focus of rehabilitation.

The then honourable member for Springvale, Mr Micallef, who unfortunately is no longer a member of this place, made similar points during that debate. On 16 July 1985 he documented at length the case of a worker who had received a $39 000 common-law settlement but who, after paying $20 000 in legal fees, was left with only $19 000. The honourable member concluded:

> The worker has a permanent injury and he is left with $19 000 to provide for him and compensate for the pain and suffering, plus loss of income and future loss of earnings.

Throughout his time in Parliament the former honourable member for Springvale maintained a principled opposition to so-called common-law actions.

I now refer to other jurisdictions, where the pattern is similar. The Labor side of politics has set about totally removing access to or drastically reducing the scope of so-called common-law actions in accident compensation matters. In 1988 the commonwealth Labor government sought to totally eliminate so-called legal actions from the commonwealth workers compensation system. The then Minister for Social Security, Brian Howe, put the case in his second-reading speech on the Commonwealth Employees (Rehabilitation and Compensation) Bill. At page 1294 of commonwealth *Hansard* of 27 April 1988 he is reported as saying:

> Perhaps the most controversial aspect of the new legislation is that common-law actions against the commonwealth will be replaced by the comprehensive benefits which I have described. It is clear to this government that common-law negligent action which bases its entitlement on proof of fault is a costly, inefficient and inappropriate mechanism for compensating injured workers. Delays in settling these actions act as a positive disincentive for employees to return to work and encourage them to maximise the extent and duration of their injuries. The provision of an adequate level of weekly income, substantially increased lump sum payments on death or impairment, payments for additional expenses for medical costs, aids and appliances and household help, combined with a commitment to rehabilitation and the return to suitable employment, make redundant any need for redress to the courts.

Mr Howe, who, I hardly need add, was a highly respected member of the Left within the Australian Labor Party, obviously did not think a proposal to remove so-called common-law legal actions represented the end of western civilisation or that it denied workers their rights, thereby creating a class of disenfranchised citizens.

The then Labor government passed the bill through the House of Representatives. It was amended in the Senate and returned to the lower house. Earlier Mr Howe made further reference to the provisions of the bill, as reported at pages 2753 and 2754 of federal *Hansard* of 20 May 1988:

> We have removed the common-law provision not because it will save us money — although it will in fact make the scheme less costly — but because we see it as antithetical to the fundamental orientation in this scheme towards getting the worker back into the work force at the earliest opportunity so that he can feel independent and support his family.

He further states:

> … common law has … been an expensive and inefficient mechanism for compensating injured workers. The necessity to prove fault in what is essentially a no-fault scheme introduces a contradiction to the whole philosophy of the reform of compensation with its orientation towards rehabilitation. I must say that in terms of my initial discussions with the trade union movement, I found that no issue was raised more frequently than that of delays. There is no doubt that in the vast majority of cases the approach that we propose will resolve the problem of delays.

The position then adopted by the ALP stands in stark contrast to the rhetoric we have heard in Victoria in recent days.

One of the leading members of the present Victorian Labor government, then a federal member of Parliament, voted for the total elimination of so-called common-law legal actions from the commonwealth workers compensation scheme.

Mr Spry — Who was that?

Mr CLARK — The Minister for Finance, then the federal member for Bendigo. He does not like having that fact raised. When the issue was debated here in 1997, and shortly thereafter, he suggested that he had not voted for the total abolition of common-law rights. But so far as I can make out, that was the case. I refer honourable members to page 2755 of commonwealth *Hansard* of 20 May 1988, which records the then honourable member voting in the committee stage of the bill.

The commonwealth jurisdiction is not the only one in which the ALP has sought to remove access to common-law legal actions. I refer to the experience in South Australia. The South Australian Labor government first introduced its workers rehabilitation and compensation legislation in 1986. At that stage the government proposed to totally abolish so-called common-law rights for injured workers. As a result of objections from the trade union movement, the South Australian government limited their abolition to

pecuniary losses only. However, in 1992 the same Labor government introduced and passed legislation that totally abolished common-law workers compensation actions. So far as I am aware, the current South Australian Labor opposition has no proposal on foot to reintroduce those actions.

Indeed, if one examines the available evidence, to which I will refer briefly later, one finds that the South Australian workers compensation scheme is one of the more stable and less controversial schemes in the country. In addition, as I have mentioned, the New South Wales Unsworth Labor government abolished common-law actions in the 1980s, although they were subsequently restored by the Greiner government.

I now refer to a few other points made about so-called common-law actions by members of the Labor Party. In particular, I cite the former member for Monbulk, Mr Neil Pope, who was regarded as one of the more able and perceptive members of the previous Labor government. On pages 596 and 597 of *Hansard* of 17 September 1986 he is reported as saying, in relation to transport accident legislation:

> In its advertising the Law Institute of Victoria stressed the protection of the rights of innocent victims. I point out that an entirely innocent victim who cannot prove fault receives nothing at common law, whereas a grossly negligent plaintiff who can prove some fault on the part of the other driver will recover a proportion of the damages. I ask: what sort of justice is that?

He went on to say:

> … despite the claims of the Law Institute, the common law tends to under-compensate … I now provide the example of the Woodhouse committee. Common law under-compensates the severely injured. In fact, as I understand it, the only head-to-head comparison that has ever been made was that made by the Woodhouse committee.
>
> … The Woodhouse committee found that of the 58 cases that were assessed, common law exceeded the compensation benefit in 19 cases and was less in 39 cases. However, in 11 of the 19 cases where the common law was greater, the total payment was less than $20 000, thus confirming the well-known tendency for the common law to be comparatively more bountiful in cases of less serious injury and to under-compensate in the case of the severely injured. Yet we have the position put forward by honourable members opposite and the Law Institute of Victoria that all is well by keeping the common-law situation in existence.

A revealing account is to be found in the autobiography of James McClelland entitled *Stirring the Possum* and published by Viking Penguin Books in 1988. On pages 82 and 83 he refers to the role of common law in labour lawyer legal practices in New South Wales:

> The cream of the personal injury work was the common-law action for negligence. If the injury was caused by a fellow worker's carelessness or a faulty work practice, or, in the case of a journey injury, by careless driving, the injured worker was entitled to sue for negligence.
>
> Although some considerable reputations — for example, that of Clive Evatt, Snr — were built on negligence work, it was never highly regarded by the more conservative sections of the profession and was openly despised by the lawyers' lawyers mainly because success at the bar in this type of work was regarded as depending more on an advocate's theatrical gifts in wooing a jury than on the exposition of complex principles of law …
>
> Still, personal injury work was highly lucrative and a few fortunes were made from it. The whole system was abolished by the Unsworth government (though partially restored by the Greiner government) because it was widely argued that the ballooning insurance premiums required to finance the ever-growing number and size of verdicts imposed an unendurable cost burden on industry. Throughout the years the nello —

negligence —

> lawyers understandably waged a desperate rearguard action for the preservation of their role in the scheme of things, employing in the process arguments of mind-boggling casuistry.

That is a frank statement of his views on common law by a leading member of the Australian Labor Party.

I turn now to the handling of workers compensation issues in Victoria under the coalition government between 1992 and 1997. I remind the house that the context in which those reforms took place was a Workcare scheme in chaos. Premiums had hit 3.3 per cent of payroll before being trimmed back to 3 per cent in an unaffordable attempt to mitigate the justified wrath of employers prior to the 1992 election. Despite those high premiums the scheme had racked up unfunded liabilities totalling $2.1 billion.

I refer now to the coalition government's workers compensation policy prior to the 1992 election. The final bullet point of that policy was that:

> Workers common-law rights to sue for pecuniary loss taken away by Labor will be reinstated. The emphasis will be on seriously injured workers, therefore we will have only two heads of damage for pecuniary loss and for pain and suffering with specified minimum and maximum claims for damages.

So contrary to the urban myth that might prevail at the moment, it was the newly elected coalition government that in 1992 restored common-law actions by seriously injured workers for economic loss. However, by 1997 the coalition had changed its views on the matter. I make no attempt to step away from the fact that the coalition changed its views. Members on this side of the house openly admit that by 1997 the coalition government had been persuaded that many of the concerns that had been raised about common-law

actions were justified and that we would be better off having a system based on guaranteed no-fault benefits.

One might have thought, given all I have said to date about the history of the Australian Labor Party's attitude to the so-called common-law legal actions, that in 1997 members of the then opposition would have claimed a moral victory, saying, 'We told you so! We have been vindicated!'. But no, instead they made an immediate U-turn. They decided that the common-law regime which they had at best dallied with and tried to check and limit and which they had at worst totally eliminated, was sacrosanct and absolutely inviolate and any attempt to alter it was a gross infringement of human rights.

That was absolute humbug, whatever one thinks of the merits of common-law actions. The views of the members on the other side of the chamber may differ on that point, as do the views on this side of the chamber, but that is not the point. The point is that there is no justification throughout the history of the Australian Labor Party's approach to common-law legal actions for its assertions in 1997 about an attack on rights as a result of the removal of common-law legal actions. It was an opportunistic attack of the worst order. Recently the Labor Party demonstrated that that opportunism is not confined simply to workers compensation; it is probably the main driving force behind the present Labor government. The Labor Party will do whatever suits it politically. It has no vision or commitment to a principled approach.

Mr Cameron — You mean keeping a promise is not a principled thing to do?

Mr CLARK — The government made an opportunistic promise in 1997, and it now seems to be inexorably stuck with the consequences flowing from that promise. Injured workers, employers and Victoria generally are likely to suffer as a result of that promise.

The government's strategy has been to make a wholesale attack on the performance of the Workcover system under the previous coalition government in an attempt to justify the legislation and the package being put forward. There has been an attack on the benefit levels, the management, the safety, the inspectorate and even the financial performance of the scheme. Given that the Labor Party left Victoria with $2.1 billion of unfunded liabilities and a premium rate that hit 3.3 per cent, its last attack is a bit rich.

The attack is unjustified for reasons I will demonstrate. The Minister for Workcover claimed in Parliament that the figures on Workcover losses show a downward trend that is out of control. He was passionate in this house on 4 November 1999 when he waved around a chart that allegedly demonstrated that trend. On 16 December he claimed in the house that the Bracks government had inherited what he called 'a black hole' from the previous coalition government. That is not borne out by the facts. It is worth noting the facts to demonstrate that point convincingly.

Mr Cameron interjected.

Mr CLARK — The minister wants me to look at the balance sheet. I will do that as well.

The first document I will refer to is the actuarial review of the Victorian Workcover Authority as at 30 June 1999, which is dated 20 August 1999. At my briefing as shadow minister I asked to be provided with a copy of that document but was told that if I wanted it I should seek it by other means. To have been given that response at such an early stage of the new government I thought was a bit churlish. However, I duly lodged my freedom of information request and subsequently received a copy of the report. When I looked at it I realised what strong motivation the minister had for not wanting me to see it. It makes a number of clear points that completely rebut the claims the minister had made.

In particular, the report projects that on the current premium levels set by the previous coalition government — that is, without any of the changes the government is now proposing — Workcover will be fully funded by February 2001. So, as a result of the measures adopted in 1997, rather than plunging into a black hole the situation had bottomed out and the scheme was heading back into the black. The actuaries refer to the various assumptions made in the report and on page xvii they state:

> Based on these projections and an ongoing premium rate of 1.9 per cent of wages (including the superannuation component), we project full funding of the scheme by February 2001.

Like all good actuaries they put a number of caveats on that projection, but they were prepared to nail their colours to the mast and claim that the scheme is heading into the black.

Mr Cameron — When was the last time the actuaries were right?

Mr CLARK — It is interesting that the minister raises that question, because over recent years actuaries have consistently tended to be wrong. Why have they tended to be wrong over recent years? Because they have underestimated the cost of so-called common-law legal actions — the very system of legal actions the

minister wants to bring back in. If the minister is worried about actuaries being wrong, he really should be worried about whether they are wrong in their costing of the scheme he wants to bring back.

Are they wrong in the actuarial report released by the working party that was established by the minister? Are they wrong in the figures picked up on by the working party and subsequently by the government to justify the costing of 2.18 per cent premiums announced by the government? By his own words the minister is putting under question the fiscal veracity of the scheme he has announced.

Mr Cameron interjected.

Mr CLARK — Is the minister already capitulating and conceding that the system cannot be held within that 2.18 per cent figure?

I will now refer to other points made by the actuaries in the August 1999 report. They pointed out at page vi of the review that of the $816 million worth of factors that contributed to an increase in the estimated liabilities of Workcover between June 1998 and June 1999, $732 million consisted of an increase in liabilities for pre-November 1997 common-law claims. Again it was the common-law claims that were being run off over that period in respect of pre-1997 injuries that gave rise to the financial difficulties of the Workcover scheme, and they were trending out as the run-off continued.

That is clearly set out by table 8 at page xvii of the review, which documents the actuaries' estimate of the 1999–2000 scheme cost as being 1.68 per cent of wages. That was based on looking at the current costs accruing on a day-to-day basis from injuries and claims entitlements as they exist at the time or as they exist now, as distinct from the costs that have to be paid out now as a result of common-law legal actions for injuries sustained prior to November 1997. The actuaries said that on the current costs the scheme is in the black, and is generating the revenue that is tending to take the scheme overall back into the black — that is, to pay off the accumulated liabilities that had emerged.

If that were not enough to demonstrate the inaccuracy of the minister's claims, I turn to the report of his own working party. I should warn people seeking to refer to the report that the last time I downloaded and read a copy of it from the government web site I noticed that its pagination was not the same as that of the printed version. I will refer to the pagination of the printed version.

Page 22 of the printed version bears out the fact that for the past three years Workcover has been more than covering its current costs and that if left unchanged it will return to the black by 2001. Page 28 of the working party report contains the statement:

> The VWA's actuary projects that, at current scheme cost and premium rates, the scheme will regain full funding by February 2001.

There is no qualification of or demurring from that — the working party bears out what the actuary found. The report also makes it clear that the main cause of the Workcover losses had been the cost of the 1997 claims under so-called common law — the very system the government wants to reintroduce.

I refer honourable members to pages 26, 27 and 28 of the government's working party report, which documents the extent to which movements in the assessment of the common-law liability have been the main contributor to the change. At page 26 the report states:

> Chart 2.9 below shows the contribution of common-law claims to the increase in total claims liability. The actuarial valuation of common-law liability at June 1998 and one year later has increased from $800 million to $950 million. This increase was a result of a reduction in common-law liability as a result of payments made during the year (–$400 million) offset by an adjustment for valuing liability at different points in time (+$40 million) and the revised assessment of liability for prior years (+$510 million). There is no additional liability for injuries arising after June 1998 for common law due to the abolition of common law from 12 November 1997.

That is further confirmation of the point I am making. The minister has referred by way of interjection to the latest actuarial report. I would be interested if he or one of his colleagues would be prepared to indicate whether the minister is referring to the actuarial report in the public arena or to one he is holding back on. The latest documentation in the public arena — leaving aside the figures contained in the actuarial costing for the working party — is the latest published half-yearly report of the Victorian Workcover Authority to 31 December 1999.

On 14 March the minister referred obliquely to that report in the house. Although I have read his answer to the question he was asked several times, I am still trying to work out exactly what he said. As it is not permissible to quote from *Hansard* of the current session of Parliament, I will paraphrase it. The minister attempted to put forward an argument that, if worked out based on the figures in the half-yearly report, the figure back at 30 June would have been $338 million rather than $176 million.

I have not been able to work out how the minister got to that. In a sense I do not need to because the two

financial reports — the profit and loss statement, and the balance sheet to which the minister asked me earlier to refer — for the half year ended 31 December 1999 set out at pages 22 and 23 of the report are crystal clear: they show that the Victorian Workcover Authority had an operating profit after income tax of $96 663 000 in the half year to 31 December 1999. Exactly as one would expect, after having been in the red the scheme is starting to head back into the black as common law is run off.

Mr Cameron interjected.

Mr CLARK — The minister interjects and says, 'High investment returns'. I would be interested to hear him or others elaborate on that.

If one looks at the balance sheet one sees that as at 31 December 1998 the Victorian Workcover Authority had an accumulated loss of $133 800 000, which by June 1999 had increased to the figure that has often been referred to publicly of $295 612 000, yet as at 31 December 1999 the accumulated loss figure had been reduced to $198 949 000. That again demonstrates that the Workcover scheme is returning to the black, with the common-law issues that have been dealt with still working through the system.

The second line of attack made by the minister on the Workcover scheme relates to administration — but I will not directly attribute it to the minister. The Department of Treasury and Finance retained Mr Masel to conduct a review of the performance of the Transport Accident Commission and the Victorian Workcover Authority in respect of common-law claims management. From what I can see from having looked through it, the report is well put together, goes into considerable detail and comes up with a number of useful conclusions and recommendations.

The report highlights the fact that in some ways the Transport Accident Commission approach to things is better than that of the Workcover Authority, and in some respects the way things are being handled under Workcover is better than the way they were being handled under the Transport Accident Commission.

The report also indicates that much of what the Victorian Workcover Authority was doing makes sense in light of the decision to end so-called common-law legal actions in 1997, and to handle the run-off process. The report points out, understandably, that that needs to be reconsidered if a decision is to be made that so-called common-law legal actions should be ongoing. Certainly I could find nothing in the quantitative part of the report prepared by Trowbridge Consulting to provide quantitative evidence that the practices of the Victorian Workcover Authority had resulted in higher payout levels than needed.

It is worth making the point that if one is trying to identify causes for differences between the Transport Accident Commission scheme and the Workcover scheme it is equally easy to point to the inherent greater difficulty of managing so-called common-law claims in an industrial environment than in a motor accident environment, due both to the differing natures of the injuries — although the actuaries attempted to adjust for that — and to the culture that prevails in those two schemes.

Mr Cameron interjected.

Mr CLARK — As the minister says, it involves different stakeholders.

The other aspect of criticism of the coalition's actions on Workcover relates to benefit levels. It is easy to wage a debate by citing examples one way or another when there is mainly anecdotal evidence available — it is one anecdote against another. One of the points that should be made across the board is that there is a propensity for people to seriously underestimate the true value of the weekly benefit payments available under the no-fault scheme. That tends to distort many people's assessment of the relative attractiveness to them of the so-called common-law legal action compared with the no-fault regime.

Under the no-fault regime a lump sum payment is available for impairment, subject to the various criteria and requirements set out in the act. A weekly income benefit is available separately. By contrast, in common law the income benefit and compensation for pain and suffering are aggregated into one lump sum. There is a tendency to compare the combined lump sum award available under common law with simply the lump sum no-fault payment available under statute, but that is not the correct comparison. The correct comparison is to convert to a lump-sum-equivalent value the weekly income benefit that the injured worker is likely to receive under the no-fault scheme, add that to the lump-sum impairment benefit, then compare that total figure with what might be available under common law, after deducting all the legal and other costs and expenses that might be required to be borne in the common-law regime.

I turn to some examples based on the situation as it prevailed prior to 1997. Under one hypothetical example, a person rendered paraplegic at the age of 51 may receive a lump-sum-equivalent payment of

approximately $576 000 under the statutory scheme, depending on the extent of the injury. Not many common-law actions settle at that level. Approximately 96.9 per cent of all common-law claims were being settled for less than $450 000 in total. Some 76.5 per cent were settled for less than $250 000.

The average common-law payout available to an injured worker, after allowing for all the legal expenses, was in the order of $172 000. Even under the working party report updated for later figures the estimate of the average payment to a seriously injured worker under common law is $195 000. If one compares the 1997 no-fault benefits one sees that a worker who was unable to work again would receive weekly income benefits of 75 per cent of pre-injury ordinary time earnings to a maximum of $887 a week until retirement age.

One can consider the example of a 30-year-old worker receiving weekly payments of $650. The total would be approximately $1186 000 if one simply adds up the dollars without any adjustment, which is equal to approximately $490 000 in present-value terms. On top of that, there is the lump-sum impairment benefit available to a maximum of $302 250 for very serious injuries such as paraplegia or blindness. To get those benefits the worker does not have to run the gauntlet of the cost, delay and uncertainly of so-called common-law legal action.

By comparison, if one considers what is available in other states, it does not stand up very well. In Western Australia, weekly payments plus any statutory lump sum payment cannot usually exceed $119 048 in total; and in Queensland the figure is $235 640. In New South Wales an injured worker who is married with one child receives a maximum sum of $395.80 per week; and the maximum New South Wales statutory lump sum is $171 000. To receive more than those amounts an injured worker in one of those states would have to successfully run the gauntlet of a common-law legal action.

In South Australia, which does not have common-law access, long-term weekly benefits are 80 per cent of the worker's average weekly earnings, but the maximum lump sum payment is only $175 875. I recommend that honourable members and others who are interested in more detail of how the Victorian scheme compares with those of other states look at some of the useful tabulations that appear in the report of the government's working party, for example, appendix D, which sets out a summary of available weekly benefits.

I refer honourable members to a recently released report of the workplace relations ministers council of comparative performance monitoring, entitled *The Second Report into Australian and New Zealand Occupational Health And Safety and Workers' Compensation Programs*. It was released on 27 April 2000 in conjunction with a meeting of the workplace relations ministers council, which I assume the Minister for Workcover attended. It has some useful examples of how the benefits available under the existing scheme in Victoria compare with benefits available in other jurisdictions.

I refer to page 89 of the report, which provides the example of someone suffering a permanent incapacity. The assumed model is that of a 28-year-old male worker who was working a 38-hour week with no overtime when he sustained an injury on 24 December 1997. There was no element of contribution in the circumstances of the accident. In the hypothetical example the worker's injury was diagnosed as a complete tetraplegia below the sixth cervical neurological segment. That resulted in paralysis of the hands, impaired upper body movement and paralysis of the trunk and lower limbs. The worker lost all lower body functions and is wheelchair bound. Incapacity was total and permanent.

