PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

24 May 2000

(extract from Book 8)

Internet: www.parliament.vic.gov.au/downloadhansard

By authority of the Victorian Government Printer

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WEDNESDAY, 24 MAY 2000

Wednesday, 24 May 2000

The PRESIDENT (Hon. B. A. Chamberlain) took the chair at 10.03 a.m. and read the prayer.

PAPERS

Laid on table by Clerk:

Auditor-General — Report on Represented persons: *Under State Trustees' administration, May 2000*.

Prevention of Cruelty to Animals Act 1986 —

Revised Code of Practice for the Welfare of Wildlife During Rehabilitation, 23 May 2000.

Revocation of a Code of Practice for the Operation of Wildlife Shelters, 23 May 2000.

YOUTH: GOVERNMENT POLICY

Hon. P. R. HALL (Gippsland) — I move:

That this house calls on the government to outline how its policies and services are meeting the needs of Victoria's youth, especially those in rural communities and in urban growth corridors.

The ministerial statement entitled 'Youth at the centre' was delivered by the Minister for Youth Affairs on 5 April in this place; in part, the statement said that the government has made a commitment to ensure government policies and service delivery reflect and meet the needs and views of all young Victorians. Implicit in the statement is an invitation to opposition parties to comment on the needs of young Victorians.

The purpose of this motion is to initiate discussion by honourable members on both sides of the house on the intent of the ministerial statement — that is, looking at the policies and service delivery of various government departments to meet the needs of young people in Victoria. The opposition proposes that six or seven of its members will express views on youth services in their electorates in response to the government's invitation to have input into the development of youth policy.

It is true to say that at the time of the election last year the Labor Party did not have a youth policy, but had a youth pledge. I say that not to attack the government because even now it does not have a youth policy; the content of the ministerial statement on youth was clearly about developing a framework to develop a policy on youth.

Hon. T. C. Theophanous — What is your policy on youth?

Hon. P. R. HALL — I look forward to Mr Theophanous contributing to the debate. The opposition has moved this motion in the spirit of goodwill and he is raising red herrings. The opposition is happy to debate its policy on youth because it is a well-developed policy. If the honourable member had listened to my response to the ministerial statement last month, he would have heard chapter and verse the coalition's policy on youth. I refer Mr Theophanous to *Hansard* of 5 April.

Honourable members interjecting.

Hon. P. R. HALL — I am disappointed with the level of interjection from the government benches because the opposition has moved this constructive motion so that it can have input into the development of policies benefiting the youth of Victoria. It is not moved for political advantage; the opposition is being responsible in raising issues of importance that can be taken up in a bipartisan manner.

The government is yet to develop a policy on youth and the opposition partnership sees this as a starting point, a contribution to assist the government in developing that policy. The development of youth policy is not a simple task. I recognise and concede that. Youth per se is not like other portfolios in government that one can package neatly in a parcel and say that this issue belongs in the parcel and this does not — for example, in the transport portfolio one could group roads, bridges, public and private transport, tram and train operations, bus operations and bicycle paths in the portfolio, but youth cuts across a range of programs within government departments.

The former government grouped youth policies under youth and family services in the Department of Human Services, whereas the government has the Office for Youth in the Department of Education, Employment and Training. I do not criticise the government for that. A significant component of education reflects the needs of youth. When the coalition parties were in government grouping youth services under the Department of Human Services reflected the fact that many of the services in health and community services impacted importantly on youth in this state. Equally there are aspects of housing, justice and transport that could well be included in youth policy. It is not a simple task to develop youth policy given that it cuts across many government departments.

Some people would probably argue that a specific youth policy is not necessary given that matters related to youth are embedded in the policies of many government departments.

Hon. T. C. Theophanous — Is that your position?

Hon. P. R. HALL — I am about to get to that. It is important that a central body coordinates the efforts of all the departments. That is why the previous government had an Office of Youth Affairs and why it is entirely appropriate that the current government has an Office for Youth. However, that office has a purely coordinating function because the success of government policy in delivering youth services depends on how well programs are coordinated across a range of government departments.

Mr Theophanous asked whether the opposition has a policy on youth. The coalition has a detailed policy on youth, the first sentence of which encapsulates some of my views about the directions in which we should be heading in delivering policy and our attitude to creating programs suitable to meet the needs of young people in this state. The first sentence of the coalition's youth policy states that:

> Youth is an exciting and challenging stage of life: a time in which important decisions regarding education, career, relationships and personal values chart the course into adulthood.

Firstly I comment on youth being an exciting and challenging stage of life. Honourable members should not be pessimistic about delivering youth policies because youth is an exciting and challenging stage of life and many of the things young people are doing in this state today need to be applauded. We should be proud of some of those achievements and we should be encouraging the initiatives of young people in this state. Youth policy and services should not simply reflect a response to perceived disadvantage but should be directed to encouraging young people to achieve their full potential and to assisting them in the initiatives they have shown. It should be clear right from the start that the coalition's development of youth policy and services is based on encouraging and supporting the enterprise and initiative of