When he sustained the injury the worker was in receipt of the award wage of $500 net per week and had been taxed at the rate of $93.50 per week. He had expected to work to the age of 65 and contributed to a superannuation fund. There was no real prospect of his being able to return to work. The worker required a carer 5 hours a day, 7 days a week. He had no dependants at the date of injury but had intended to marry and have children.

A chart sets out the various benefits available. It does not have exact dollar figures but the point is clear that, in making a comparison which takes into account the weekly benefits that would have been payable for the remainder of the individual's working life, all lump sum payments for permanent incapacity and estimates of common-law settlements where applicable — and taking into account the permanent incapacity — the benefits available in Victoria for that permanent incapacity are higher than those in any other jurisdiction in Australia. They appear to be $850 000 in present-value terms.

The Queensland, South Australia and New South Wales schemes then follow in decreasing numerical order. That bears out my earlier point: looking in particular at the serious-injury end of the spectrum, Victoria's system of no-fault benefit stands up well compared with those of other jurisdictions.

I cite an example of a lesser but still significant injury, which is set out at page 88 of the report, involving a case of permanent impairment due to the loss of fingers. The report states:

> In this instance, the injured employee received an award wage of $500 per week and performs no regular overtime. The employee has a dependant spouse but the couple are childless. The injury sustained concerns the severance of two digits, the thumb and forefinger, on the right hand. While there is no partial return to work the employee returned to full-time duties after six weeks.

Again, after aggregating all the compensation figures available one sees that Victoria has the second highest benefit rate of all jurisdictions. The precise figure of $85 159, which is cited in the report, is second only to New South Wales, which was computed at $95 500. The benefit levels available in Victoria, particularly for the most seriously injured workers, compare favourably with those in other states.

I now refer to industrial safety. The Minister for Workcover again suggested that the former government was not diligent about and did not have sufficient regard for the safety of workers. That allegation is false. The available statistics show that accident rates in Victoria have fallen consistently over time. The work of Victoria's inspectorate compares favourably with what was done in the past and with the work done by inspectorates in other states.

The number of hours inspectors spent visiting workplaces increased from 6198 hours in 1992 to 7561 hours in 1996. Following the amalgamation of the Workcover Authority and the inspectorate, the number of hours increased to 9711 in 1997. The amalgamation has proved to be highly successful. I will refer later to the present government's policy of breaking up the Victorian Workcover Authority and splitting off its safety function.

Other statistics from the authority's 1998–99 annual report and the authority's statistical report for 1997–98 show that on a standardised basis the number of reported claims has fallen from 64 768 in 1986–87 to 31 340 in 1998–99.

Mr Nardella interjected.

Mr CLARK — The honourable member for Melton suggests that that is because of a change in the basis for measuring claims.

Mr Nardella — Absolutely.

Mr CLARK — I reiterate that those claim numbers were standardised to ensure their comparability over time. If one examines work-related death claims — I do not think even the honourable member for Melton would suggest that death claims were not lodgeable over that period — one sees that they peaked at 262 in 1988–89 and fell to 125 in 1998–99.

That is not to suggest that problems do not emerge in particular industries. There appears to have been an increase in the number of fatalities in the construction industry in recent years. That may well be because that industry is stretched to the limit — or it was until recently — which has not only increased the number of people engaged in the work force but also placed pressure on people to cut corners.

If problem areas emerge governments must respond, and if one looks at the various announcements made by the Workcover Authority dating back to July last year, one can see that that happened under the former coalition government. The present government has adopted its own approach, and the jury is still out on how successful that will be. However, the suggestion that the former coalition government and the former minister did not have a sufficient commitment to industrial safety is unwarranted.

The May 1999 report of the ministerial council I referred to earlier — it was then described as a labour ministers council — shows that in 1997–98 Victoria had more workplace safety inspections than any other state — 58 189 compared with 50 314 in New South Wales. The same report also shows that Victoria had 236 inspectors and investigators compared with 254 for New South Wales. Subsequent to that, in July last year the VWA announced that the number of staff in the field would be increased to 255 by the end of 1999.

There is a need to be constantly diligent and to look for better ways of handling workplace safety and target problem areas. As with the road toll there should never be satisfaction with the prevalent figure at any time. Adopted measures should be intelligently directed at solving problems and should avoid allowing industrial safety issues to be hijacked by people who might want to pursue other agendas and make them part of broader industrial campaigns.

It is worth noting the present overall status of Victoria's workers compensation scheme compared with those in other states because the government has not paid a great deal of attention to that issue, except in the most simplistic terms. I commend to anyone interested in this issue to appendix B of the working party report of February 2000. I refer to the pagination in the printed version. Many other states are experiencing

considerable difficulties with their workers compensation schemes.

New South Wales has the highest premium rate in Australia, with unfunded liabilities of around $1.6 billion on last measure. New South Wales has been tearing its hair out as to how to improve its scheme. The Labor government in New South Wales has gone so far as to propose privatisation of many aspects of its scheme. So far as I am aware that has been deferred, although it is still intended that it go ahead in October of this year.

The South Australian scheme, which is one in which common-law legal actions were eliminated by a Labor government, has demonstrated a stable premium level for many years. Its solvency ratio is trending up in the right direction.

Western Australia's premium rates have been rising dramatically in recent years. Recently a package of legislation was passed to drastically restrict the scheme and impose conditions on entitlements because of the runaway costs.

The Queensland scheme has the lowest premium levels in the country at 1.85 per cent and has been performing well over many years. However, it is worth flagging the fact that the Queensland Labor government recently introduced a package of measures that have significantly liberalised entitlements under the scheme. It will be interesting to see how that works out as the years progress.

Premium rates in the Tasmanian workers compensation scheme have increased significantly in recent years. I quote source note (e) at page 135 of the working party's report, which states:

> Premiums continue to rise as a result of large increases in common-law costs. Between 96/96 to 98/88 —

I suspect there might be a typographical error there, it should be 1998 —

> common-law costs increased on average 15.5 per cent per annum.

I understand, although I have not been able to confirm it, that the new Labor government in Tasmania is seriously considering the possibility of eliminating common-law legal actions.

Finally, the Comcare scheme, which is largely based on the regime introduced by Brian Howe, a minister in the former federal Labor government, and to which I referred to earlier, has a stable solvency rate and its premium rate has fallen considerably over recent years. Its premium rate is low, probably due to the relatively limited range of employee types that it covers.

That is the context in which the Victorian scheme needs to be assessed. I have demonstrated that on all aspects of the government's criticism and attacks on the scheme, those attacks have been unjustified. Contrary to the government's allegations, it has not inherited from the previous government a Workcover scheme in crisis requiring government intervention to rectify deficiencies in funding, management or administration.

The bill represents a clear, freestanding policy initiative of the new Labor government. There is no opportunity for the government to excuse and try to characterise its actions as a reaction to anything it has inherited. The initiative needs to be judged on its merits in the context of a scheme that was heading back into the black. Labor's opportunistic policy also needs to be assessed in the context that the working party the government established was not given any opportunity to address the merits or lack of merit of so-called common-law legal actions. It was told, 'Common-law legal actions are coming back, you go away and give us some options as to how we might do it'.

Within the constraints of the narrow mandate the working party was given it has produced a good report. I commend anyone who is interested in workers compensation issues to read it carefully. It documents a lot of material that was not conveniently available on the public record from one source. It puts the various arguments carefully and dispassionately within the terms of the mandate it was given. However, because it had such a limited mandate some key pieces of information are not present in the report that really need to be present in order for there to be a fully informed and intelligent public debate.

In particular, there is no comparison of the incidence of common-law payments compared with no-fault benefits on a case-by-case basis. There are aggregate costings, and in the actuarial supplement to the report there is a detailed working through of the methodology and specification of claimant profiles and likely patterns of claims, and so on, but there is a lack of any matching up on a case-by-case basis.

It is not possible to run through a list of cases and identify what a particular injured worker received under the regime prevailing before 1997 compared with the entitlements the worker would have had after 1997. It would be possible to identify where the additional costs of the government package are going if that information were available — costs in terms of increased premiums of $170 million or perhaps more, allowing for the

shifting of costs from Workcover into the Transport Accident Commission, which would be a substantial amount of money.

It is known that a significant proportion of the increased funding will go to increased legal expenses, medical/legal expenses and other costs associated with the litigation process. However, those remain minority components. Where is the rest of the money going? Where will the benefits fall? What categories of worker will receive the additional payments? Only with that information is it possible to make an intelligent judgment about whether the reintroduction of so-called common-law legal actions is the best way to spend the further $170 million or $190 million.

It is not a question of whether more benefits will be received by injured workers. The additional money will go to someone. Will the increased costs be reflected in higher payments to individuals? If so, for what categories of injury? Will they be older or younger people? Will the money be absorbed by a higher number of injured workers than previously received compensation? The answer is not known to the public because the working party was not given a broader mandate.

The information could be readily made available. The Workcover Authority has a database of individual cases referred to in the working party report and the actuarial evaluation and that could readily be used to make the computations. The availability of the database to the public would permit a more informed debate.

Ironically, it is necessary to go to the Trades Hall Council web site to find a sizeable body of information not available in the working party report. It appears the data was made available to members of the working party and Cumpston Sarjeant has done some number crunching on it. The results are available on the web site but it should not be necessary to go to the Trades Hall Council web site to access the information.

The working party report also leaves a number of items of business unfinished and they are issues that the Trades Hall Council is keen to pursue. It wants to look at the impact of the move from the second to the fourth edition of the American Medical Association guides; the assessment of back injuries; and the application of the 30 per cent threshold for statutory impairment benefits in relation to psychiatric illness. How will the government follow up on those matters?

The working party report gave three options involving various combinations of possibilities for reintroducing so-called common-law actions: the rules prevailing before 1997; those rules minus the so-called narrative test so that benefits would be available only if a 30 per cent impairment were established under the American Medical Association guidelines; or those under a so-called tightened narrative test that attempts to replace on a more restricted basis the narrative prevailing before 1997. Various options were also put forward for possible increases to impairment benefits, which the report refers to as statutory non-economic loss benefits, and options for possible enhancements to weekly benefits.

The options were compiled and made available for public comment and then vanished into the black box of government, for the government to make its decisions. Out of the other side of the box came a package with all the hallmarks of a compromise solution. Although it has some elements from several models the government proposal does not adopt any particular model set out in the report. It provides for enhanced weekly benefits for a 26-week period and for increases to the impairment benefit different from any of the models in the working party report and it adopts a compromise outcome for retrospectivity — an issue which I understand was heatedly debated within government. I suspect the minister's argument prevailed in the debate.

We now have the package that was announced by the government. It involves a series of elements including, needless to say, the reintroduction of so-called common-law actions on bases similar to the pre-1997 ones but with a more restrictive narrative. It has increased impairment or statutory non-economic loss benefits allowing regular overtime and shift allowances to be taken into account for the first 26 weeks of weekly benefits. The so-called common-law actions are made retrospective to 20 October 1999. It also includes what the government has seen fit to describe as an intensive case review program for workers seriously injured between 12 November 1997 and 20 October 1999 and also changes to the Sentencing Act.

That is not a complete inventory of the government's agenda. I referred previously to some of the unfinished business from the working party report. The government has also foreshadowed legislation on industrial manslaughter, and it proposes to break up the Victorian Workcover Authority (VWA) and take away its role in safety — which would be a great tragedy and as great a folly as splitting up the Transport Accident Commission and telling it that it is not allowed to run its extremely successful safety advertising campaign.

The minister is reported in one of the newspapers as saying the government has cut the VWA's advertising

budget by about $2 million. That is a sizeable cut given that the minister has been going around the state launching, in glowing terms, many of the advertising campaigns the Workcover authority undertakes.

I turn now to the different elements of the package, in particular the issue of common-law legal actions. I want to talk firstly about those actions in principle.

Arguments both for and against common-law legal actions can be mounted, but in 1997, after looking at all of the arguments, the conclusion reached by the previous government was that on balance a no-fault statutory scheme is a far better one. The Labor government has said nothing in debate so far to rebut that case. It has found it easy to hide behind a slogan about restoring the common-law rights of seriously injured workers, but as I have already demonstrated the issue is much more significant than that. There are arguments, many of which have been developed by the Labor side of politics, that ought to have been addressed in any serious attempt to have an intelligent public debate on this issue, but the government has made no attempt to address them.

The first and clearest argument put against common-law actions is equity. Why should two injured workers with identical injuries and identical circumstances receive differing levels of compensation based simply on the fact that one of them is able to prove negligence against an employer and the other is not? I have heard no justification of that inequity from members opposite. I will be interested to hear if anybody from the government side is able to offer a response to that argument against so-called common-law legal actions.

The second argument often put forward against common-law legal actions is that they develop a culture of reaching for the lawyer first. Lawyers have a valuable role to play in upholding people's rights in the context of industrial accidents, just as they do in other contexts. However, consulting a lawyer should be the last resort rather than the first. If one is involved in a car accident, certainly a bingle involving property damage, the normal first step is to go to the insurance company. Only if you feel you are not being well looked after might you consult a lawyer.

The culture has been different with industrial accidents. It has been a highly adversarial, highly litigious culture, and the experience has been that if people cannot have a fight in one forum they will keep looking until they find a forum in which they can have a fight. One of the key aims of the 1997 changes was to bring about a cultural change, not just the formal change to so-called common-law legal actions.

Similarly, it can be said that so-called common-law actions promote an adversarial culture in the workplace and feed into employer-employee relations in a way that is not very helpful. It has also been argued that making lump sum payments, particularly payments based on judgmental and subjective factors, makes common-law legal actions an impediment to the worker's return to work.

In other words, if you are concentrating on getting a good result in a court case, an emotional if not a financial tension is created between getting back to work and having a good recovery of damages. That position is exacerbated by the fact that common-law judgments of loss amounts are, to a large part, subjective.

Another argument commonly raised against common law is the high level of legal and medical fees involved, which significantly reduce the amounts received by the workers, and the costs involved in going through the court system. Delays are frequently cited as a deterrent to the common-law process. They only add to the time taken for the injured worker to recover and return to work.

It can also be argued that negligence as defined under common law and applied in a workplace is not a fair or effective way of measuring the degree of responsibility of an employer for a worker's injury. It is clear in the case of a gross dereliction of duty that you can attribute culpability to an employer, but experience shows that the best way to enhance safety overall in the workplace is to attribute financial responsibility to an employer for all injuries. It was said, 'Let us not argue about whose fault it was but about what the injuries in the workplace cost, then base premiums on that level'. That was the intention behind the amendments to the system in 1992. Those amendments corresponded with a significant reduction in injury rates in Victoria.

That goes one better than basing liability on negligence because the responsibility of an employer is then on a strict liability basis. An accident in the workplace should have an affect on the level of premiums; then the employer has the incentive to do something about improving safety records in his or her workplace. Enormous gains have been made in that area in recent years.

It can also be argued that many of the benefits commonly seen in the so-called common-law system can be better achieved through redesigning a statutory

no-fault system. It is often also argued, as the Woodhouse report commented, that to try to measure the appropriate sum to compensate an injured worker for all his or her needs into the future is an inexact science. The tendency is either to overcompensate or undercompensate. It is often said that the amount an injured worker receives in a court case depends on how good the lawyer is rather than the merits of the case. The government has not made a serious attempt to respond to the arguments put against common law.

By contrast, let us look at some of the arguments that are often put in favour of common law. It is said that common law can provide a more customised outcome; certainly that is the case in principle. When a trial is held, evidence is led as to the degree of injury suffered by a worker, the pain and suffering he or she has incurred and his or her loss of income. In principle, you can get a more customised package of benefits built around the loss suffered by the worker. However, those benefits apply only for those few workers who are able to bring common-law legal action and, strictly speaking, that applies for only the few of the few who make it through to court.

When the settlement process is under way it is more likely that the individual factors will not be taken into account as well, and the settlement tariff, as it were, is more likely to be based on a more limited number of factors.

It has also been argued that an advantage of so-called common-law legal actions is the greater independence from government: that people do not trust governments and that under a purely statutory scheme there is a risk of there being a purely political capture of the premium benefit setting. One can see that point. Ultimately, as was seen recently with the working party report and as has been experienced in the past, government policy decides the level of premiums and benefits. One then asks: does common law give that much greater, if any, protection? The government's bill imposes even more limits on common law than applied prior to 1997. One wonders whether, if that is at the core of the problem, there may not be better ways of avoiding it.

It is also argued in favour of common law that it enables an injured worker to cash out benefits and to part ways from the nexus with the employer and the circumstances that gave rise to the accident. It enables workers to get on with their lives, to break with the past, perhaps to buy a small business, to pay off the mortgage, and so on. Certainly that is one of the potential benefits of common-law legal actions. However, the downsides have been highlighted by the various reports I referred to earlier. The money may not be particularly well managed, and there needs to be some protection against its being lost. That raises the argument of paternalism. Should we intervene to tell people what they can do with compensation for the injuries they have suffered? Society is prepared to be interventionist or paternalistic, for example, in relation to gaming laws and various other forms of activity.

The bill's provisions about a structured settlement of common-law legal actions move in the direction of some government involvement even with common-law legal actions. I am not sure how well the provisions set out in proposed section 135D will work, but that provision is an indication of the direction in which the government is moving.

The government has also brought into play the potential cashing out of no-fault benefits under section 115 of the Accident Compensation Act. The government said it will use its powers to make regulations to allow the cashing out of the statutory benefits of some seriously injured workers under the intensive case review program. If there is a question of making a break and cashing out benefits, that can equally be done under a statutory system as under a common-law system.

Other arguments about equity have been advanced in favour of common law. One is that not having common-law entitlements gives those injured at the workplace through negligence lesser rights than those injured through negligence outside the workplace. That is the case, but offsetting that is the availability of the guaranteed no-fault benefits in the industrial context that are not available outside the workplace.

It is often felt more just that a worker who has been injured as a result of the negligence of his or her employer should be entitled to a higher level of benefit. The injustice or injury is often felt to be greater if it is suffered as a result of negligence, or even more so as a result of gross negligence, than if it is as the result of a pure accident.

Those are some of the main arguments that have been advanced in favour of so-called common-law actions. As I have said previously, respectable positions have been adopted both for and against them. What the government has not done in this debate is get into the detail of those arguments. It is trying to coast through on the basis of a few superficial clichés. That is most regrettable.

I turn now to the issue of the ongoing financial costs of the scheme being introduced by the government and

their likely impact on employers, jobs and the Victorian economy. It is difficult to get accurate figures on how the 2.18 per cent premium increase package is made up. True, various elements of the package are set out in the working party's report — particularly the reintroduction of common law under the tightened narrative test, the cost of which can be ascertained by reference to the report.

However, because the government's model for impairment benefits and weekly benefits departs from the report one cannot derive from information in the public arena accurate costings for the various components. We are told that the proposed impairment benefit most closely resembles impairment option 4 of the working party's report. The proposed period of 26 weeks for the enhanced weekly benefit lies midway between two of the options set out in the working party's report, so there is no precise dollar figure. Consequently, it is hard, if not impossible, to work out what component of the proposed 2.18 per cent premium level is a buffer. Is it the 10 per cent mooted in the working party's report? And what proportion of that is intended to address retrospectivity? Those questions are not just of academic interest; in future years they will become significant because, if the government's numbers prove to be right, the question of whether there should be a reduction in premiums will arise.

On the basis of the methodology adopted by the working party, components of the proposed premium increase will pay for the retrospectivity to October 1999 and for completion of the elimination of the past unfunded liability. Once those two things are done — paying for retrospectivity and eliminating past unfunded liability — there should be no need for those components of the premium to remain. In other words, there should be a premium reduction.

The fairest way for the government to announce its decision would have been to announce an ongoing premium level reflective of the ongoing costs of the scheme plus a surcharge to cover those two specific, short-term components — retrospectivity and the move to full funding. That would have been the open and accountable way of doing it, the way to give employers an expectation of a premium reduction when the short-term costs had been met. The government has not done that; it has bundled all the components into one figure.

One can be cynical about that approach. On the one hand it helps the government to cover up any failure in its costings by simply continuing the premium at the higher level for longer than was initially expected. On the other hand, if the figures turn out as expected, the government can unexpectedly announce a premium reduction, when in fact the ending of the surcharge should have been something employers were entitled to expect as of right.

The government says the premium level it is moving to is competitive and the 2.18 per cent lines up with the national average. It lines up only with an average, however — some states are above it and some below. To be competitive in a marketplace one normally pitches one's price at or marginally above the best in the field, but the government is not proposing that. As I mentioned earlier, Queensland's premium from 1 July this year will be 1.85 per cent of payroll compared to Victoria's 2.18 per cent, opening a competitive advantage for Queensland.

We have already seen what happened with Virgin Airlines and other businesses. Queensland is very keen to win business off Victoria. The proposed Victorian premium level will be just one more competitive advantage to that state. The government seems to overlook the fact that the economic resurgence that took place under the previous coalition government was not just a matter of good luck or chance; it took place because that government was able to establish a competitive advantage for Victoria. The return of $600 million a year to employers compared with the pre-1992 regime was a significant component of that competitive advantage, and on top of that was a concerted effort to attract business to Victoria and to win international and interstate business for Victorian-based firms through being competitive.

The point needs to be made that for every 0.1 per cent increase in premiums the cost to Victorian employers is more than $60 million.

Mr Nardella interjected.

Mr CLARK — The honourable member for Melton interjects and says, if I understand him correctly, that one must have regard for what is necessary to compensate injured workers. He is right; but the equation must be balanced. Workers compensation has never offered 100 per cent compensation for loss.

The honourable member for Melton may want to argue for that, but that would be a dramatically different compensation regime from the one that has prevailed in Victoria and other states since at least 1985. The honourable member for Melton will need to spell out much detail if he wants to argue the case for 100 per cent compensation.

The increase in premiums under the government's announced package represents a 15 per cent rise for

employers across the board. Working out what each employer's new premium will be involves the simple arithmetical exercise of adding 15 per cent to each employer's current premium level. In a news release dated 11 April the Premier had the nerve to say that Victorian premiums would 'increase marginally' as a result of the government's package. That is utter humbug. He was being extremely loose with the truth. I do not think many employers would regard a 15 per cent rise in premiums as being a marginal increase. It should be remembered that many major industries already pay high premiums, so the increase will have a particularly significant effect on them.

I will cite a few examples of industry rates. In the areas of bricklaying, concreting and tiling the rate is currently 7 per cent. In logging it is 7 per cent; in sawmilling it is 5.78 per cent; in sheep or cattle farming it is 7 per cent; in interstate road freight transport it is 7 per cent; and in meat product manufacturing it is 8.4 per cent. One important point that should be made about all of those industries is that a significant number of them are in rural and regional Victoria — the areas the government claims to be particularly concerned about. Many significant rural and regional industries will be hard hit by the premium increases, yet the minister is trying to encourage enthusiasm among agricultural industries for a greater commitment to safety. The encouragement is admirable, but people in those industries will feel somewhat distracted by having to cope with premium increases which will apply regardless of past safety records.

What is particularly appalling is that the government has made no attempt to put any assessment of the economic impact of its policy on the public record. The government does not seem to care at all about how many jobs may be lost in Victoria as a result of the package. It takes the approach that they are not on the radar screen, so they do not matter and it will increase the premiums regardless of job losses.

Mr Nardella interjected.

Mr CLARK — Helpfully, the honourable member for Melton asks what my estimate of job losses is. I am looking around for the best available expert information on the subject. Notwithstanding the great confidence the honourable member for Melton appears to have in me as an economist, I do not feel capable of performing the necessary analysis, research and computations myself.

I will now refer to what I would have thought was the best available public information — that set out in the 1999–2000 budget papers. Chapter 8 of budget paper no. 2 sets out the Department of Treasury and Finance estimates of the impact on job creation of the various payroll tax reductions that took place under the previous government. It states:

> The full year savings to Victorian businesses of these three cuts in payroll tax amount to $300 million.

It also states:

> Over a two-year period the 0.25 per cent reduction in payroll tax announced in this budget is expected to yield a sustained increased in GSP of about $100 million per annum in 1999–2000 prices, and an accompanying increase of almost 2000 jobs. Over the longer term (five years or more) this estimated gain to GSP rises to $385 million per annum in 1999–2000 prices, generating more than 5400 jobs for Victorians. The long-term employment effect in Victoria from the three consecutive payroll tax reductions is estimated to be an additional 18 000 jobs.

That estimate equates $300 million worth of payroll tax cuts to the creation of 18 000 jobs in the long term. With only one limited qualification it seems to me that that arithmetic can be run in reverse. One can say that if $300 million in payroll tax cuts creates 18 000 jobs in the long term, an increase in premiums of $150 million, for example, would cost around 9000 jobs.

The opposition raised that point when it was being briefed on the legislation by officers of the department. Their response was that they calculated that 1500 jobs may be lost as a result of premium increases by applying the same economic model as that used to calculate the payroll tax implications. I do not know how they could estimate that premium increases would cost 1500 jobs while at the same time the model suggests that a comparable figure in payroll tax cuts would create 9000 jobs or more. One suggestion that may explain it to some extent is that some offset may be provided by reductions for employers in make-up pay as a result of increased weekly benefits.

However, I cannot believe that explains the magnitude of the difference between 1500 and more than 9000. Furthermore, the obligation should be on the government to put into the public arena the economic evidence to inform the public of what the true state of affairs should be. It should not be up to the opposition to conduct extrapolations from budget papers of past years or to rely on oral reports by officers of the Department of Treasury and Finance. The government should have released the information and come out with a detailed explanation. The Department of Treasury and Finance has the economic model from which the numbers should have been plucked. Even if the job losses were 1500 as compared to more than 9000, that is a significant loss and one about which the public is entitled to be informed.

The minister and others have tried to make out that in the scheme of things the impact of the premium increases is an insignificant component of payrolls. The document entitled 'Restoring your common law rights. Going forward', issued by the minister, in a fact sheet outlining changes to employers' premiums, sets out a number of numerical examples and at the end of each states 'The increase in these tables is 0.06 per cent of wages', 'the increase in these tables is 0.03 per cent of wages' and 'the increase in these tables is 0.07 per cent of wages'. I must say that I and many others who have looked at the figures cannot work out how they have been calculated. They seem to be significantly understated.

The point I make is that the incidence of job losses as a result of the package is not likely to be uniform across the board but sporadic and concentrated. Already opposition members are receiving anecdotal accounts of jobs being at risk. For example, a stone quarrying business might lose a major contract to an overseas stone supplier and that may lead to considerable job losses.

Mr Nardella interjected.

Mr CLARK — The honourable member for Melton helpfully questions whether that will be as a result of the package. The point I make is that in particular cases the change in the premium will make the difference between businesses winning or not winning particular contracts. When I have travelled around Victoria and spoken to employers, in some instances they have said, 'I am at risk of losing business to interstate competitors as a result of a 15 per cent increase in my workers compensation premiums'. The matters are not illusory, they are about real jobs being put at risk. That needs to be brought to account and properly addressed.

The Law Institute of Victoria referred to an economic analysis of the firm Marsdens and put forward the argument that a large part of the incidence of industrial accident costs falls on injured workers and that therefore premium increases are not likely to result in job losses. I cannot understand the logic of the argument. I have been promised a copy of the relevant report, but as yet no-one has given it to me.

An honourable member interjected.

Mr CLARK — It would considerably enhance the debate if the opposition could be informed about such things. I have no quarrel with the proposition that a proportion of the cost of industrial accidents falls on employees, which is a matter I referred to earlier. I am talking about premiums, which are the net costs borne by employers. The economic impact of premiums seems just as great as that which has occurred with changes to payroll tax, subject only to the relatively limited issue of make-up pay. The proposition that some have tried to take from the report would be true only if Victorian workers and unions were prepared to accept rates of pay lower than those of other states in exchange for the provision of better workers compensation benefits, so that from the point of view of employers higher premiums would be offset by lower wages.

Mr Nardella interjected.

Mr CLARK — The honourable member for Melton helpfully suggests that that is a stupid argument. It is indeed highly unlikely that unions and workers in Victoria would be prepared to accept lower wage rates in exchange for higher workers compensation benefits. That being the case, I find it hard to understand the logic extrapolated from the report that premium increases will not cause job losses in Victoria.

The other point I make is that it is not only a question of job losses which is involved, particularly so far as the public sector is concerned. It is also a question of the impact on services. There have been reports of various local government bodies expecting varying numbers of local government jobs, as well the capacity to deliver services in the community services sector, to be put at risk. The question was raised of what adjustment had been made in government funding to allow organisations to pay for the higher premium rates. Many service delivery organisations are in areas to which high premium rates apply, so the cost is not insignificant. People are concerned about their capacity to deliver the same level of services when the premium increases have to be absorbed. The government has not adequately addressed that impact of the premium increases.

There is also the risk of future cost blow-outs and rorts coming back into the system. From the many discussions I have held with small and medium-sized businesses that is their biggest worry. They are fearful that the claims will multiply because of the opportunities for bringing common-law actions and the general workplace culture that could well follow from the package of benefits. Unfortunately a minority of people are willing to abuse the system. That was seen to happen prodigiously under the old Workcare scheme. We listened to Neil Mitchell and other commentators morning after morning give accounts of gross abuses that were taking place under Workcare. I certainly hope Victoria does not return to those bad old days of Workcare, but that spectre has been raised in the minds

of many people who run small and medium-sized businesses by the bill and by some of the general cultural changes to the workplace that are currently being promoted.

I turn to look briefly at the issue of retrospectivity. As I said earlier, many workers injured between November 1997 and October 1999 have been exploited by being used as part of a broader agenda and being quickly dumped at the end of the process. Although some in the trade union movement seem to have accepted that quietly, others have been critical of it. When one contrasts the demonstrations, rallies, public protests, interviews, and so on, that were taking place prior to the government's announcement of its decision, with what is being said now, one can see that many workers injured in the period feel that they have been led on and let down by both the government and the trade union movement.

It would have been interesting to be a fly on the wall in some of the cabinet meetings to hear what propositions honourable members opposite put forward. Did they argue for full retrospectivity to 1997 or no retrospectivity? I wonder who lined up where in the debate. Opposition members will stand by and hope some more facts emerge.

Ms Pike — Why?

Mr CLARK — Because we would be interested to know what the true beliefs are, as distinct from the rhetoric and slogans of current government members.

I comment briefly on the intensive case review program. It is all part of the dressing up and pretence that the government has gone through. It is a case of 'Yes, we are really concerned, and what the Kennett government did to you really was rotten. We have this wonderful package called the intensive case program that will look after you. We are sorry we cannot backdate common law to 1997, but don't worry, we have a list of points that will take care of you'.

On examination, the intensive case review program really promises workers in that category what they are entitled to anyway, and it has certainly been greeted with considerable cynicism by the people opposition members have spoken to who have been looking after the interests of injured workers. I suppose, given the house amendments, the two possible exceptions are the potential for cashing out of entitlements and the potential for legal actions under the Sentencing Act.

However, on the first issue, the government is proposing to give workers in a cash form only what they are entitled to over time anyway. What has not been addressed in announcing the package is: if that is the right, proper and beneficial thing to do for those workers seriously injured between November 1997 and October 1999, why is it not the right, proper and best thing to do for those who will be injured in the future? There is no logic in the proposal; it is all driven by expediency, pragmatism and politics.

I look forward to hearing from any honourable members opposite who are prepared to put forward some justification for providing the cash out in the past but not in the future. It raises a serious policy issue about whether the regime under section 115 for the redemption of statutory entitlements should be broadened. Earlier I expressed many of the arguments against it. There are also arguments in favour, but the issues seem to be far too difficult, profound and unexciting for the current government to want to address them.

I turn to the International Labor Organisation, and in particular convention 121 (C121). I shall refer to some of the articles of that convention because they lay down specific policy directions relating to workers compensation. Article 14 of ILO C121, entitled 'Employment Injury Benefits Convention, 1964', states:

> Cash benefits in respect of loss of earning capacity likely to be permanent or corresponding loss of faculty shall be payable in all cases in which such loss, in excess of a prescribed degree, remains at the expiration of the period during which benefits are payable in accordance with article 13.

Article 13 provides:

> The cash benefit in respect of temporary or initial incapacity for work shall be a periodical payment calculated in such manner as to comply either with the requirements of article 19 or with the requirements of article 20.

Article 14 further states:

> In the case of total loss of earning capacity likely to be permanent or corresponding loss of faculty, the benefit shall be a periodical payment calculated in such a manner as to comply either with the requirements of article 19 or with the requirements of article 20.

Article 14 makes some other provisions. Article 15 states:

> In exceptional circumstances, and with the agreement of the injured person, all or part of the periodical payment provided for in paragraphs 2 and 3 of article 14 may be converted into a lump sum corresponding to the actuarial equivalent thereof when the competent authority has reason to believe that such lump sum will be utilised in a manner which is particularly advantageous for the injured person.

Section 115 of the act more or less complies with the requirements of article 15, but it is hard to make out any case that the reintroduction of the so-called common-law legal actions complies with the requirements of article 14 for making payment for loss of earning capacity in the form of periodical payments.

The status of ILO conventions within Australia varies depending on whether Australia has ratified them. Convention 121 is not one of those ratified by Australia so there is no suggestion that it is legally binding. However, it sets out the policy approach adopted by the ILO, an organisation that in other contexts the Australian Labor Party is keen to support and uphold.

I will not quote the particulars but I refer interested members to news releases such as that issued on 18 March 1999 by the federal Leader of the Opposition, Kim Beazley, which emphasises the significance he attaches to the International Labor Organisation. A media statement of 31 March by Arch Bevis, the federal shadow Minister for Industrial Relations, also refers to ILO conventions and castigates the federal coalition government for allegedly not complying with them. It is ironic that on the one hand the Labor Party places great store by ILO conventions yet on the other hand the measure it has introduced does not comply with the principles set out in ILO convention 121.

I now turn to some of the details of the bill. I have received from the government a copy of the house amendments. They were emailed to me late in the morning or around midday, and I obtained them when I returned to my office at lunch time. Although I have examined the clauses the amendments impact on, I have not had an opportunity to conclude their exact consequences.

I raise for the consideration of the minister some of the concerns that have been raised with the opposition; I am sure similar concerns have been raised with the government. Some of them have been addressed in the house amendments, but not others.

At the outset it is worth making the point again that the scheme the government is introducing represents a failure to honour the Labor Party promise to restore common-law rights to injured workers. That promise or claim was reiterated in the 11 April news release of the Premier:

> We said we wanted a Workcover scheme which restored the common-law rights of seriously injured workers.

He seems to think that is what he has done, but the scheme does not restore common-law rights as they prevailed prior to 1997 in respect of legal actions against third parties, how elections between impairments and common law operate, and in relation to the narrative test. Just recently it has been suggested to me that the right to bring legal actions under the Wrongs Act is prejudiced by the proposed legislation, if one characterises actions taken under the Wrongs Act as common-law actions.

I will now address some of the provisions. I will also set out some of the concerns raised by practitioners and other people experienced in the field without necessarily expressing a view on whether they are justified. Nevertheless, they deserve consideration.

Clause 3 amends the definition of ‘medical question’ in section 5 of the principal act. Some people suggested that it would be inappropriate to allow the definition to be adjusted by regulation because it would give greater and unjustified power to the government. The law firm of Slater and Gordon expressed concern along those lines to the government.

Clause 7 inserts proposed section 55A, which relates to the referral of medical questions by consent. The proposed section is intended to implement some of the Masel report recommendations. However, concerns were expressed about the sense of applying those provisions only in the absence of a dispute. One questioner asked when there would not be a dispute, unless the section was invoked immediately prior to a dispute arising. Others were concerned that the provision might be used to circumvent rights of appeal. Although I am not sure whether those concerns are valid, they were raised by experienced practitioners in the field.

A more serious concern relates to clause 17 and the inability to obtain damages for pain and suffering if a statutory impairment benefit is accepted. If one turns to page 17 of the bill one sees that proposed section 104B(11A) provides that if a worker confirms to the authority that he or she wishes to receive compensation under section 98D or 98E relating to statutory no-fault benefits, he or she is precluded from subsequently recovering damages for pain and suffering in respect of that relevant injury or injuries.

There is debate about whether the government intends the bill to have that consequence. The opposition was told that that is not the government’s intention and that there is nothing to stop injured workers from obtaining lump sum payments if they are unsuccessful in their common-law actions.

Against that, some people pointed the opposition to proposed section 104B(10A), which states:

> The worker must within 60 days of being advised by the Authority or self-insurer of the entitlement of the worker in accordance with subsection (10), advise the Authority or self-insurer whether or not he or she wishes to receive the compensation to which he or she is entitled.

That seems to preclude the opportunity of coming back later if the common-law action is unsuccessful. Some government amendments deal with those clauses, so it may be that they remove any time limit and make it clear that the employee may come back. One further argument put to the opposition was that it is unfair to require workers to go through the so-called common-law process first rather than allowing the no-fault benefit to be provided in advance and then be offset against any common-law recovery.

Late in the piece concern was expressed to me that the phrasing of the government's amendments would prevent dependants of deceased workers bringing actions under the Wrongs Act. Section 134A(1) of the Accident Compensation Act states:

> … on or after 12 November 1997 shall not, in proceedings commenced in respect of the injury or otherwise, recover any damages of any kind.

Subsection (2) states:

> Subsection (1) does not prevent the recovery of damages in proceedings under Part III of the Wrongs Act 1958, subject to and in accordance with the Transport Accident Act 1986, in respect of the death of a worker.

Although I have not had time to follow it through, I think the argument is that amending section 134A so that it ceases to apply to injuries suffered after 20 October 1999 means that the proviso in subsection (2) is excluded. As a matter of law I am not sure whether that is right, but the concern was raised by legal practitioners and should be addressed.

Practitioners were also critical of the drafting of proposed sections 134AA and 134AB, which are the key sections in the bill to restoring so-called common-law legal actions. It was argued that on a straightforward reading proposed section 134AA extinguishes all legal actions other than in narrow circumstances — that is, actions under the Wrongs Act or actions taken by people on authorised breaks from their employment.

The argument is that it does that by stating:

> A worker who is or the dependants of a worker who are or may be entitled to compensation in respect of an injury arising out of or in the course of, or due to the nature of, employment on or after 20 October 1999 should not, in proceedings in respect of the injury, recover any damages in respect of pecuniary loss except …

It then lists two paragraphs. The argument is that, notwithstanding that proposed section 134AB goes on to list other provisions, in effect proposed sections 134AA and 134AB are mutually contradictory because proposed section 134AA excludes such actions. If it is correct that is obviously a drafting deficiency.

Mr Cameron interjected.

Mr CLARK — The minister says a proposed amendment addresses that issue. I hope it does.

Another issue that has been raised with the opposition relates to the provisions in proposed section 134AA(b) on the ability to bring actions against third parties — that is, actions against parties other than the employer. In 1997 the bar on proceedings applied not only to proceedings against employers, but also to proceedings against, for example, manufacturers of machinery that might have caused an accident. The provision in the bill allows actions against third parties only in the case of workers who have a fixed place of employment and who are on an authorised recess from their work, such as a lunch or coffee break, when the injury takes place. It has been argued that is unfair. Ultimately the provision raises policy issues and mixed arguments can be put in that regard. This is a further point on which the opposition has been pressed vigorously by many people who provided it with feedback.

Other provisions that are worthy of comment are the provisions relating to the onus being on the worker to prove an inability to be retrained or to undertake other work. I can understand the reason the government has brought it in. It will be interesting to see in practice what sort of burden that will impose on an injured worker in establishing his or her case.

Concern was raised with the opposition about proposed section 134AB(19)(c) on the issue of estoppel, but I believe that has been addressed in the proposed amendments.

Concern has also been raised about the need for a worker to be granted leave by the Victorian Workcover Authority to commence proceedings if he or she is out of time. It has been argued that is too draconian and that the worker should be able to recommence proceedings simply by applying afresh for a serious injury certificate. Again I set out that concern without expressing a view on it.

Other provisions about which concern has been raised are those stating that a jury is not to be told that the authority has agreed that a worker in a particular court case has a serious injury. The concern is that it is unjust

to require the serious injury to be proved again. I am not sure if that concern is correct because I understand that the issues to be litigated at the ultimate trial do not relate to serious injury; at that point they relate simply to quantum. However, I wonder about the practicability of making a provision that the jury is not to be told, because I am sure on some juries there will be members who will know about a worker's serious injury and the operation of the provision is therefore likely to be somewhat sporadic.

Another area of concern relates to the definition of serious injury. It appears from the bill that a pain and suffering action will not be able to be brought by any injured worker unless he or she can show a loss of 40 per cent of income. If that is the case it is a gross breach of the government's promise to restore common-law rights. It is also in breach of the working party's recommendation and of the government's announcement that the narrative in relation to pain and suffering will remain unchanged. Again that may be addressed by the proposed amendments, but if it is not the critics seem to make a reasonable point about the drafting of the provisions.

As I understand the intention, under the tightened narrative, if one can establish a 40 per cent loss of income-earning capacity one can bring an economic loss claim, and if one can satisfy the narrative about the severity of pain and suffering one can bring a pain and suffering claim. The two are not intended to be linked. I look forward to hearing the explanations of the provision to be given by other honourable members.

Some critics have questioned the actual wording of the provisions dealing with the loss of income-earning capacity. The law firm Wisewoulds has been particularly critical of that. Wisewoulds also makes the point that the provisions may prove to be a disincentive to a worker to return to work at a more than 60 per cent rate, because the minute an injured worker returned to work at above that rate he or she would undermine his or her capacity for a common-law action.

Other critics have said more crudely that the simple advice to be given to injured workers is not to go back to work at all until they can establish a loss of capacity. That is the sort of view being expressed by practitioners that lends weight to some of the concerns raised about the potential for abuse by small businesses and others.

Other drafting concerns have been raised about the proposed new section 135AC(a) in relation to limitations being imposed on actions before November 1997 and applications relating to serious injury being required to be lodged by 1 September. That may be one of the difficulties being addressed by the house amendments.

Similarly, the house amendments address a concern raised in the so-called Rizza and Walker-type cases that could not proceed due to anomalies in earlier legislation. The house amendments provide for the restoration of the right to bring those actions. Thus, a wide range of concerns have been raised — some are drafting concerns and some are about whether the government has honoured its promise to restore the previously existing right to common-law legal actions, although it is clear there are serious greater restrictions.

Other aspects of the government package include the proposals for payment of weekly benefits and counting regular overtime and shift allowances for the first 26 weeks of an injury. The provisions in the bill appear to be based on the South Australia provisions. Conflicting opinions on the effectiveness of the provisions in the South Australia context have been expressed — some argue they are a source of difficulty. One of the problems with the drafting is that the worker only has overtime and shift allowances calculated towards income for the purpose of calculating weekly benefits in the following circumstances: if there is a regular and substantial pattern; if the payments are substantially uniform; and if the worker were to have continued to work in accordance with the pattern. Enormous discretion is required to be exercised in determining that. How can the potential for dispute be avoided?

It was an issue of particular concern to self-insuring employers because more than any other group they are at the centre of the administration of the claims as they are called on to make the judgments. They say the provisions are difficult to interpret and apply.

Other concerns have been raised about the government choosing 26 weeks as the base from which to drop down from regular overtime and shift allowances back to a basis that does not count overtime and shift allowances. It is hard to see an in-principle justification for it — either overtime and shift allowances should be counted towards income or they should not. The 26-week drop down can be a source of considerable confusion to the worker. It might or might not translate into a reduction in income being received by the worker, depending on the make-up pay rules in the relevant industry.

It will be another piece of paper that will be received by the worker. It has been put to the opposition that when workers receive official notices the reaction is to take the notice to a lawyer. Many workers receiving notices

will be worried and will be asking lawyers for explanations. They may be told that the cash-in-hand amount will not change because of make-up pay rules but the worries will continue. As well, the new provisions apply to claims lodged after 1 September. Claims might be withheld to come under the provisions.

On consideration of the real rather than the political issues, the quantum of the impairment benefits available at the lower end of the scale have been of greatest concern to the union movement. The intention of the 1997 changes was that the reduction in benefits resulting from removing access to so-called common-law actions would be applied to increased no-fault benefits. There is some suggestion that there is an inequality there — —

Mr Batchelor interjected.

Mr CLARK — Is the Minister for Transport prepared to indicate whether he will allow the bill to go into committee?

Mr Batchelor — On a point of order, the honourable member asks me to give an assurance that the bill will go into committee. I am unable to do so, given his deliberate procrastination. Unless the honourable member stops artificially extending his contribution, I am unable to provide the time — it will not be there. It has already been used up!

The ACTING SPEAKER (Mr Savage) — Order! There is no point of order.

Mr CLARK — I assure the minister I am not artificially extending my remarks on the legislation. It is a major piece of legislation involving significant policy issues. Given the amount of humbug from members opposite over recent years, there is much to put on the record. If one has a commitment to doing it right — as distinct from playing politics with the legislation — one should attend to the detail. Had the minister been prepared to give an assurance that the bill would be committed I would have been happy to have raised many of my points during the committee stage. Given the track record of the government in not allowing legislation to proceed to committee, it was a forlorn hope.

In 1997 it was intended that the reduction in impairment benefits resulting from the elimination of common-law actions would be applied to increased statutory benefits. Suggestions have been made that the statutory benefits have cost less than the savings achieved by removing the benefits of common-law actions. The opposition would not have objected if the government had concentrated on reviewing the appropriateness of statutory impairment benefits or weekly benefits.

Practitioners have raised concerns with the opposition about the impact on claims brought by minors. I can see the logic in not compelling minors to make legal decisions, but it is possible for paperwork to be triggered against a worker while he or she is under 18 years of age. I refer in particular to proposed sections 104B(5C) and (5D). Concerns have also been raised about the way clause 14 changes a dependant's benefit.

I turn to the shifting of costs to motorists. It appears that once the legislation has been enacted something like $25 million in costs will be borne by the Transport Accident Commission and reimbursed to the Workcover Authority. The previous government considered that accidents involving people going to and from work should be regarded as happening during private travelling time and should therefore fall under the TAC scheme rather than Workcover.

The bill, however, provides that transport accidents while on the job will still be compensated as workplace accidents, but the costs will be picked up by the Transport Accident Commission. One way to understand the logic of that is to contemplate the opposite proposition. If you were to say that all motor accidents, even those involving employees, were to be determined under the TAC scale of benefits but that Workcover would bear the cost, that would be illogical. That is why the amendment also seems illogical.

One has to conclude that this is just a government grab for money, which it wants to use to piece together a package that it can squeeze in under its cost limit of 2.18 per cent. Under the previous Labor government Treasurer Rob Jolly systematically emptied out every hollow log he could find. The Bracks government also seems determined to empty every hollow log it can find to balance books that do not balance naturally. Hollow logs can be emptied for a time, but their contents are soon exhausted!

I refer to the restriction on legal fees. Members of the legal profession have been among the strongest advocates of a return to the so-called common-law legal regime. It is easy to be cynical, but like most professionals many lawyers genuinely believe that their professional skills are of benefit to the people they serve and that they are worth the cost involved. However, sometimes it is difficult to untangle these two factors. I quote from a recent edition of the Victorian *Bar News*, which states:

> It seems that steps are now in train to revive, at least in part, the common law rights of injured workers. This will inevitably produce work for the bar not only in litigating those rights but also in interpreting, or arguing over the interpretation of words of the amending legislation.
>
> We welcome any expansion of the work available to members of the bar. On the other hand, any work which becomes available must be paid for. There is a cost, in one form or another, to the community. We understand that Workcover premiums are to rise to meet that cost.
>
> This cost and the putative benefit to the Bar are, however, irrelevant to the main issue.

The opinion piece goes on to advocate the principles the author sees as favouring the bringing back of common-law actions.

That graphically illustrates the fine line between talking one's book and standing up for issues of principle.

Mr Cameron interjected.

Mr CLARK — The minister is becoming very chirpy. He might care to inform the house of his own professional background. As I understand it, he worked for a legal firm that derives a significant proportion of its income from personal injury work. I hope the minister has severed all financial relations with that firm!

Legal costs have been and continue to be a significant component of the cost of Workcover. In 1997 approximately $115 million of premium income was spent on legal and medical legal costs, of which $24 million was attributable to the common law regime. That was a reduction compared to the approximately $140 million that was going to costs in 1992–93.

Mr Cameron interjected.

Mr CLARK — The minister says by interjection that I do not like lawyers. I wonder whether he would similarly characterise his own attitude to the legal profession, because he has just decreed a unilateral 20 per cent discount off the scale of obtainable legal costs.

Mr Cameron — It's fair enough.

Mr CLARK — The minister says that is fair enough. It would be interesting to discover how he reached that computation. Certainly when it was briefed the opposition was given no explanation as to how the 20 per cent figure was arrived at. It appears the minister believes it is a just and reasonable figure. It is an example of decision making by ministerial fiat.

Mr Cameron interjected.

Mr CLARK — The minister passionately defends his 20 per cent figure. I wonder how he will explain it to the house? A further component is the question of who ends up bearing the cost of the reduction in fees. If you accept on face value the scheme as prescribed in the act, the reduction in remuneration will be borne by the legal profession. But I have been told by an experienced practitioner that the application of a standard 10 per cent tariff is common practice among plaintiff lawyers, regardless of what the legislation prescribes. In other words, the lawyer acting for a plaintiff expects to recover 10 per cent of the amount awarded in legal costs.

If that is the case, and if it continues unchecked, the less the amount awarded on a party-party basis — that is, the less the plaintiff's solicitors costs are met by what the other side has to pay — the more the injured worker has to pick up the tab.

Mr Cameron — Look at the second-reading speech.

Mr CLARK — I am fully cognisant of the fact that the act does not appear to allow the 10 per cent quantum. Nonetheless, I am told by a source I regard as authoritative that that is the going rate. The minister must address that aspect. He proposes to insert provisions that mean that if the 20-per-cent-off rule does not work, he can do a whole lot of other things to bring down other orders. That illustrates how complexity builds upon complexity in so-called common-law legal actions.

As we are discussing legal issues, I refer briefly to the Court of Appeal. The legislation allows the Victorian Workcover Authority and self-insurers to take appeals to the Court of Appeal. In addition, it specifies that in hearing the appeals the court is not to confine itself to questions of law but is required to examine the evidence in the court below and to accept new evidence.

Others with whom the opposition has discussed the provision say it will turn the Court of Appeal into a trial court. That will do grave damage to the standing of the Court of Appeal and its ability to carry out the other roles with which it is charged.

Earlier, by way of interjection, the minister said that the President of the Court of Appeal has agreed to the arrangements. I understand it is more likely that under pressure he has reluctantly acquiesced to the arrangement. Experience will tell how it works. I very

much fear that the operations of the Court of Appeal will be seriously prejudiced by the provisions.

Sitting suspended 6.30 p.m. until 8.03 p.m.

Mr Batchelor — I raise a point of order and seek your guidance, Mr Acting Speaker. Debate on the bill began at 3.25 p.m. and it is now 8.04 p.m., almost 4½ hours later. The government has a list of 10 members who wish to speak on the bill and the opposition has indicated that it wishes the bill to go into the committee stage. Clearly there will not be enough time.

I seek your guidance, Sir, about the situation where a lead speaker for the opposition is filibustering to extend the debate beyond what is reasonably tolerable, thereby denying both government and opposition members the opportunity to join in debate at the second-reading stage or to consider the legislation in the committee stage. The problem is serious. Honourable members on both sides of the house are being denied the opportunity to speak on this important matter because the lead speaker for the opposition is deliberately procrastinating, extending the debate and preventing honourable members who genuinely wish to make different contributions from doing so.

The house will not deal with government business after 10 o'clock, and we know that if we continue in this vein the opposition will cry foul at a later date. I place on the public record that there will be no basis to that complaint. I seek your guidance, Sir, on how the house can get around the obvious procrastination that is taking place.

Mr CLARK — On the point of order, I submit first of all that there is no point of order. It is a totally spurious attempt by the Leader of the House to interfere with the rights of honourable members to express their views. The minister has been in this house for many years and is well aware that honourable members traditionally spend considerable time on Workcover legislation because it is complex and detailed. If the minister had been listening to my speech he would be aware that the accusations he has made are totally baseless. I defy him to find in any part of my speech any filibustering or procrastination.

This is yet another attempt by the minister to dictate terms to the opposition and to prevent a full and fair canvassing of issues brought before the house. I submit that there is no point of order.

The ACTING SPEAKER (Mr Kilgour) — Order! Clearly there is no point of order. Standing orders advise that the lead speaker can take as long as he or she likes. The Leader of the House would understand that on many previous occasions in this chamber lead speakers have taken more time than has been taken on this occasion so far.

Mr CLARK — I refer the minister to the fact that it is not only opposition members who have raised concerns about the legislation; the all-party Scrutiny of Acts and Regulations Committee has also raised various concerns. I invite the minister to address those concerns in the course of this debate or while the bill is between the houses.

I turn now to the Sentencing Act, to which a series of significant and far-reaching provisions in the bill relate. Those provisions can be found towards the back of the bill, particularly in clauses 26 to 29. Those provisions have profound and disturbing effects, despite the government's professed commitment to law, justice, equity and the proper legal processes.

The provisions do two things that relate to the Sentencing Act in respect of the provisions of the Accident Compensation Act and the Transport Accident Act. Section 86 of the Sentencing Act initially allowed an award of compensation for loss or destruction of property to be made against a person convicted of a criminal offence in favour of a person whose property was lost, damaged or destroyed.

When the previous coalition government restructured crimes compensation arrangements in 1996 an amendment was inserted into the Sentencing Act which took effect from 1 July 1997 and which provided that an award of compensation for pain and suffering could also be made under the Sentencing Act. An application for an award of compensation for pain and suffering has to be made as soon as practicable not less than six months from the date of the conviction.

In its document 'Restoring your common-law rights. Going forward' the government held out the possibility of a claim being made under the Sentencing Act for pain and suffering as one of the benefits that may be available to workers who were seriously injured between 12 November 1997 and 20 October 1999. It states:

> The ICRP will be administered through a special unit of Workcover established by the government which will go through each of these cases —

the cases of those workers seriously injured between 12 November 1997 and 20 October 1999 —

> to make sure:
>
> …

> That each case is investigated to explore whether the claimant might be eligible for any additional and/or alternative entitlements, for example under the Sentencing Act.

How the government proposes that the ICRP and the special unit of Workcover will handle those claims is not exactly clear, but one may assume that it will result in the Workcover authority being particularly diligent in bringing prosecutions against people in respect of accidents that have taken place — —

Mr Cameron interjected.

Mr CLARK — The minister has offered to have a look at the matter while the bill is between here and another place. I am grateful for his undertaking, and I will set out the concerns so the minister is in a position to do so adequately.

There are two aspects to the legislative amendments put forward by the government. As I was saying, one possibility is that the government wants the special unit of Workcover to be particularly diligent in bringing prosecutions for cases involving workers who have been seriously injured, so that awards for pain and suffering may come on the back of successful prosecutions.

The amendments put forward by the government do two separate things. The first set of amendments curtail access to the provisions of the Sentencing Act in relation to offences under the occupational health and safety legislation — namely, the Dangerous Goods Act, the Occupational Health and Safety Act and the Equipment (Public Safety) Act — in respect of Workcover and in relation to offences against the Road Safety Act in respect of the Transport Accident Commission.

In his second-reading speech the minister concluded that it was not appropriate for those actions to be available given that there is a comprehensive scheme in place to provide compensation through either the Victorian Workcover Authority or the Transport Accident Commission. I do not think there would be much argument about the government doing that, although some people may take issue with the consistency of its position. Given the government's view that the compensation schemes should involve the Victorian Workcover Authority or the Transport Accident Commission exclusively, it is logical to exclude the potential for pain and suffering awards under the Sentencing Act.

The government wants to exclude awards for the future but retain awards for the past, but the bill contains provisions that may be said to prevent that. Proposed section 138B(2) to be inserted in the Accident Compensation Act and proposed section 107A to be inserted in the Transport Accident Act limit pain and suffering awards based on the date of conviction. For example, proposed section 138B(2) provides:

> Notwithstanding anything to the contrary in section 86 of the Sentencing Act 1991, this section applies to and in respect of any offence referred to in sub-section (1) of which a court finds a person guilty, or of which a person is convicted, on or after the commencement of section 26 of the Accident Compensation (Common Law and Benefits) Act 2000.

In other words, a person could still go to the court for an award for pain and suffering based on a conviction that has already taken place — it has to be a conviction in the past six months, otherwise the time would have expired — but a person cannot go to the court for an award based on a conviction that takes place after the relevant provision comes into operation because awards based on those convictions have been excluded.

In the second-reading speech the minister said the clauses would apply from the date of the speech. Although that was incorrect the minister has now introduced amendments to provide for them to apply from that date. Many people have approached the opposition to make the point that that makes a mockery of the undertaking in the intensive case review program facts sheet because only a narrow category of workers may be able to be helped — namely, those who have been injured as a result of offences for which convictions have taken place over the past six months — and for others it will either be too late under the Sentencing Act or they will be chopped off by the provisions in the bill.

The government's house amendments change the rules so that the cut-off is now based on the date of injury rather than on the date of conviction, so people who have been injured at some time in the past by an offence for which a conviction takes place in the future can still apply for a pain and suffering award. There is some logic in that, although it is worth pointing out as an aside that the Attorney-General intervened in a recent Supreme Court case to support the conclusion that the commencement of the provisions should be based on the date of conviction rather than on the date of the offence.

The Attorney-General argued that, for example, the parents of a person who had been killed in an accident prior to 1 July 1997 could apply for a pain and suffering award based on a conviction having occurred after 1 July 1997. That is also the way the court interpreted the provision. The case I refer to is *Shoebridge v. The Pasta*

Master Pty Ltd, which is reported at (2000) VSC 14. The anomaly will exist that for the commencement of the provision the day of the conviction will be used but for the cut-off the day of the offence or injury will be used.

The change gives rise to particular concern about the provisions of clauses 27 and 28 of the bill. I hope the minister will consider the opposition's concerns about the clauses and respond to them when the bill is between this house and the other place. The clauses provide that employers are not entitled to cover under workers compensation insurance for any awards of compensation for pain and suffering made under the Sentencing Act. Similarly they provide that motorists involved in transport accidents do not have access to Transport Accident Commission cover for any awards made against them — in other words, if an award is made against a person, that person faces personal liability and is required to pay up themselves.

The government justifies the provisions on the basis of the decision of the Supreme Court in the case of *Bentley v. Furlan*. I point out that the citation of the case contained in the second-reading speech notes is incorrect. The correct citation is (1999) VSC 481. In that case the court held that on its interpretation of the existing Transport Accident Act motorists convicted of offences could not look to the Transport Accident Commission to meet the costs of any pain and suffering awards made to the victims of offences against the Road Safety Act.

One might question whether or not the decision is correct. If it is, one wonders why the government needs to legislate to enshrine in legislation what is already the law. If the decision is incorrect — and it was the decision of a single judge of the Supreme Court — then by legislating the government is changing the law and taking away the existing rights of motorists. Similarly the rights of employers under the Accident Compensation (Workcover Insurance) Act are being affected.

The point the minister needs to consider is this: just because a court says the Transport Accident Act scheme does not cover a motorist who is convicted of an offence does not mean that the Workcover insurance policy does not cover an employer in respect of an injury as a result of an offence. Two different acts and sets of law apply, and the law may well be different under each act. There is a strong argument that it is different under each.

I refer the house to section 7(1) of the Accident Compensation (Workcover Insurance) Act, which provides:

> (1) An employer who in any financial year employs a worker within the meaning of section 5(1) of the Accident Compensation Act 1985 —
>
> (a) must obtain and keep in force a Workcover insurance policy with the Authority in respect of all of the employer's liability under the Accident Compensation Act 1985 and at common law or otherwise —

I stress the words 'or otherwise' —

> in respect of all injuries arising out of or in the course of or due to the nature of all employment with that employer on or after 4 p.m. on 30 June 1993 …

From those words it seems there is a pretty good case for an employer against whom an award is made under the Sentencing Act to argue that the Workcover scheme is required to pay the costs.

The concerns about the government's amendment are twofold. Firstly, in principle is it appropriate to take away such insurance cover from employers? That case could be argued both ways. It could be said that in the case of a wilful offence by an employer involving the deliberate disregard of safety, gross negligence, and so on, the employer deserves everything it gets, and why should other employers through the Workcover scheme be obliged to pick up the cost that flows from that employer's conduct? On the other hand, it needs to be — —

Mr Cameron interjected.

Mr CLARK — The minister has clearly been chatting away instead of listening. The point I was making, which I will reiterate, is that there is a difference between the law under the Transport Accident Act and that under the workers compensation legislation, and just because a Supreme Court judgment relates to one of the acts does not mean the law is the same in relation to the other act. It seems highly arguable that employers' rights are being retrospectively removed by the proposed legislation.

It can be said that an employer who is grossly negligent or wilfully disregards safety requirements does not deserve to have indemnity under Workcover. However, it must be remembered that many of the offences involved are not of the sort that involve wilful neglect of safety requirements or gross negligence. Just about anything that leads to an accident in an industrial context could be regarded as a failure to maintain a safe

workplace and could therefore be an offence under the Occupational Health and Safety Act. It is the sorts of accidents that relate to normal claims under the Workcover system which employers would expect to have cover for, so why on earth should employers not have cover because the payment is ordered under the Sentencing Act rather than under the Workcover Act?

On top of the issue of policy for the future is the issue of whether it is appropriate to turn the existing law on its head retrospectively in relation to actions that have already taken place. If employers are on notice that they do not have cover under the Workcover scheme, they at least have the opportunity to take out another insurance policy to cover their liability. Based on inquiries, I have ascertained that there would be no legal objection to them obtaining such insurance cover. The courts have held that the entitlement to an award under the Sentencing Act on the grounds of pain and suffering is in the nature of civil not criminal proceedings, and there would be no policy reason for not being able to obtain insurance cover.

If those rules are altered retrospectively, the employers are in no position to obtain that cover. They are therefore exposed to a risk against which they will have had no opportunity of protecting themselves. Many employers who could be liable for prosecution would not be considered to have engaged in a heinous and wilful disregard of safety requirements. The offence could simply be failing to maintain a safe workplace.

Mr Cameron interjected.

Mr CLARK — The minister says that he is fixing it. If the minister had been listening he would have heard me make the point that insofar as the future is concerned there is no quarrel with the scheme he has adopted. The question is: is it fair and reasonable to make those changes retrospectively and particularly to the Accident Compensation Act?

The further point that should be made, if the minister needs further persuasion, is that the provisions will result in not only the employer being put at risk but also the worker who may bring a claim for pain and suffering and may obtain a compensation award under the Sentencing Act. If the employer has no insurance cover, what value is an award in favour of the worker for pain and suffering? To cut to the sort of political point that seems to appeal most directly to the present government, what good does it do for the undertaking that government members have made in the intensive case review program that they will help injured workers to bring claims under the Sentencing Act when they help an injured worker to go through the process, to get to the court and get an award made for pain and suffering after a conviction, and there is no possibility of recovery because the employer cannot pay an award of $50 000 or $100 000, the business goes bust and the employee is left without any redress?

It seems to be a strong argument that such retrospectivity is unjust not only to employers but also to injured workers. If the government is sincere in wanting to look after injured workers by virtue of the Sentencing Act provisions, clause 27 ought to be removed and, based simply on the provisions about letting the law in its interpretation take its course, clause 28 also should be removed. If the government does not see fit to do that, it should consider making a distinction based on whether the conduct of the employer is wilful, just as there is a similar test as to whether employees fail for coverage under the Accident Compensation Act through wilful act.

The point should also be made that even for the future there remains a possibility that the government's provisions in clauses 26 and 29 can be avoided because they apply only to specific pieces of legislation, and it may not be beyond the ingenuity of the legal profession to find other acts on which to base offences. Whether that is the case I will leave to others more expert than me to say. However, the basic point remains that the government has offered no justification for the seeming injustice of retrospectively taking away people's legal rights. It is certainly the sort of thing that government members would have objected to very strongly when in opposition, and it adversely affects not only employers but also injured workers.

I hope the government in general and the minister in particular will reconsider the provisions while the bill is between the houses and have regard to the arguments I have put.

Mr Cameron interjected.

Mr CLARK — The minister interjects yet again to say that this side of the house supports the legislation. Unfortunately he has not been listening to what has been put. If the government listened to the advice that is coming to it, not only from the opposition but across the board from those who know workers compensation issues well, it would not be proceeding with the bill but would be considering other and better ways of achieving changes to workers compensation legislation. Nearly all the parties involved would agree that the government could readily arrive at a better outcome than what is contained in the bill.

It is a tragedy. Because there is sufficient common ground among the main parties involved in workers compensation matters, the bill could be improved with relatively little effort. However, the government is making no effort to do so. Government members are proceeding with arrogance, blind stubbornness and determination that their regime will prevail. The government will press on with a bill that is full of anomalies and loopholes that will allow consequent cost blow-outs, loss of jobs and loss of confidence in Victoria.

Government members know in their heart of hearts that the approach being adopted in the legislation is wrong, but they are persisting with it. No doubt when the honourable member for Dandenong North gets to his feet there could be a degree of triumphalism in what he says, and similarly with other government members. For some honourable members opposite who believe their own party's rhetoric, it may be a genuine reaction. If so I suggest it will be short lived. For others it will be a false and shrill bravado put on because they know the damage that will flow from the measures the government is introducing.

Government members know that the patchwork of rules, procedures, limitations and anomalies is not a fair and logical method of compensating injured workers. They have no real idea of where the extra $190 million of costs that they are imposing on the Victorian community will go. They have no idea of what job losses will follow from the extra 15 per cent premiums imposed. No doubt very soon we will be back in the chamber as the government introduces further legislation seeking to sew even more patches on an increasingly worn-out fabric.

Regardless of one's view on the merits and principles of so-called common-law legal actions, the bill is a disaster. As is the case with so much of what the government has done, it is a half-baked outcome driven by politics rather than a vision or a search for new solutions. It is expedient, callous, manipulative and directionless, and is focused on little but presentation and image in the quest to retain power for power's sake. Victorians are increasingly paying the price for this new style of leadership.

Mr LENDERS (Dandenong North) — I am pleased to contribute to the debate on the Accident Compensation (Common Law and Benefits) Bill. I could not help but note that eight other people could have contributed in the time the honourable member for Box Hill has taken. I hope he has summed up thoroughly what honourable members opposite wish to say.

I will slowly go through the small number of notes I have taken to rebut the argument of the honourable member for Box Hill. I note with interest, and the government obviously welcomes, his statement that the environment is right for amendments to the Workcover legislation and that the partnership — certainly the Liberal part of the partnership — will not block access of workers to common-law actions.

The government also notes with some interest — and I will certainly be watching the honourable member for Box Hill — that the honourable member called for more consultation on the bill to enable the government to further consider and consult on the issues. I welcome his statement. Honourable members opposite are generally more than willing to ridicule and abuse government members every time we talk of consulting with or talking to industry, the workforce, unions or consumers; they say it is a sign of weakness.

In his concluding remarks the honourable member was scathing about the leadership style of the Bracks government — but earlier had said that consultation is the way of getting things right. I was delighted to hear the honourable member for Box Hill calling for the government to consult, because that is its leadership style.

The honourable member for Box Hill's rather somniferous presentation was at times hard to take. I found the first hour interesting, when he talked about the evolution of common law since Saxon times. Clearly, he has a passion for and understanding of the actuarial workings of Workcover. However, I thought 3 hours was a bit much.

I also found interesting his oral tour of Germany, Canada, the United States and Victoria during the First World War. It was a good history, which one would expect from a former parliamentary secretary for Treasury and Finance. It seems it goes with the job. We must all learn the lessons of history.

The honourable member for Box Hill appears to be fascinated by Brian Howe, a former federal Labor minister, and Barry Unsworth, a former Labor Premier of New South Wales. During question time today, some of his colleagues referred to John Della Bosca, the New South Wales Special Minister of State. Members opposite seem to have caught the same disease as their colleague, the Deputy Leader of the Opposition, who is fascinated by everything that happens in New South Wales. Government members are also interested in the things that happen over the border, but the house is debating Victorian Workcover legislation.

In summing up the comments of the honourable member for Box Hill, who took up the time normally taken by eight speakers, I point out to him that he got himself mixed up. He said Brian Howe supported ending workers' access to common law. He talked about the cynicism of the Labor Party, which he said has changed its view several times. Yet in the same breath he said the coalition supported the notion of economic loss being a condition for compensation in 1992 but opposed it in 1997.

The honourable member for Box Hill has forgotten that the Labor Party went to the election last year with a policy of restoring common-law rights for injured workers. That policy was announced in 1997, around the time of the Mitcham by-election, which followed soon after the Kennett government removed those rights. The Bracks government is proud of its position. Nothing is hidden, nor is there any subterfuge. The policies on which it was elected contained a commitment to restoring common-law rights, and it is now legislating to implement that policy. I am not sure what the honourable member's problem is.

It is important to put the legislation into perspective as at May 2000. As I said, in 1997 the Labor Party announced that it would restore common-law rights if it won government. The Minister for Workcover announced last year that a working party would examine the common-law provisions and report back to the government. Following its receipt of that report the government introduced the bill, the minister's second-reading speech on which is long and detailed.

I will try to put into perspective the reasons why we have common law. The honourable member for Box Hill gave honourable members an interesting historical perspective on its development, but it was hard to work out exactly what he was doing other than not opposing the legislation.

The Parliament must try to find a balance in considering the matter. The restoration of common-law rights involves a mixture of issues, including insurance and how one spreads the risk, how one pays for injured workers benefits, and how one deals with employers whose workplaces are too risky and penalises those who do not do the right thing by the system.

As I said, it is the Parliament's role to achieve the right balance. Sharing the cost of all that to society is not unusual in the modern era. Society cannot forget that it has a responsibility to people who are injured in the workplace, and it must share the burden of looking after them. It is not a case of manufacturing industry versus the rest. As the Minister for Workcover has said, currently the highest rate of injury is among farm labourers. The issue crosses the entire state. It has no easy solution, and over time it will require ongoing monitoring by governments of all persuasions.

The legislation is about much more than the restoration of common-law rights for injured workers. It forms part of the effort being made by a fiscally prudent government to plug the $176 million Workcover black hole left by the former government, in which the honourable member for Box Hill was the parliamentary secretary responsible for that part of Treasury. The people who leave such holes always have an explanation, but the revenue base of Workcover does not have the means to fill the hole. The issue cannot be easily ignored.

Honourable members opposite seem to regard Workcover as some sort of luxury that Labor governments throw the way of workers. Society has a responsibility to care for people who are injured in the workplace, just as it is the responsibility of employers to provide safe workplaces and of workers to be vigilant and to follow safe work practices. However, all that must be seen in the context of the responsibilities of parliaments and governments.

Victoria's transport accident legislation is no different in principle from Workcover — people who are injured are entitled to benefits and a compulsorily mandated insurance system that applies to the whole community pays for that. There are various levels of benefit under the transport accident scheme, and Workcover is no different in that sense. The Prime Minister has reflected on past world wars, and Victoria took responsibility for veterans affairs on much the same principles. Issues of social security, as we know it, whether they deal with the aged, the unemployed or the sick, are issues on which the government cannot sit back and let the market do things — it has to step in and take action. That is what Workcover is all about.

One of the issues of contention in the shadow cabinet room in 1997 that still exists is: why have access to the common law? I rest my case as to why common-law access should be restored on nine benefits of that access mentioned in a memo dated 5 May 1997 from the honourable member for Box Hill in his former capacity as Parliamentary Secretary to the Treasurer and Minister for Multimedia which is addressed to a number of members of Parliament, including the honourable members for Bellarine, Doncaster, Gippsland South, Benambra and Eltham. It states:

> Benefits of common-law access:

> Common-law rights are regarded by the people as a basic right. Injured workers and the public have faith in the courts and believe the process is fair.
>
> An injured worker is treated as an individual in his/her own right; the court is able to take account of particular circumstance.
>
> The payment of a once-off lump sum award provides a clear finalisation of the claim.
>
> Court awards are made by juries and are more generous than the table.
>
> We don't have to remove common law to have an efficient and fair system.
>
> We have already —

'We' being the former Kennett government —

> introduced initiatives which have tightened the system — only 10 per cent of those classified as seriously injured are able to access the court.
>
> How do we fund an expanded table of maims?

The final two points are the gems of this memo:

> The abolition of common law will not lead to anticipated savings.

Honourable members should remember that this was just before the Mitcham by-election. The last point states:

> It would be political suicide to remove common law.

Mr Wynne — What is that again?

Mr LENDERS — The honourable member for Richmond asks, 'What is that again?'. The final point made by the coalition task force — the Workcover group — on 5 May 1997 was that it would be political suicide to remove common law.

Mr Clark — On a point of order, Mr Acting Speaker, I would like to take up the kind offer of the honourable member for Dandenong North to make the document available to the house at the conclusion of his remarks.

The ACTING SPEAKER (Mr Kilgour) — Order! The honourable member for Box Hill has requested that the document the honourable member for Dandenong North is referring be made available to the house.

Mr LENDERS — The case for the common law is probably best summed up by the work done by the coalition working group on Workcover, which presumably reported to a joint meeting of the parties in May 1997 before that meeting embarked on the decision to remove common-law access. The government knows the Leader of the National Party said he was opposed to the removal, that the honourable member for Doncaster argued vehemently against it in the party room, and that most members opposite probably argued against it but must not have argued articulately enough or were rolled by cabinet and the former Premier.

The issue before the present government was how it should address a Workcover system that it inherited that had a $176 million black hole and how it could restore the common-law benefits it promised to restore in 1997 when it opposed changes to the legislation. The process was put in place, the inquiry was held, the report was received and the legislation has been introduced. The Victorian Workcover Authority and the issues that surround its operation are a living, breathing regime and during the period of tenure in this house of current honourable members it will need to be constantly reviewed and monitored to cater for changing circumstances.

I will comment on only two clauses before winding up my remarks. Clause 4 adjusts the Workcover benefit. It deals with the important issue of using average take-home earnings rather than notional pay to calculate payments. Back in the 1960s and 1970s holiday leave loading and other entitlements were introduced to recognise that in some industries there was a large component of overtime in people's wages. When such people were not at work because of injury that extra component was missing. The provision brings the level of earnings used to calculate payments into line with industry standards, particularly those in the construction industry.

I take most interest in clause 19. The legislation is being portrayed by some members opposite as a bogey — that is, they say it is all about lawyers getting their hands on money. The information I have is that the legal costs recovered by practitioners in respect of common-law claims presently represent around $70 million, or 6.5 per cent. The bill attempts to further regulate that area. Clearly the government wants as great a percentage of benefits as possible to be received by workers.

I can understand that the honourable member for Box Hill is one of the last dyed-in-the-wool supporters of the previous Premier. In many other debates in this chamber he has experienced a fair amount of anguish at seeing some of the Kennett government's so-called reforms dismantled, including reforms to the role of the Auditor-General. I can understand that anguish because Labor saw much of its reform program unwound by the previous government, and that is never easy. The

Bracks government welcomes the fact that the Liberal Party will not oppose the legislation, but I suspect that the honourable member for Box Hill has experienced a fair amount of grief in shadow cabinet and in the party room over the party's backing down and support of the government on the issue.

Workcover is a living, breathing part of looking after the work force in this state. The 1997 reforms were wrong. Whether at the time honourable members opposite supported them because they thought they were good or because they were forced into it is irrelevant. It is always a worry when someone in Parliament says there can never be change, that you always have to stick with what was in place and do not need to respond to changing needs.

I am pleased that the shadow cabinet and the opposition have agreed to support the legislation. As the coalition changed its position between 1992 and 1997 and again in 2000, it is a good sign that its members are thinking about the legislation. The government is delighted that the legislation will be passed. It is not a matter of politics but a basic principle: in 1997 when compensation rights were removed the Labor Party heard the community and promised to restore those rights. It gives me great pride to commend the bill to the house.

Mr MULDER (Polwarth) — I look forward to contributing to the debate on the Accident Compensation (Common Law and Benefits) Bill as an employee over 15 years, an employer over 20 years and with considerable experience in small business.

The bill provides the opportunity to reflect on the days when there was no form of workers compensation for injured workers. Many families, particularly low-income earners, faced a great deal of stress and concern because no chance existed to put forward a case or be compensated for injuries suffered at work. It is appropriate to congratulate governments from both sides of politics on the work done in establishing a workers compensation scheme that protects the interests of workers and the interests of the community.

It is not possible to have a workers compensation scheme that covers everybody. There will always be changes in the types of injuries suffered, the social circumstances, the awards and the complexities that affect how workers compensation is viewed. Both sides of the house should be willing to pursue an effective compensation scheme for injured workers.

One issue that leaves me cold is that 5000 workers will not be covered by the bill. Given its philosophy of taking care of injured workers, it is difficult to understand how a line can be drawn leaving out the workers injured before the Labor Party came to government. Those people will have an opportunity to convert some of the statutory benefits to lump sums but they are not protected under the bill. It is extraordinary that the government has taken this line.

Problems will always arise in working out a compensation package for an injured worker. It would have been far better for the government to negotiate a better line in compensation or to increase benefits rather than open the floodgates for the lawyers, as it has done. What happened under the previous Labor government is well known — workers compensation turned into a trough or a pot of gold and was rorted by members of the legal profession. They had a field day! Why would a government head back to the bad old days and the previous system that was such a shocking failure?

The 2.8 per cent increase in Workcover premiums might be regarded by some as small. Businesses operate on small margins and massive turnovers to maintain a competitive edge. Such an increase is enough to destroy a business overnight. Many farmers, those in the timber industry and others in more hazardous occupations are already facing Workcover premiums in the order of 9 per cent. Add a further 2.18 per cent to their premiums and see what it does to them! Abattoir owners paid Workcover premiums in the order of 50 per cent and were driven out of the state as a result. Townships such as Camperdown and others suffered the effects of union intervention and excessive Workcover premiums.

Farmers are already facing low commodity prices, paying for water and experiencing bad seasonal conditions. It is claimed that the legislation will bring Victoria into line with other states. Who would hand over a competitive edge in business today? No-one except the state of Victoria! It wants to bring itself into line with other states and hand over a competitive edge, to drive investment out of the state, and discourage employment. That is what the legislation is about!

In 1992 the Labor government had an unfunded Workcover liability of $2 billion — that is, under the previous Labor government one authority had a deficit greater than the surplus the coalition government handed to the current government.

The then Labor government had a chance to put up premiums under that scheme but it chose not to — it chose to send the fund broke instead. The premiums could have been increased from 3 per cent to 5 per cent but the Labor Party sent it to the wall and that is what

the Liberal Party inherited on coming into government in 1992.

It is all right for government members to say that workers need protection — it is always the employer's fault and never the worker's fault. I have personal experience of incidents in my electorate. I mention a farmer who put on an employee and had his first weekend off in a couple of years. The employee had two simple tasks: to feed the cows and water them. The employer came home on the Monday to find the tractor with the prongs on the front had killed the best cow! The employee got on the motorbike he had been told not to touch, went for a ride through a barbed wire fence and nearly hanged himself. That was a Workcover claim, yet members of the government say it is always the fault of the employer!

A safety policy in my business is that if a ladder is above a certain height two people must be there — one holding the ladder and the other doing the work. When an employee decides not to comply, who wears the Workcover claim? The employer! I mean — —

Mr Nardella — Who should wear it?

Mr MULDER — Everyone is happy to say that it is an issue for employers. It is always the employer's fault, but there is an area of responsibility that lies with employees.

When a person is put on Workcover, the hounds line up for a feed! Because it is a Workcover issue, all of a sudden the medical costs associated with the case go up. The wound that could be dressed at home now has to be dressed twice a day at the outpatient clinic because it is Workcover and the employer is paying for it. What the hell, the Victorian business community is paying for this! Victoria will be taken back to a culture of neck braces, back to an era when lawyers thought there was a pot of gold and an easy dollar to be made — somewhere where an employee could roll up and get an easy payment — —

Honourable members interjecting.

Mr MULDER — I am not talking about the genuinely injured person, but the government is opening the floodgates, driving the fund back into debt. What we will see in the country and in the city will be the lawyers marketing their services on television like McDonalds, because they can see a pot of gold. People attending at an ear clinic will be asked, 'Did you work for Telstra? Do you think you are deaf?'. Advertisements will say, 'Come and see us. We will take your case for you and put it through Medicare'. Victoria will go back to the good old days of rorting the system — a free-for-all.

It was interesting to have a briefing by the trade union movement in Parliament last week. It described this bill as the first instalment. An instalment is defined as a sum of money due as one of several equal payments spread over a period of time or as any of several parts, especially of a television or radio serial or magazine. *Blue Hills*, here we go again!

The matters raised in the meeting with the trade union movement included the ability to challenge a doctor or medical panel if a patient is not happy with a decision — and who is going to be happy with the decision? They also included the provision of a statement of facts agreed to prior to a panel hearing; the ability to go back for a second dip after receiving a benefit if the injury deteriorates; serious injury certificates at the time of the claim to cover any changes in circumstances by the time the court hearing is carried out; and a claimant's own choice of rehab supplier, recommended by the trade union and affiliated with the Labor government. That will result in extended claims, and some rehabilitation suppliers will go soft and be greatly sought after.

The issues raised also included the right of employers to seek background evidence on applicants' illnesses and injuries and introduces a cover for the journey to work by means other than motor vehicles, such as walking, cycling and trains and trams.

Honourable members interjecting.

Mr MULDER — Here we go again! 'On the way home on the tram, I will stop off and have a few beers and fall over in the gutter, but I am on my way home from work, so — —

This is what happened before!

Honourable members interjecting.

The ACTING SPEAKER (Mr Kilgour) — Order! The honourable member for Richmond will get the call if he cares to stand later on, and the honourable member for Ballarat West should desist in her comments.

Mr MULDER — The bill provides for an expansion of the narrative clause to cover, for example, the shearer in Horsham with no chance of employment in the town or the buckjump rider who has run out of horses. There will be cover for a worker who has taken benefits but due to his off-work injury has had to retire early from another job.

The government says that it will be funded from the 2.18 per cent increase in Workcover premiums. No way! The premiums will rise and continue to rise until Victoria is back in the position it was in in 1992, with an unfunded liability of $2 billion — and it will happen quicker than you can take a breath.

Another issue I wish to raise is the government's record of protecting its own workers in the installation of portables. Prior to entering Parliament I had a property maintenance company and it did a lot of work for the state government installing those portables.

Honourable members interjecting.

Mr MULDER — The issue was never raised. No-one ever said to us that we were working on a building that had asbestos in it, and if you saw the condition in which the portables arrived ready for installation you would understand what a journey does to a fabric such as asbestos sheeting.

Mr Lenders — On a point of order, Mr Speaker, I direct your attention to standing order 99 and suggest that the issue of relevance is the key. The honourable member is addressing another matter before the house, not this one.

The ACTING SPEAKER (Mr Phillips) — Order! At this stage I will not uphold the point of order, but it is incumbent on all honourable members to understand the rules of the house and ensure that their remarks are relevant to the bill before the house. As I have only just assumed the chair, I am in an awkward position. I will listen to the honourable member for the next 5 or 10 minutes and if his speech becomes irrelevant I will rule accordingly.

Mr MULDER — I am referring to the safety of workers, and as the bill relates to common-law claims and Workcover I believe my remarks are relevant.

Mr Wynne — How long ago was this?

Mr MULDER — I have worked in portables and I have seen the damage caused by their being transported. I find it incredible that those portables were dropped off in a schoolyard. The workers were reinstating the building, drilling holes into asbestos, and were not informed that they were working on a building in that condition. Carpenters, electricians, carpet layers, cleaners and visitors were all being exposed to the fibres. I have seen the asbestos sheets arriving after transportation and I understand the problems. The workers should have been notified.

Much of the work carried out by my organisation was for Telstra, which would never allow a building with asbestos in it to leave its site. The asbestos had to be removed before the building was removed. I have a copy of a document entitled *Code of Practice for the Safe Removal of Asbestos*, published by the National Occupational Health and Safety Commission, from which I would like to read some clauses. I am happy to table the document.

It is extraordinary that the government has allowed the practice to continue. It had been notified of the problem but failed to act. I refer to the document, which states in part:

1. Planning and programming considerations.
   - 1.1 Information to be supplied by the client —

that is, the government —

   - 1.2 Information to be supplied by the approved removalist.
   - 1.3 Guidelines for planning and programming.
   - …
   - 1.5 Supervisory personnel.
2. Preparation of the removal site for a major removal program.
   - 2.1 Determination of asbestos removal area where total enclosure is not possible.
   - 2.2 Site preparation for asbestos removal from buildings and other structures.
   - 2.2.1 Compliance testing of removal area containment prior to commencement of work.
   - 2.3 Decontamination facilities.
   - 2.4 Changing facilities where a decontamination unit is inappropriate.

Have those procedures been followed? No! The code continues:

3. Equipment for asbestos removal.
   - 3.1 Cutting tools.
   - 3.2 Spray equipment.
   - 3.3 Total saturation equipment.
   - 3.4 Vacuum cleaning equipment.
   - 3.5 Waste disposal equipment.
   - 3.6 Inspection of equipment.
4. Removal techniques for buildings and structures.
   - 4.1 Spray method.
   - 4.2 Removal by soaking or total saturation.

Mr Lenders — On a point of order, Mr Acting Speaker, I direct your attention to standing order 93, which states:

> No member shall allude to any debate of the same session upon a question or bill not being then under discussion …

The Administration and Probate (Dust Diseases) Bill was debated and passed by the house during this sessional period. The honourable member is referring to the provisions of that bill in his contribution to the Workcover bill.

Mr Clark — On the point of order, Mr Acting Speaker, I was listening to the honourable member for Polwarth. He has not mentioned another bill. He is giving a general illustration of an instance concerned with occupational health and safety and how careful steps need to be taken to address the issue. His contribution included a particular example of occupational health and safety.

The ACTING SPEAKER (Mr Phillips) — Order! The honourable member for Dandenong North raised a point of order on relevance. In his opening remarks the honourable member for Box Hill spoke for a number of hours. His contribution was succinct and reasonably wide ranging. The Workcover bill talks about accidents and the possibility of injuries caused by wide-ranging causes, including the removal of asbestos. As the honourable member for Box Hill said, I understand that the honourable member for Polwarth has not spoken about the bill directly but about Workcover injuries in general. At this point he is still relevant.

I again remind all honourable members they must be relevant to the bill. This is important legislation and will create quite some passion in the house. The precedent has been set and maybe all honourable members should be tolerant. As long as honourable members are relevant, some latitude should be allowed for them to express their views.

Mr MULDER — The code of practice continues:

- 4.4 Removal from hot metal.
- 4.5 Techniques for small removal jobs.
  - 4.5.1 Use of glovebags
  - 4.5.2 Mini-enclosures.
- 5. General hygiene requirements.
  - 5.1 Decontamination procedures.
    - 5.1.1 Personnel.
    - 5.1.2 Equipment
- 6. Protective clothing and equipment.
  - 6.1 Respiratory protection.
    - 6.1.1 Faceseal.
  - 6.2 Protective clothing.
    - 6.2.1 Laundering of protective clothing.
- 7. Environmental monitoring of removal site.
  - 7.1 Air monitoring techniques.

Those techniques should have been taken into account by the government when it allowed the units to be moved.

I refer to another publication of the National Occupational Health and Safety Commission entitled ‘Removal of asbestos-cement (fibro) sheeting’, which also covers the repair and cutting that would have been done on the units. I saw the units when they arrived at a school site; they were in a state of disrepair because of the journey. A lot of the cladding had been dislodged. The publication states:

> All windows and doors on the building should be closed, or in factory-type building where there is no ceiling, the area below or adjacent to the work should be roped off.
>
> The asbestos-cement should be sealed or wetted with water, but not with high pressure water jets. The sheets should not be wetted if this creates a high risk of a worker slipping from a roof.
>
> Workers should wear disposable coveralls and either an approved disposable respirator or an approved half-face respirator mask fitted with dust cartridges approved for asbestos.
>
> Only power tools approved by the appropriate statutory authority for asbestos work may be used for removal.
>
> Asbestos-cement should be removed with minimal breakage and should be lowered to the ground, not dropped.
>
> The removed sheets should be stacked on the ground sheet and not allowed to lie about the site where they may be further broken or crushed by machinery or site traffic.
>
> All asbestos-containing waste should be kept wet, wrapped in plastic or otherwise sealed and removed from the site as soon as practicable, using covered bins or on a covered truck.

I have further publications including one about the Australian standard for the handling of asbestos cement products. The government has let down the workers who have been working on the portable classrooms. I have been involved in the industry, and I saw the debate stifled in the house — —

The ACTING SPEAKER (Mr Phillips) — Order! The honourable member’s time has expired.

Ms GILLETT (Werribee) — I was not the managing director of a company that exploited its employees by not knowing the rules that were, for some bizarre reason, read into *Hansard* by the honourable member for Polwarth. It may have done some people a

lot of good if the honourable member had known about the rules in a previous life. I hope the timber workers in the Otway Ranges are able to obtain copies of *Hansard* to read the honourable member's speech. If the opposition does not make it available to the timber workers, perhaps it is beholden on the government to do so. I find it disgraceful that the honourable member should describe people as hounds lining up for a feed.

The honourable member for Polwarth may be pleased when the bill passes into law because he may be able to then seek compensation for the injury he caused himself and the opposition parties tonight in his speech, which demonstrated his utter lack of compassion and the fact that he lives a million years in the past. The government wishes he would go back into the past. Nonetheless, it is the responsibility of honourable members to make intelligent and constructive comments about the bill, which is what I hope to do.

The bill makes some of the most straightforward, practical, sensible and compassionate moves a government could make. It restores common-law rights to seriously injured workers. The honourable member for Polwarth was not a member of this place when some years ago thousands of people marched on Parliament House to argue for the restoration of common-law rights. The bill restores those rights.

It also establishes an intensive case review program for those who had their rights removed from them by the Kennett government. People who were seriously injured at work did not have the right to sue negligent employers at common law in the period between 12 November 1997, when the Kennett government abolished the common-law rights of seriously injured workers, and 20 October 1999, when the Bracks government was sworn into office. By establishing an intensive case review program the government is committed to helping workers. Seriously injured workers will get the maximum financial help to which they are entitled, including the opportunity for the seriously injured, where appropriate, to access lump sum benefits.

The intensive case review program will be administered through a special unit of Workcover. It will go through each of the cases in detail to make sure that each of a number of things takes place. Firstly, seriously injured workers will get the maximum financial help to which they are entitled including, importantly, correct weekly benefits and medical expenses. Secondly, seriously injured workers who have been on benefits for over 104 weeks and have a permanent impairment of more than 30 per cent may be eligible, where appropriate, for a lump sum settlement for their future weekly benefits. Thirdly, management of each individual claim will be appropriate to meet the needs of both the claimant and his or her immediate family.

Each case will be thoroughly investigated to explore whether the claimant may be eligible for any additional or alternative entitlements such as, for instance, entitlements under the Sentencing Act.

Further, seriously injured workers will get all the help they need to return to work. One of the most important aspects of the legislation and of the whole accident compensation scheme is the restoration of the dignity of the seriously injured worker by rehabilitating the worker sufficiently to allow him or her to come back to work, thereby retrieving the self-esteem and dignity that comes from work. The proposed legislation provides for a wage subsidy for employment or access to entitlements under commonwealth social security.

That process recognises that injured workers are a uniquely disadvantaged group. The intensive case review program makes absolutely certain that Workcover goes out of its way — for once — to make sure that that group is properly cared for. The intensive case review program is only the first step towards ensuring that the workers are not forgotten. The effectiveness of the program will be monitored on a quarterly basis over the next five years.

Another important facet of the bill is that it provides fair and just benefits for employers as well as for injured workers. The proposed benefits for injured workers will recognise regular overtime payments as a portion of normal weekly earnings. For many injured workers that means a considerable enhancement of weekly benefits.

Injured workers in the transport and storage, mining and manufacturing, and construction industries will benefit most from the change the government is making because, according to the Australian Bureau of Statistics, as at May 1998 workers in those industries received on average more than 10 per cent of their base pay in overtime each week. Including regular overtime in the definition of pre-injury weekly earnings will mean that weekly benefits more clearly replicate an injured worker's actual pre-injury earnings, so many injured workers will not be faced with the immediate shock of an enormous reduction in the amount they actually take home as opposed to the standard award rate.

Injured workers who work regular overtime and whose income drops from 95 per cent of pre-injury weekly earnings to either 75 per cent or 60 per cent after the initial benefit period of 13 weeks will not suffer as great

a reduction in their weekly benefits level. The legislation is all about lessening the blow and helping workers to care for their families while they themselves are most vulnerable.

However, there are also benefits for employers. Listening to the opposition you would think a number of things, particularly that the new system had been designed wholly and solely for the benefit of injured workers. That is not so; it also works to the benefit of employers who provide a healthy and safe working environment. The fair and just benefits for employers are that employers who pay injured workers make-up pay — that is, the difference between the amounts they receive from Workcover and their normal weekly earnings — will benefit from the change because Workcover will now pay for the amount of overtime that was regularly received by workers. There are advantages for employers.

A lot has been said about premium levels. It must be made clear, without resort to rhetoric or other nonsense, that the Bracks government has legislated to enforce premium levels that are competitive. Whether opposition members like it or not, that is the case. Even after the restoration of common-law rights Victorian employers' rates will still be much lower than the rates paid by their counterparts in New South Wales and South Australia.

The Workcover reform package will increase employers' premium costs only marginally, from an average of 1.9 per cent to 2.18 per cent of wages. As an incentive employers who reduce workplace injury and disease will see their premiums fall in the future. It is simply wrong for opposition members to talk about some hideous outcome as a result of this relatively small increase in the premium — which is offset by an incentive anyway!

The main aim of the accident compensation game is to not have accidents, so for employers who provide a healthy and safe working environment premiums will be reduced. That is the aim of this sort of legislation.

The bill also provides appropriate encouragement for injured workers to return to work. The encouragement includes — and this has been absent in previous legislation — proper access to good rehabilitative programs.

The Bracks government takes the complex task of injury management very seriously. In the next 18 months the government will, through the Victorian Workcover Authority, conduct a major review of rehabilitation and return-to-work programs to ensure they meet standards of best practice and suit the needs of the broadest range of seriously injured workers. The review will identify current trends in quality management of injury and claims in Australia and overseas and will coordinate with other workers' schemes, transport accident compensation schemes and commonwealth agencies to develop better integrated services and incentives for good injury management. That will involve wide consultation with all the major stakeholders.

An important fact about the Bracks Labor government is that it does not consider itself to be the fount of all wisdom, thereby standing in stark contrast with the previous government, which refused to listen to what anyone had to say and reaped the consequences of that inability to listen. The Bracks government is fully committed to ensuring that the Victorian Workcover Authority has a well-integrated approach to injury management. It regards that as absolutely crucial to the successful implementation of changes to the Workcover scheme.

The Bracks government is seeking to make not only a practicable and tangible change to the Workcover scheme but also a cultural change within the Victorian Workcover Authority. I will refer to those matters later in my contribution to the debate.

The bill also seeks to provide for proper assessment of the extent of injury. Honourable members on both sides of the house who have experience with insurance companies will know the main aim of the game is for them to deny liability. Insurance companies will go out of their way to ensure that they either reduce or deny liability. The bill puts emphasis on the proper assessment of the extent of injury. There will be no more mucking around.

The Bracks government has fulfilled its election pledge to reinstate a worker's right to access damages under the common law. As was the position prior to 11 November 1997, workers have to satisfy the serious injury test, which will continue to have two gateways. The seriously injured worker can use either gateway to access damages if the conditions are met. The first gateway involves the worker establishing a 30 per cent whole-of-person impairment as assessed under the fourth edition of the American Medical Association guides. That test for serious injury uses a medical concept — namely, whole-of-person impairment — to assess the level of injury and is determined by a medical practitioner. Disagreement on the level of impairment will result in a determination being made by a medical panel.

The second gateway involves the worker satisfying what has been referred to as the narrative serious injury test, which in the absence of agreement is determined by a court. Under the serious injury test set out in the Accident Compensation Act the worker must have a serious permanent impairment or loss of body function; a permanent serious disfigurement; a severe permanent mental or long-term behavioural disturbance or disorder; or have suffered from the loss of a foetus. The test has been determined by the courts by taking into account the consequences for the worker of the pain and suffering or economic loss incurred as a result of the impairment or disturbance. By contrast to the 30 per cent whole-of-person impairment test, the narrative test for serious injury examines the consequences of the injury for an individual.

Another important aspect of the proper recognition of the extent of injury are the statutory non-economic loss benefits, known as SNEL benefits. Compensation for statutory non-economic loss incurred by a worker with a permanent disability is provided through a lump sum statutory non-economic loss benefit. The Bracks government has increased the initial lump sum benefit by 100 per cent — from $5040 to $10 300. That increase will occur following indexation on 1 July 2000.

One of the fundamental demonstrations of the change of culture in the Victorian Workcover Authority is access to fair and equitable dispute resolution. As a result of Labor fulfilling its pre-election pledge to restore common-law rights for seriously injured workers, some seriously injured workers will be able to take court action against their employers for negligence. The Bracks government understands legal process is an important part of common-law actions, and legal costs will necessarily be incurred as parties seek to be represented in court actions. As a result, the Workcover scheme will incur legal costs associated with legal actions, and the government recognises that reasonable legal costs must be borne by the scheme. The government has legislated for measures to control legal costs to ensure they remain at a reasonable level.

I have been proud to be a member of the government on many occasions, and the debate tonight is another occasion on which I am proud to be a part of the government. It is important for a government to do what it says it will do because that helps to restore the community's faith in the parliamentarians they have voted for. I hope the bill does that for the community.

Over the past four years I have seen my constituents damaged as much by the processes adopted by the Victorian Workcover Authority as they were by the injuries they suffered. I have seen many of my constituents arguing for years about trivial, pedantic paperwork matters when the extent of their injuries was obvious.

I place on the record my congratulations and gratitude to the Minister for Workcover and his hardworking staff. They have honoured the promise the government made when in opposition. To a large extent the government is able to keep that promise because of their hard work, skill, talent and high pain threshold. There is still much to be done to ensure that the Victorian Workcover Authority becomes truly efficient. The Transport Accident Commission model is a fine one that provides an efficient method of working through difficult issues. I hope the government will be able to work towards seeing that model and that culture effectively translated in the Victorian Workcover Authority.

I wish the minister and his staff well in the future and wholeheartedly look forward to the advantages the changes to the Victorian Workcover Authority will provide for seriously injured workers and all Victorians.

Mr LUPTON (Knox) — I believe everybody in the house, no matter on which side they sit and whether they be members of the Liberal, Labor or National parties, or Independents, is looking for one method by which to provide the best compensation facilities for workers who are injured in the Victorian workplace. However, the opposition and the government go about it totally differently.

History shows that the workers compensation legislation was flawed. Workcare was flawed and the Workcover scheme introduced in 1997, while it may have been a step in the right direction, was also flawed. The proposed legislation is flawed. It is an indictment on society that members of Parliament cannot get together in a bipartisan way to work out a better method by which to look after injured workers. All honourable members believe in the same thing — that is, that we must look after people who have been injured in the workplace, perhaps through no fault of their own. However, when the Liberal government gained power it cut out common-law rights, and now that it is in power, Labor has brought them back. Surely Parliament cannot keep going on that way.

Members of both sides of the house should sit down together to work out a method that will be of benefit to all sides — that is, it will be fair, will not bankrupt the state because of high common-law claims, and will ensure injured workers have a good standard of living, that their medical expenses are covered and that overall

they are looked after. No-one wants employers to go bankrupt through being sent to the wall because of high costs. Surely in the 21st century — or just about — an appropriate method can be found through a bipartisan process.

I refer to a letter from the Common Law Bar Association, which together with the Victorian Bar Council strongly opposes the amendments contained in the Accident Compensation (Miscellaneous Amendment) Act, which was enacted a couple of years ago. Although the association welcomes the reintroduction of common-law rights, it believes the amendments will have inequitable consequences. I will quote a couple of examples from a letter written on behalf of the association. It states:

> 1. The right of a worker to claim against third parties …
>
> 1.1 A worker is given a limited right to sue a third party where the employer is not a party to the proceeding … This is fundamentally unfair.

Who else would have a bigger interest in the bill than the Common Law Bar Association? In its letter the association picks out some of the faults in the legislation. As I said, members of Parliament should sit down and work out a way of moving ahead that will benefit everybody. The letter further states:

> 2. Retrospectivity
>
> 2.1 Whatever the view is as to the appropriateness of the 1997 legislation it is anomalous that those injured after 1997 and before 20 October 1999 have no fundamental right to claim common-law damages.

But the people in that window will be deprived of the benefits of the legislation. The letter further states:

> 3. Dependents' claims
>
> 3.1 The 1997 amendments maintained the right of dependents to bring Wrongs Act claims under the act. The proposed amendments, for some unknown reason, place such fundamental rights in jeopardy.

I would have thought that those who drafted the legislation would have covered those points. In referring to the statutory offer scheme, the letter states:

> These provisions maintain a capricious and punitive system for making offers and counter offers with draconian costs penalties for workers.

That is not what we are about. Why do workers have to bear such unreal costs? Surely members of Parliament — which comprises the house that represents the people of Victoria and the house of review, which together make the laws — can sit down together and work out a way that will relieve workers of costs.

The letter goes further. In referring to the threshold of 40 per cent for economic claims it states:

> We see the 40 per cent limitation as expressed in the bill as not only being difficult to understand but also extraordinarily difficult to apply.

It goes on to refer to statutory hurdles:

> The introduction of section 104B (and necessarily section 93C) within the serious injury provisions will produce extraordinary complications and potential inconsistencies in what ought to be a relatively straightforward process.

The letter further states:

> The association accepts that the government has an obligation to be fiscally responsible. In that context we note that when the scheme is accessed, damages recoverable by a worker will now be considerably less than that which he or she may have recovered prior to November 1997 by reason of the amendment to the discount rate (to 6 per cent) and the clear abolition of interest.

Surely that is not what Parliament is about. Honourable members are about trying to improve the lot of injured workers.

In her contribution the honourable member for Werribee made a number of claims. She talked about the fact that the government would see injured workers get back to work and would monitor the problem — I really hope that is true — and that benefits provided for under the legislation will include a component for overtime and shift allowances. Having been involved in the superannuation industry for more than a decade and a half I am concerned that under the previous system a number of workers, because they were having make-up pay included in their workers compensation payments, had no ambition to go back to work and sat at home and vegetated. History shows that a person who sits and vegetates instead of trying to get back into the work force loses any ambition to be usefully re-employed. That is of real concern to me.

I agree with the concept that overtime and shift allowances should be included. However, I have a real concern that if they continue as part of the payments to workers for too long the incentive for workers to go back to work will be taken away, because it is possible that when workers go back they may not be able to work to the normal standard and do shift work and overtime and their normal salaries will be diminished and may be only equal to or around the same figure they would have got had they been on Workcover.

I have a real concern about the proposed changes. As I have said, I really believe that as members of Parliament we can we sit around a table and come up with something that will be better for Victorian workers. That would be far better than members of each side haggling and arguing with each other.

Honourable members should look at the history of the matter. In 1992 when the Liberal and National parties came to power the workers compensation system was haemorrhaging with unfunded liabilities totalling more than $2.1 billion and premiums at an average of 3 per cent of payroll. It is fair to say that in 1992 the scheme was clearly the worst performing scheme in the whole of the nation. The Kennett government brought in changes. Although the changes may not have been popular, the former government's scheme generated savings of around $500 million per annum to Victorian employers, contributed to making Victoria an attractive place to invest and achieved the highest employment levels in the state's history. The current Workcover premium is at an average of 1.9 per cent, and following the changes introduced in 1997 the scheme is likely to be fully funded by June 2001.

There is one point I must take up. I refer to *Hansard* — I know I cannot quote from it — and what the minister said about Victoria's having an enormous black hole because of the Workcover legislation. On 25 November he said the government inherited a debt of $176 million for the last financial year and that it is a black hole. The former coalition government inherited a debt of $2.1 billion, and that would have continued to climb. I do not want to go back over too much history, but honourable members should look at Workcover's annual reports in an honest, fair and truthful way. The Victorian Workcover Authority's 1998–99 annual report states at page 10:

> This increase was almost entirely due to an increase in common-law payments from $206 million in 1997–98 to $355 million in 1998–99.
>
> The major influence on the authority's funding ratio has been the financial impact of the run-off from common-law settlements. Common-law liability accounts for 22 per cent of the net claims liability.

Nobody in their right mind can believe that common-law claims will continue to keep benefits down. History has shown that unless there is an almighty change in the way the current government is proposing such things, Victoria will experience a blow-out in Workcover such as it has never had before.

At page 40 the report refers to the key achievements of the Kennett government in 1997:

> All payments, excluding common law, reduced by $37 million (5 per cent), compared to 1997–98.
>
> All payments, including common law, increased by $111 million (12 per cent)
>
> …
>
> Legal payments (excluding common-law legal costs) reduced for the second year running by $8 million

I hope and pray that the community and Parliament can together come up with a better solution. Common-law access is not the right or fair way to go. Surely 88 mature people sitting around the chamber can come up with a better way.

Attempts have been made to blame the coalition for what happened in 1997. The facts are that since 1997 Workcover has returned to unfunded liabilities, reaching $295 million as at June 1999. However, this was almost entirely due to pre-1997 common-law claims exceeding expectations, which shows the risks of Labor's policy to reintroduce common law. Current running costs are only 1.68 per cent of payrolls, and left unchallenged Workcover would return to the black by 2001.

The second-reading speech refers to the government's concern about the impact on small business of the premium increases, which I and the general community maintain will reduce the benefits of employment. One firm in my area will make no attempt to increase the cost to the consumer but it will have to put off 19 people. That reduction in jobs in one organisation is of the utmost seriousness. If that figure is multiplied throughout the state, Victoria will have an enormous increase in its unemployment rate. I noticed in the budget announced last week that the government aims to reduce unemployment from 6.75 per cent to 6.5 per cent by this time next year. If other Victorian employers head down the path of the company in my electorate to which I have referred, unemployment will increase and the state will be in deep trouble.

I am concerned that if the cost of Workcover is increased by the proposed amount Victoria will no longer be as attractive to big or small business. There is no doubt that the reduced Workcover premium has attracted investment to Victoria. Should it go up there may be an adverse affect on employment in the future. There will be an investment downturn in the community.

In my former life I worked for some 17 years in an industry where I was involved in counselling and caring for and advising people in situations of death, disability, terminal illness and retirement. In 1987 the organisation introduced a new superannuation scheme which

increased the amount of money payable to the workers by just changing to another division of the same fund. It was not necessarily going to cost the employees more — in some cases it cost them less. It cost blue-collar workers more only if they chose the top rate. For a zero contribution rate the employees accrued a benefit of 9 per cent. If the employees contributed 3 per cent of their salaries, they accrued a benefit of 15 per cent. If they contributed 6 per cent they accrued a benefit of 21 per cent of their final average salary. In today's terms a 25-year old person on a salary of $40 000 would be contributing 6 per cent and accruing a benefit of 21 per cent on his or her final average salary, which could be in 20 to 30 years.

Many people in the organisation took the money and left because of the big payouts. There was an enormous increase in the benefits when they chose the new division of the fund. Those people were advised to look carefully at the situation and not put all their eggs in one basket. They were advised to be conservative with their money. Honourable members will recall that in September 1987 interest rates were running at 26 to 32 per cent in the high-risk area. People left the organisation and invested their money.

Honourable members will recall also that in October 1987 the stock market crashed. Many people had ignored the advice they had been given and had their money invested in organisations such as AMP and National Mutual. Representatives of those two organisations were moving around like a mob of scavengers, telling people to invest at those rates. They promised 32 per cent on a 6 per cent contribution. Although we were talking about a final average salary we could not convince people.

The crash came. Firms had promised the 32 per cent — bearing in mind that the fine print said it was only for 12 months — and people had invested their $300 000 to $400 000 in high-risk areas. For example, the then Labor government had told people that it would be okay to invest their money in Pyramid, and the following week it went down the tube. People invested their money in funds returning 26 per cent but that went to a negative return in a matter of months. One can imagine how people felt after investing their life savings. Many people on Workcover had invested their money in such funds and when the bottom dropped out of the market they were broke.

In my position I would get phone calls from people I had never heard of, mainly widows, who would say, 'My husband Bill said if anything happened I should talk to you'. I would talk to them and find out that the husband had invested in a shonky scheme. People who had taken their lump sum and their common-law Workcover benefits had committed suicide because they had looked at the big dollar to be gained in Pyramid or National Mutual and then lost everything. They were devastated. I had to try to pick up the pieces in what was not a nice situation.

I am concerned that Victoria is going down the same path. I believe that 88 people can come up with a better way, by which an injured person can get a lump sum payment and receive a pension that is guaranteed to see him or her through an illness. There must be a better way than giving a person a lump sum that will disappear after a certain time. If a person buys a home and a motor car and invests badly, he or she will lose everything. I wish I had a dollar for every motor car company representative who came to me and asked for a list of people about to retire, because I would be a wealthy man. When people get big lump sums they lose perspective of what is right and buy a new house, a new car and a motor boat. It is not the way to go.

I urge honourable members to consider the situation in a bipartisan way, examine it and come up with a good, honest scheme that will benefit Victorian workers and not send the state broke.

Mr CARLI (Coburg) — I support the Accident Compensation (Common Law and Benefits) Bill because it is an important improvement for seriously injured workers in Victoria. The restoration of common-law rights sends a clear message to Victorians not only that the government will keep its promises and look after the most vulnerable in our society, but also that it intends to fix the compensation system in this state.

There are other things wrong with both accident and workers compensation. Before I entered Parliament I worked in the rehabilitation area so I have first-hand knowledge of Workcover's limitations and the need to improve the lot of injured workers. I appreciate the comments of the honourable member for Knox, who seeks to improve conditions for and strengthen the rights of injured workers. All honourable members should direct their energies towards those aims. The bill goes some way towards achieving that, but more needs to be done.

Earlier speakers referred to the need to improve the claim management system. A greater commitment should be made to the rehabilitation and return to work of injured workers. The occupational health and safety system needs support. The rights and status of health and safety inspectors require strengthening to give them the power to ensure that work sites are more protective

of workers. I know of cases where health and safety inspectors have been retrenched on various pretexts.

It is important that injured workers are not thrown on the scrap heap and that workplaces are kept safe to combat injury. The bill is one of a raft of reforms that cover the organisation and practice of occupational health and safety in Victoria to bring about improvements in workers' conditions. The honourable member for Knox made some good suggestions for increasing the protection of workers and creating safe working places.

The restoration of workers' common-law rights is symbolic. I was a member in this place in 1997 when the former Kennett government removed the common-law rights of injured workers. I was also involved in the Mitcham by-election campaign, during which the then opposition campaigned strongly on two issues: the restoration of common-law rights for injured workers and the restoration of the powers of the Auditor-General. One might say the result of the Mitcham by-election was the beginning of the end of the Kennett government.

Those two issues were indicative of the way the former government trampled on the rights of the most vulnerable people in society and trampled on democracy and the rights of democratic institutions. It is important that the legislation is enacted, just as it was important to enact the legislation to restore the powers of the Auditor-General. They are the issues on which Victorians want the government to deliver.

Mr Leigh interjected.

The DEPUTY SPEAKER — Order! The remarks of the honourable member for Mordialloc are unparliamentary. I ask that he cease interjecting in that manner.

Mr CARLI — The bill represents the commitment of the Bracks government to injured workers, who are among the vulnerable members of our society. I welcome the contributions from honourable members on the other side who support the rights of injured workers to proper compensation. It has been interesting to listen to the different views expressed by honourable members. Some have condemned common-law rights and the rights of workers while others have sought their restoration.

I have read a letter dated 5 May 1997 written by the honourable member for Box Hill, the former Parliamentary Secretary to the Treasurer and Minister for Information Technology and Multimedia, to the Workcover group outlining the reasons why common-law rights should be maintained. The line I particularly like says, 'It would be political suicide to remove common law'. The honourable member for Box Hill had it right. He was a visionary not only in putting forward valid arguments for the maintenance of common-law rights for seriously injured workers but also in pointing out the obvious, that it would be political suicide for the government to remove common-law rights. Within two and a half years the government committed political suicide.

The Labor Party tested the provisions in the bill. Some of its members campaigned in the Mitcham by-election at every free moment. As I said, one of the fundamental issues during the campaign was the restoration of common-law rights for injured workers. It will be a proud day for the Bracks government when the legislation is enacted.

People talk about the impact of increased premiums on businesses and small companies. However, the premium increases are moderate. Victoria will still be competitive — far more so than New South Wales — being second only to Queensland in premium costs. It is a red herring to say premium costs will shoot up and drive off investors.

The bill ensures that the needs of seriously injured workers will be met and that Victorian businesses will not be burdened with excessive costs. The government has also underlined the symbolism of the bill, because it is something it said it would do, and do within a reasonably short time.

It is evident from the contribution of the honourable member for Box Hill that he knows it is political suicide not to support the bill. For all the criticism from the other side, opposition members are not prepared to oppose the bill because they know it is politically unacceptable in Victoria not to give workers the right to sue employers in cases of serious injury caused by negligence. But they have recognised that fact too late because it was one of the key reasons for the government's victory at the last election. It is one of the issues on which the government has had a good response from the Victorian community and which will cement its support. It is one of the issues on which the government has fought hard.

The cost increases will be relatively small, but importantly the bill will affect the negligent employers who cause the problems because that is where the burden of cost will fall. The government needs measures to enable it to deliver on occupational health and safety laws through an inspectorate that will ensure that workplaces clean up their acts or incur the wrath of

government and be subject to further costs. The government wants to ensure that conditions at work sites in the state improve.

Government Members — Hear, hear!

Mr CARLI — I am proud to support this bill. It has been a long time coming. Many in the Labor Party have campaigned for a number of years and are proud it has occurred. I congratulate the Minister for Workcover for the work that has been done. This has been a difficult — —

The DEPUTY SPEAKER — Order! The time for government business has expired. The honourable member for Coburg will have the call when the debate resumes.

Debate interrupted pursuant to sessional orders.

ADJOURNMENT

The DEPUTY SPEAKER — Order! Under sessional orders the time for the adjournment of the house has arrived.

Police: Mordialloc station

Mr LEIGH (Mordialloc) — I raise a matter for the attention of the Minister for Police and Emergency Services. I hope he will come slinking into the chamber at some point in the future. The matter concerns the government's selling out of the south-eastern suburbs. It has sold Victorians out over the Dingley bypass, over schools and on other sorts of issues. I have noticed — —

An honourable member interjected.

Mr LEIGH — In fact, the government has been cutting money to schools in my electorate, and I will come to that in the next few weeks. I have become particularly concerned about the government's position on the Mordialloc police station. When in opposition the former shadow minister thought building a new Mordialloc police station was urgent — I have various statements, including one from 1999, in which he said that the current station was highly inefficient and not conducive to a good working environment — but since getting into government he has told everybody, 'If the Kennett government really did it, I am going to follow it up'.

I found an Access Economics statement about what the Labor government was going to do in respect of police stations. The Minister for Police and Emergency Services was in this Parliament last Wednesday night crying about what he was prepared to do and saying I did not know about the budget, yet according to Access Economics Labor had no intention of building a new Mordialloc police station until 2002–03. The honourable member for Springvale nods his head, but I am quite happy to make the papers in my possession available to the house.

I have come to understand what is going on in respect of the delay in all of this. Firstly, the Labor-controlled council of the City of Kingston is run by a Port Melbourne resident, the federal member for Hotham, Simon Crean. I am seeking assurances from the minister that the government does not intend to close Cheltenham police station. There are police stations at Moorabbin and Chelsea, and the minister is negotiating the closing of the Cheltenham station.

The DEPUTY SPEAKER — Order! What action do you wish the minister to take?

Mr LEIGH — I am talking about Cheltenham police station. I am seeking a categorical assurance tonight from the government that it will not sell out the south-eastern suburbs any more and that Mordialloc police station will be built quickly — —

Government members interjecting.

Mr LEIGH — You've got the money! Secondly, and the ministers laugh, I ask that the government not close Cheltenham police station — —

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

North–Wellington roads: bicycle lanes

Mr LIM (Clayton) — I ask the Minister for Transport to look at the possibility of providing bicycle lanes from the Huntingdale railway station to Monash University. Bicycle lanes along that 2.8-kilometre stretch of road of would assist people travelling to Monash University, which is the largest commuter destination in the City of Monash. A key route to the university from the west follows what is known as Monash Highway — North Road and Wellington Road. At present many students and staff are deterred from cycling to the university because of busy traffic conditions on the highway. Bicycle lanes would give more people the confidence needed to cycle to the campus.

To emphasise the point, I quote from an article that appeared in the Oakleigh–Monash *Times* of 15 December 1999. It states:

> The other important thing to remember is that for every person who is riding up North Road now, there are more people who would like to but don't because they just don't think it's safe …
>
> Monash academic Glenn McConnell, a former triathlete and distance runner, said he stopped riding to work after a semitrailer came within millimetres of mowing him down on North Road more than a year ago.

In putting up its submission to install bicycle lanes on North and Wellington roads, the Monash Student Association drew attention to how it could be done. It suggested that a combination of engineering treatments is needed for various sections of the road. Treatments include removing a section of an under-used traffic lane while building up the central median, intersection treatment, and so on.

The request is worth serious consideration by the minister. It is in keeping with the government policy of reducing gas emissions by 20 per cent by the year 2002. I ask the minister to look it into it.

Essex Heights Primary School

Mr WILSON (Bennettswood) — I ask the Minister for Education to seek an assurance from her department that some of the $22 million allocated in last week's budget to improve the delivery of education services to children with disabilities will directly assist students at Essex Heights Primary School.

The programs at the school are unique in the extent they cater for students' needs. They provide an extensive range of educational services for the most gifted students and for those with mild and severe disabilities. I quote from a letter I have received from a number of parents at the school to highlight the financial hardships facing the parents:

> Each of our children attend Essex Heights Primary School where they participate fully in the inclusive program that is the basis for all children at the school. Our children have a wide range of specific needs — some have multiple and significant needs which have the potential to cause life-threatening situations, others have intensive needs in such areas as communication, physical dependence, emotional dysfunctions, etc. The school has a clear and non-negotiable position of acting meticulously in the expenditure of the children's funding, by responding to the goals and structure identified in each child's PSG.
>
> It is distressing that the funding is inadequate to meet the children's basic needs, and the school, unable to continue to subsidise the shortfall for specialised services, has had to request parents to fund these essential services. For all parents, this presents a significant hardship, particularly in the light of the extremely high cost of needs for the children outside the school day.

Disabled students integrated into Essex Heights Primary School are underfunded. The parents have been advised they will be required to pay for basic services for disabled students — for example, occupational and speech therapy and physiotherapy. The department expects all parents to pay for therapy services up to as much as $55 per hour plus travel time, ranging from $564 to $9445 per student per year. This year the total shortfall for parents will be about $88 000.

I ask the minister, firstly, to ensure a reappraisal of the annual funding for disabled children — that is, a revision of the funding pro forma; secondly, to ensure the formula applied to disabled students does not impede or diminish the opportunity for those students to learn; and thirdly, to ensure all appropriate and correct aides are made available to students with a disability.

Finally, I invite the Minister for Education to visit Essex Heights Primary School at the earliest opportunity to see the problems and challenges facing students and parents at the school.

Alitalia Airlines

Mr CARLI (Coburg) — I raise for the attention of the Minister for Major Projects and Tourism a matter relating to the air link between Italy and Australia. A few years ago KLM merged with Alitalia and local Alitalia staff moved to work with KLM. In 1998 Alitalia stopped direct flights to both Sydney and Melbourne. Recently there was an acrimonious separation between KLM and Alitalia when, without discussion, KLM pulled out of the merger.

I ask the minister what the Bracks government has done to ensure Alitalia flies to Melbourne. Comments have been made in the Italian community and in the Italian language media by the Leader of the Opposition and an honourable member for Templestowe Province in the other place, Carlo Furletti. Argument has been raised that the Bracks government has favoured the Greek community by encouraging Olympic Airlines to fly to Melbourne but has done little to assist the Italian community by promoting the air link between Italy and Australia.

I ask the minister to comment on what has been done by this and the previous government to ensure good air links between Australia and Italy and to say whether the government will encourage Alitalia to fly into Melbourne.

The issue was put on the table by the opposition crudely to create divisions between the Greek and

Italian communities by suggesting that one has been favoured by the government. The issue must be clarified quickly so that there is a clear understanding of the intentions of Alitalia and the government and, more broadly, of the government's intention to maintain good communications between Italy and Australia through Alitalia and other airlines.

The DEPUTY SPEAKER — Order! There is a great deal of audible conversation in the house. If members wish to carry on conversations, I suggest they go somewhere else.

Bridges: Cobram–Barooga

Mr JASPER (Murray Valley) — I refer the Minister for Transport to the bridge replacement program between Victoria and New South Wales and the need for the minister to specifically consider approval of funding for a replacement bridge between Cobram and Barooga in my electorate of Murray Valley.

On earlier occasions I have spoken on the issue and brought to the attention of the house that there are 23 bridges across the Murray River between Victoria and New South Wales and that those bridges have been maintained under a 1936 agreement between the two states. The last bridge constructed over the Murray River between Victoria and New South Wales was at Tocumwal in 1989.

The government decided that five bridges were the most critical for replacement and a program was submitted to secure Federation funding from the federal government. Three of the bridges — those at Corowa, Robinvale and Echuca — received federal government funding of about $45 million. The fourth, the bridge at Howlong, has been replaced under an agreement between Victoria and New South Wales. However, the bridge at Cobram–Barooga, which is more than 100 years old and which was one of the five bridges referred to the federal government, did not receive funding under the Federation program. The federal government decided it had provided all the funding it was going to provide for the bridge replacement program and the governments of Victoria and New South Wales should consider any further replacements.

Obtaining funds for the replacement of the bridge has created a lot of activity in Cobram and Barooga. Large meetings have been held and both councils are involved. Two committees have been set up, one in Victoria and one in New South Wales, to make appropriate representations. I arranged a deputation to the Minister for Transport late last year. He responded, but I believe not positively enough. The Victorian government needs to make a commitment to provide its share of the funding, which would pressure the New South Wales government and perhaps the commonwealth government into providing further funds.

The chief executive officer of the Moira Shire Council, Gavin Cator, has written to all state members of Parliament bringing the matter to their attention. He has also referred to information in *Traffic — The Journal of Traffic Planning, Design and Construction* that supports the replacement of the bridge as quickly as possible. Its condition has deteriorated and its replacement needs consideration. I am seeking a positive response from the Minister for Transport. He has undertaken some investigation, and I believe the government should commit, even if it is over a couple of years, to making sure the funding is — —

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

East Gippsland: financial crisis

Mr INGRAM (Gippsland East) — I call on the Minister for Local Government to consider ways to resolve the acute fiscal crisis facing the Shire of East Gippsland.

The East Gippsland Shire Council has a debt of $17.5 million, which increases by $500 000 a year. The interest bill alone is $1.5 million a year, and the shire's debts outweigh its assets. Our shire is insolvent. Most of the debt was imposed on the shire during the council amalgamations. At that time commissioners were appointed and under the direction of the previous government the entire work force was sacked, leaving an unfunded superannuation liability of $9 million. That is the dead hand the National Party placed on East Gippsland.

At the same time a fire sale was held of all the shire's assets. All the tractors, graders, slashers, mowers and even the picks and shovels were sold off. The goods were mostly sold at well below replacement cost, leaving the shire not even owning a shovel!

The Shire of East Gippsland comprises 21 000 square kilometres, or 10 per cent of the state. It has 3923 kilometres of roads; 244 bridges, 144 of which are high maintenance timber structures; and 76 per cent of the area is either national park or state forest, and as such is unrateable. The shire maintains many kilometres of roads throughout those parks and reserves.

Our national parks and forests are set aside for the entire Victorian community, yet the community of East Gippsland pays the maintenance and upgrade costs for the roads and bridges. East Gippsland shire has annual road and bridge maintenance debts of about $2 million.

I call on the Minister for Local Government to consider ways to resolve the financial crisis facing the Shire of East Gippsland.

CFA and SES: funding

Ms OVERINGTON (Ballarat West) — I wish to raise a matter with the Minister for Police and Emergency Services.

Honourable members interjecting.

The DEPUTY SPEAKER — Order! I ask for the cooperation of honourable members, including the honourable member for Mordialloc, so that the adjournment debate can continue in a professional manner. I ask the honourable member to cease interjecting and I ask other honourable members to speak at a low level so the honourable member for Ballarat can be heard.

Ms OVERINGTON — Thank you, Madam Deputy Speaker. I ask that the Minister for Police and Emergency Services take action to ensure that the Country Fire Authority and the State Emergency Service no longer have to meet the onerous requirements of the Fundraising Appeals Act.

Over the past seven years emergency brigades in Victoria have been starved of much-needed funds and resources. The brigade volunteers are dedicated and spend many hours working on behalf of their communities.

An Honourable Member — They are great workers for the community.

Ms OVERINGTON — They are great workers for the community. They deal with emergencies such as house fires, bushfires, someone trapped in a car needing to be cut out and searching for children in a mine shaft — which is not something that regularly occurs in metropolitan Melbourne.

Mr Leigh interjected.

Ms OVERINGTON — It does not occur in Mordialloc. I assure the house that it is something that occurs on occasions in rural Victoria. Unfortunately over the past seven years those brigades and volunteers have been ignored. They have been forced to fundraise for the basic necessities of their trade — and it is a trade. These people are lifesaving for our community. It cannot be expressed more basically than that. They are great volunteers.

In my own community the Sebastopol fire brigade not only provides a much-needed resource but every Christmas Day every person in the brigade goes out on the fire trucks providing lollies for the kids. I have lived in the community for 30 years. Every Christmas the volunteers give up their Christmas mornings and go out in the fire trucks. It has become a generational thing. When the kids hear the sirens they go out onto the streets and wait for Santa to turn up on the fire trucks.

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

Templestowe–Thompsons roads: upgrade

Mr KOTSIRAS (Bulleen) — I direct to the attention of the Minister for Transport the need for an upgrade of Templestowe and Thompsons roads, Bulleen. We need a good road system so people can move around safely and efficiently. A number of my constituents are concerned that the two roads will not continue to have a high priority under the government's arterial road strategy.

The portion of Thompsons Road between the Eastern Freeway and Manningham Road has been upgraded, but the section between Manningham Road and Foote Street is in urgent need of upgrading. Thompsons Road goes from two lanes each way to one after it crosses Manningham Road. A number of my constituents are seriously concerned about safety and fear a serious accident may occur in the area. Thompsons Road intersects with Templestowe Road at Foote Street.

Templestowe Road also needs to be upgraded urgently, but it is important to remember that it runs adjacent to one of the most sensitive environmental areas in my electorate.

I ask the minister to investigate the poor condition of Thompsons and Templestowe roads and to give an undertaking that both will continue to have a high priority under the government's road strategy program and that Vicroads will provide the appropriate funding. That would decrease the likelihood of any serious accident because of the poor condition of both roads.

Corporations Law

Mr HOLDING (Springvale) — I ask the Attorney-General to advise the house of the action the government may take to address the crisis in the

corporate law system as a result of a number of High Court decisions, particularly the most recent one in *re Hughes*, the judgment in which was brought down last Wednesday. That seven–nil decision of the High Court has created further uncertainty about whether the commonwealth Director of Public Prosecutions can prosecute cases under the existing Corporations Law.

Although the High Court supported the commonwealth DPP's powers to prosecute in *re Hughes*, it did so only on the basis that the facts of the case related to an international investment scheme in the United States of America and therefore relied on the commonwealth's foreign affairs powers rather than on other powers associated with the commonwealth's Corporations Law.

I particularly draw the attention of the Attorney-General to the comments of Justice Kirby. Although his was only one of the seven judgments of the court, he called specifically for a simpler corporate law regime in Australia. His judgment states in part:

> The court should uphold, not destroy, lawful cooperation between the commonwealth and state governments … but the current system is so grotesque and the implications of a successful challenge so profound that the adoption of a simpler constitutional foundation needs to be considered to reduce the perils that are bound to recur, possibly with serious results.

I have spoken on this matter on several occasions — for example, during my inaugural speech and my contribution to the debate on the federal cross-vesting legislation, which dealt with the implications of the Wakim decision, which also undermined the commonwealth Corporations Law.

What action will the government take to work cooperatively with the commonwealth and the other states and territories to address the raft of issues raised by the significant decision of the High Court in Wakim and by the ramifications of the current High Court case, which is a further chapter in the Wakim matter and which I understand was argued before the court today?

Vicroads: agricultural machinery regulation

Mr VOGELS (Warrnambool) — I ask the Minister for Transport to ask Vicroads to have another look at the Road Safety Act, including its definitions of 'trailer' and 'agricultural machinery'. The difference between the definitions is affecting farmers as machinery becomes more complex.

In my electorate Goringe Pumptech has recently imported from New Zealand items of agricultural machinery that pump out effluent ponds on dairy farms and spray the contents onto pastures. It has been a common practice in Europe for many years, where it has proved to be economically viable as it fertilises pastures and is environmentally friendly.

More flexible definitions of 'trailer' and 'agricultural machinery' are needed. At present the standards for trailers are understandably more stringent as they include their having brakes, mudguards, couplings and lighting. Anyone who understands the nature of the work done by the machinery will appreciate that the standards are impossible to maintain. That is why there is now a classification for agricultural machinery so farmers can tow hay balers, super spreaders, rakes and silage carts between farms.

When machinery is classified as agricultural it is exempted from braking requirements as the vehicle towing the equipment has to be of a gross mass at least equal to the mass of the machinery it is towing. As well, the lighting and indicators can be removed when a job starts and replaced when it is completed. The equipment is to be used solely for agricultural purposes.

Because the items of agricultural machinery I referred to are new and do not fit neatly into the definition in the legislation, I ask the minister to overcome the anomaly. As we move further into the new millennium and new agricultural machinery comes on stream, Vicroads will need to be more flexible and better able to make decisions in the best interests of rural Victorians. Farmers have to compete with the rest of the world. As we import modern equipment we need to have regulations that do not burden Australian farmers who are endeavouring to improve their farming techniques.

Frankston Community Legal Centre

Mr VINEY (Frankston East) — I direct to the attention of the Attorney-General my concern about community legal centres. I understand he will visit the Frankston Community Legal Centre next week. What action is the government taking to enhance and improve the opportunity for community legal centres to provide decent services to the community, particularly in the light of the failure of the previous government to fund and resource the centres adequately?

In my electorate many members of the community are socially and economically disadvantaged and require the services of community legal centres to gain reasonable access to the justice system. Along with my constituents, I am interested in finding out what the government is doing to ensure that the disadvantaged members of our community gain that access. I have had several meetings with the members of the Frankston

Community Legal Service during which I have discussed with them the services they provide. I look forward to the minister talking to me and members of the legal centre to ensure they are able to provide a decent service to the people of my electorate.

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

Dr Napthine — On a point of order, Madam Deputy Speaker, I ask you to rule the contribution of the honourable member for Frankston East out of order on the basis that the honourable member asked a question rather than seeking action from the minister. I did not wish to interrupt the honourable member and deny him the opportunity to make a request for specific action by the minister, but under the strict rules that apply to the adjournment debate it is inappropriate for an honourable member merely to ask a question.

Both questions without notice and questions on notice provide opportunities for an honourable member to ask a question of the Attorney-General. In this case the honourable member for Frankston East inappropriately used the adjournment debate to ask the Attorney-General a question about what action he would take rather than asking for specific action to be taken.

I ask you, Madam Deputy Speaker, to rule the honourable member for Frankston East out of order.

Mr Hulls — On the point of order, Madam Deputy Speaker, I was certainly listening closely to the contribution — —

Dr Napthine — As always!

Mr Hulls — Do not intimidate.

I was listening closely to the honourable member. He was talking about community legal centres (CLCs) and seeking government action to enhance and improve the opportunity for CLCs to provide better services in his area. That is clearly within the standing orders. He mentioned in particular the CLC in his electorate.

The DEPUTY SPEAKER — Order! I do not uphold the point of order. I understood that the honourable member was asking the minister to take action in relation to community legal centres.

Responses

Mr PANDAZOPOULOS (Minister for Major Projects and Tourism) — The honourable member for Coburg asked about actions the government is taking and included an important statement about the history of Alitalia's passenger service to Melbourne. The matter was also raised in question time by the Leader of the Opposition — indeed, it was the only item raised in question time by the Leader of the Opposition.

The Alitalia issue should cause the opposition severe embarrassment, because that airline ceased its flights into Melbourne in October 1998.

Honourable members interjecting.

Mr PANDAZOPOULOS — Opposition members ask, 'What is the government doing?'. That is important, and it is exactly the matter raised by the honourable member for Coburg.

Since opposition members have been taking such an interest in the matter — albeit belatedly — I have taken the opportunity to ask Tourism Victoria to find out what assistance it gave Alitalia at the time. What actions did the former Minister for Tourism, now the Deputy Leader of the Opposition, take, and how did she respond when Alitalia pulled out of Melbourne? It was an important issue for our tourism community as well as for our Italian community.

I can now inform the honourable member for Coburg that the previous government did nothing. It knew the airline had pulled out, but did it try to hold discussions to keep the airline here? No, it did not. That is in complete contrast to what this government did when it heard that Olympic Airways might pull out because of economic problems in Europe. Rather than just letting the airline pull out, the government decided to intervene by talking to the airline's management. After a small amount of assistance and encouragement was offered the airline found itself able to continue flights to Melbourne, and there is the possibility of additional flights in the future. The government did that not because Olympic is a Greek airline but because connections into Europe are very important to Victoria.

Mr Viney interjected.

The DEPUTY SPEAKER — Order! The honourable member for Frankston East!

Mr PANDAZOPOULOS — When we look at an airline we look for three things: competitive pricing; convenient connections to ensure efficient travel time or, put another way, the shortest travel time to Melbourne; and reliability. In the case of Olympic Airways we were able to convince the airline that it was good business to stay with Melbourne. We have a curfew-free airport, and Sydney is to increase its airport charges. In light of the small contribution the

government made, Olympic Airways decided the continued promotion of Melbourne as a tourist destination for Europeans was worth while for it. In short, the Bracks government acted appropriately. It saw that the airline and the European market were important to Victoria. The former government did not do that with Alitalia.

Visiting friends and relatives represent an important tourism market for Victoria. True, friends and relatives do not spend as much money as corporate visitors and some other key groups do, but they are still a strong and important market. Many visitors to Victoria, the most multicultural state in Australia, come and stay with family and friends and travel around Victoria with the host families. In that way international tourists visit regional areas.

The government has had nothing but criticism from the opposition about its support for Olympic Airways. Worse, a member for Templestowe Province, the Honourable Carlo Furletti, made some outrageous statements to the effect that the government gave preference to the Greek community ahead of the Italian community.

The honourable member for Bulleen would appreciate the government's decision on Olympic Airways. Some eight months before the government came to office the previous government knew that Olympic Airways was considering pulling its operations out of Melbourne, yet it did nothing about it. The previous government did nothing about it because it believes the market made up of friends and relatives visiting Victoria is not important given that they do not spend as much money as some other visitors. However, the Bracks government believes it is an important market and wants to maximise the number of tourists to Victoria.

Commercial reality dictates that when an airline pulls its operations out of Melbourne another airline fills the gap. Alitalia's decision to withdraw its operations in 1998 was disappointing because at the time the load factors were between 75 per cent and 95 per cent, which meant the flights were profitable. Alitalia's decision came as a result of the financial problems it was experiencing in the world market. The previous government should have sent a message to Alitalia that that sort of decision would not help its business. Upon learning that Alitalia may again be interested in flying to Australia Tourism Victoria and Melbourne Airport sought to have discussions with the airline to promote Melbourne's advantages over Sydney as the destination of the airline's flights.

Although there has been some speculation, Alitalia representatives have not confirmed that the airline will schedule flights to Sydney and there is still some doubt about whether it will schedule flights to Melbourne. The Victorian government believes there will be great benefits in Alitalia again providing flights to Australia. The government will send a message to the airline that scheduling flights to Melbourne is a better business prospect than scheduling flights to Sydney. However, if for commercial reasons Alitalia chooses not to provide flights to Melbourne many other airlines that fly to Rome will be able to fill the gap. The government believes every airline is important to Victoria and direct flights to Melbourne are important for tourism growth.

The government is responding appropriately. The previous government sat on its hands and did nothing, yet its members now have the audacity to play politics on the matter in an attempt to pit ethnic communities against each other. It is good that the communities have not responded because, in contrast to the opposition, they believe in the benefits of tourism and in cooperation.

Honourable members interjecting.

Mr HAERMEYER (Minister for Police and Emergency Services) — You should talk. What did you do in Queensland!

The honourable member for Mordialloc has the absolute gall to raise the Mordialloc police station and the Cheltenham police station. In 1992 the then Minister for Police and Emergency Services, Mal Sandon, signed a contract for a new police station in Mordialloc and 33 other police stations across the metropolitan area. One of the first acts of the Kennett government upon coming to office was to spend in the vicinity of $4 million to buy out that contract, which meant that 34 communities across Melbourne were not provided with new police stations.

Some eight years later a new police station is yet to be built in Mordialloc and the same negligent member is still sitting in our midst. I find the sudden interest of the honourable member for Mordialloc perplexing. He had no interest in the issue during the nearly eight years of the previous government. He claims Labor does not intend to build the police station because there is no reference to it in the Access Economics document. I was in the chamber last year when the then Treasurer, Mr Stockdale, delivered the 1999–2000 budget papers, which referred to a police station being built in Mordialloc. Is the honourable member for Mordialloc saying that the funding for the police station was never provided and that that budget commitment was a hoax?

The honourable member for Carrum was the first member of this house to raise the issue. She expressed an interest — —

Mr Leigh — On a point of order, Madam Deputy Speaker, I know the Minister for Police and Emergency Services is excited about this issue, but the matter I raised concerns the future closure of the Cheltenham police station. I know Mordialloc police station is being built because of what the Kennett government did — —

Government members interjecting.

Mr Leigh — The previous government bought the land and arranged for the designs to be done, but the proposal is being held up. However, I want the minister to give a guarantee that Cheltenham police station will not be closed during the life of this government. I believe — —

The DEPUTY SPEAKER — Order! There is no point of order. The minister, continuing his response.

Mr HAERMEYER — I can understand the sensitivity of the honourable member for Mordialloc to the issue, but I must say that despite the police station not being built after seven and a half years of the Kennett government and despite the fact that the people of Mordialloc are still represented by the individual opposite, the government will build a police station in Mordialloc during its term of office — no thanks to the honourable member for Mordialloc!

The people of Mordialloc should be grateful that a diligent member in the neighbouring electorate of Carrum represents their interests. When the Mordialloc police station opens I will pay tribute to the role played by the honourable member for Carrum. The honourable member for Mordialloc sat on his — I will not say anything about the size of his rear end, but he sat on the issue for a long time and did absolutely nothing about it.

The Kennett government produced a strategic facilities plan, which provided for the closure of 34 police stations across the metropolitan area. Among those police stations were stations at Glenhuntly, Murrumbeena and Sandringham. The government is reviewing — —

An Honourable Member — Not Cheltenham?

Mr HAERMEYER — The Cheltenham station was not earmarked for closure; that is correct. The government is on about opening, not closing, police stations. Unlike what occurred under the previous government there will be police officers working out of those police stations. It is a novel thought, but there will be police in police stations.

Mr Hulls interjected.

Mr HAERMEYER — The Attorney-General thinks it is a bit radical, but there will be police in police stations because there will be 800 additional police. The government does not need to go around closing scores of police stations across Victoria. I can assure the honourable member for Mordialloc that not only will Mordialloc police station remain open but also that the government will ensure that there are appropriate numbers of police across the southern suburbs to properly service the area. The government will not have to close police stations because there are not enough police to staff them.

The honourable member for Ballarat West raised the issue of fundraising for the Country Fire Authority. She made a valid point that the Fundraising Appeals Act introduced by the coalition government last year placed some onerous requirements on the volunteers of not just the Country Fire Authority but also the State Emergency Service. The volunteers donate their own time, put in a lot of good, hard work and are dedicated. They then have to go around raising funds to a large extent to keep the SES and CFA units running.

The previous government put onerous requirements in place under the Fundraising Appeals Act, and thereby placed more and more obstacles in the path of those organisations. I defy any honourable member on the other side of the house who voted in favour of the legislation to say that the CFA or the SES would in some way be bogus fundraising organisations.

The government is in the process of arranging for exemptions from the onerous requirements of the Kennett government's Fundraising Appeals Act for volunteer organisations. Brigades such as the Sebastopol brigade, which the honourable member mentioned and which is an excellent unit, will benefit from that measure. I know that on Christmas Day, while everybody else is enjoying their Christmas dinner, the CFA brigades in my area go around collecting money to fund the running of the fire brigade to protect the whole of the community. They do not need governments such as the Kennett government throwing obstacles in their way.

By contrast, the current government has increased the core funding for the Country Fire Authority by $1 million for each of the next four years. Because of the way the fire authorities are funded through

contributions from insurance levies that means an additional $17.8 million over the next four years for the CFA. On top of that, in the current financial year the core funding for the authority has also increased $800 000. A further $2.6 million will be provided over the next four years for ongoing access to specialist firefighting aircraft, which includes $800 000 in this financial year. That means that for the first time, instead of the CFA having to go to the government each year and beg for money to pay for essential firefighting aircraft in one of the most bushfire-prone states in the world, the government is providing it with security so it can count on having the aircraft for an ongoing period.

Additionally the government is establishing a new fund, the Community Safety Emergency Support Fund, which will allocate an additional $1.5 million to local CFA brigades and SES units on a dollar-for-dollar basis for approved community safety and rescue equipment. Although the SES and the CFA will continue to fundraise in future, that fundraising will provide the icing on the cake instead of covering the bare essentials of their requirements.

I congratulate the honourable member for Ballarat West for raising the issue and assure her that the CFA and SES units in her electorate will be a lot better off in the future.

Ms DELAHUNTY (Minister for Education) — The honourable member for Bennettswood raised a serious matter concerning the pressure on parents trying to educate disabled children, particularly in mainstream schools, which is the policy of this government and is favoured by most educationalists. The honourable member for Bennettswood raised the concerns of parents over the costs they have had to bear in ensuring their children have had sufficient support for integration. The honourable member referred to the costs for occupational therapy and speech therapy, in particular.

Although the honourable member for Bennettswood is new to this place and to the demands imposed on members by their constituents, he would be aware that under the previous government funding for disability integration in schools was savagely neglected. When the Bracks government came to office it was alerted to a black hole in funding for students who should have and have been classified as requiring integration aides. Initially the government thought it was an $8 million black hole, but it was worse than that and had risen to $11 million. Finally, following a thorough examination, the government discovered that it was a $17 million black hole.

Students were assessed according to World Health Organisation criteria as needing and requiring, and therefore being deserving of, funding for integration aides at various levels, yet those aides were not supplied by the previous government. The honourable member for Bennettswood will be able to confirm for his constituents that the Bracks Labor government actually cares about such students — and more than that, that it provides money to support their integration into mainstream schools.

I am sure the honourable member for Forest Hill has also looked at the matter because I know he also has an interest in student integration in schools. He would have noticed that the Bracks Labor government has not just provided $17 million in its first budget for disabilities and impairment integration, but has gone further than that by providing funds for the black hole. It has provided a further $5 million. The government has now apportioned $22 million to assist students with disabilities and impairments to integrate into schools.

Students with disabilities and impairments are assessed according to World Health Organisation criteria to be now around 3 per cent of the school population. The funding will ensure that more than 15 700 such students will receive an appropriate level of assistance to help them achieve their potential. In addition, two-thirds of the students will be supported in regular or mainstream schools, making Victoria a world leader in the inclusion of students with disabilities in regular classrooms.

I urge the honourable member for Bennettswood to invite parents whose concerns he has raised with me tonight to press their case with the regional office of the Department of Education, Employment and Training.

Mr CAMERON (Minister for Local Government) — The honourable member for Gippsland East raised the East Gippsland shire's crises and problems with financial matters, and in particular infrastructure problems. The previous government had a local government reform regime which did not necessarily take into account the opinions of local communities or councils, and the effect of that was to put many people offside. The former government initiated an artificial rate cut and imposed compulsory competitive tendering. The net effect of those processes increased the superannuation liability, and the honourable member for Gippsland East has informed the house that debt in that municipality is $17 million, which is up from the debt levels at the time of the council amalgamations.

More critically, and probably more noticeably to the public, plant and equipment were taken away. The shire

now owns very little in the way of plant and equipment. Obviously infrastructure is very important for councils, in particular rural councils, and one of the most critical roles of a rural council is to look after local roads.

Madam Deputy Speaker, with your municipal background you will be aware that many councils started as local roads boards that collected local rates for local roads. Even today that is one of the most important roles of councils. The maintenance and upkeep of local roads is paid for by a local rate take and the federal government's contribution. Victoria puts a substantial amount into the federal roads pool and gets back a lot less than it should in straight percentage terms.

A campaign is being mounted by the Municipal Association of Victoria and councils to get a better deal. Obviously the state government is supportive of that because then councils and the government will get a better share. Clearly people want the state government to improve roads in their areas. The federal budget was announced this evening. I am yet to see the details of it but I will be interested to see whether there is a commitment by the federal government to road improvement.

Prior to the election I discussed the matter with representatives of shires that are in similar positions. The need to bridge the infrastructure gap is very real. Therefore, councils are discussing better asset management with officers of the Department of Infrastructure. Councils must also apply a rating framework so that increases are directed towards physical infrastructure. The department will continue to work with local councils to help them resolve their matters in house, and as I indicated earlier, asset management is one part of that issue.

Mr HULLS (Attorney-General) — The honourable member for Murray Valley raised the important issue of the bridge replacement program and specifically referred to the bridge between Cobram and Barooga, which was built 100 years ago — which I think was the second year the honourable member was in the house! I understand the Minister for Transport has addressed the issue of bridges in the past, and last week he made a substantial media announcement urging the federal government to put in its budget its fair share of federal funding for bridges. I am sure the Minister for Transport is monitoring the federal budget as we speak to discover whether that money is forthcoming. I will certainly refer the honourable member's concerns to the minister for a fuller response.

The honourable member for Bulleen raised the issue of Templestowe and Thompsons roads requiring an upgrade. I know the area fairly well, as I am sure does the Minister for Transport. I will refer the matter to him for specific comment.

The honourable member for Warrnambool raised a Road Safety Act issue, and he has been kind enough to hand to me some notes on the matter. I undertake to hand them on to the Minister for Transport. They deal with the definition of 'trailer' as opposed to 'agricultural machinery'. Although recently I was more than happy to announce a new courthouse for Warrnambool, that is not the matter the honourable member raised. He is obviously quite satisfied with that and no doubt has been praising the Bracks Labor government in his electorate for the provision of that courthouse. If he has not been, he should be. I will refer the notes to the Minister for Transport.

The honourable member for Clayton raised the issue of bicycle lanes from Huntingdale railway station to Monash University. It is an important matter that I will take up with the Minister for Transport. I am sure the minister is aware of the concerns that have been raised and will address them in the appropriate way. Knowing the Minister for Transport, I am sure the matter will be addressed to the satisfaction of the honourable member for Clayton.

Some important issues were raised with me as Attorney-General. The first was the decision handed down recently in the Corporations Law case of *re Hughes*. I thank the honourable member for Springvale for raising that important matter and I understand his interest in the matter. He referred to the judgment of Justice Michael Kirby in which he called for a separate Corporations Law regime.

The Hughes case originated in Western Australia. The Australian Securities and Investments Commission brought charges against a Mr Hughes for alleged breaches of the Corporations Law. Mr Hughes made proscribed interests available to investors relating to transactions in the United States of America contrary to certain sections of the Corporations Law which allow only corporations to do so.

Mr Hughes applied to the District Court of Western Australia for an order to quash the charges on the basis that the Commonwealth Director of Public Prosecutions did not have the power to prosecute the matter. The matter was removed to the High Court in November 1999 and certain questions were referred to the court. As the honourable member said, in the unanimous judgment the seven members of the High Court held that the commonwealth DPP did have power to prosecute Corporations Law matters.

However, the High Court restricted its consideration to the precise facts in the Hughes case. The narrow basis of its decision, where the court seeks to identify a link between the facts of any given case and a commonwealth head of power, means that the ability of the commonwealth to prosecute a range of corporate offences is still in doubt. That finding should cause concern to all honourable members. By implication where there is no link with the commonwealth head of power it is uncertain whether the commonwealth has the power to prosecute. The court indicated that a speedy solution to the complex and fragmented national Corporations Law structure was required. I am also of that view, especially in light of additional High Court challenges currently waiting to be decided.

One way of resolving the issue as a matter of urgency is for the states to refer their Corporations Law powers to the commonwealth. I have discussed this with the Minister for Small Business in another place. We both believe the transfer of those powers to the commonwealth is the most appropriate remedy for the corporate regulatory uncertainty that currently exists. The government is committed to referring those powers to the commonwealth to remedy the acute problems facing the national Corporations Law and the wider business community.

The government does not take that step lightly but will do so in the national interest. I have indicated to the other Australian attorneys-general that that is the Victorian government's preferred view. The government hopes such a referral will be revenue neutral and not cost the states anything. I hope the other states will fall into line. I understand the South Australian and Western Australian governments are reluctant to go down that path and are seeking a referendum on the matter. My guess is that in the current environment a referendum would not get up and the current situation would remain.

The government is prepared to make an offer to Daryl Williams, the federal Attorney-General, to hand over its corporations power to the federal government. All the Victorian government will seek in return is an increase in legal aid funding, which would be an appropriate quid pro quo.

Referring to legal aid, I now turn to the matter raised by the honourable member for Frankston East, who no doubt is listening to the response in his room. He has a strong commitment to community legal centres, particularly the Frankston Community Legal Centre in his electorate. He has invited me to visit that centre next week. I also have an interest in that centre because many years ago I worked with the legal aid office in Frankston.

The honourable member for Frankston East wanted to know what the government was doing to increase the opportunities community legal centres have to provide better services. The answer is simple. Before the last election Labor made a commitment that under a Bracks government no Victorian community legal centre would be forced to amalgamate or close. The government stands by that commitment. It hopes it will have the support of the shadow Attorney-General and all opposition members.

Anyone who understands the work of community legal centres will realise that they provide shopfront legal services for the most disadvantaged members of the community. I understand that the Leader of the National Party is also interested in community legal centres. He has a legal background, and I know he wants me to fully explain the government's policy to the house! However, I will be brief.

It is important that people understand the volunteer basis of community legal centres. Once you start amalgamating them into north, south, east and west centres you create a McDonalds structure and the volunteer base is lost. Community legal centres are not one-size-fits-all operations. They cater for the special needs of community groups. It is important that the federal Attorney-General understand that.

The government stands by its policy that no Victorian community legal centre will be forced to close or amalgamate. It is a funding issue, and the review currently being undertaken by the federal government is faltering. I have written to the federal Attorney-General asking him to amend the terms of reference. To his credit he has agreed to some of the amendments I sought. The sticking point is the make-up of the review team. Originally the team had five members. The former Attorney-General, Jan Wade, limited that number to three, but I am seeking its restoration to the original five, which would allow for greater community legal centre representation.

In my view that is the only way the centres will participate in a bona fide review. They are not scared of reviews, but the review should ensure that any unmet demand is addressed in future funding allocations. More funding and more centres rather than fewer are required. The government stands by its policy and urges the federal government to put more funding into legal aid so community legal centres can not only survive but thrive.

The DEPUTY SPEAKER — Order! The house stands adjourned until next day.

House adjourned 11.08 p.m.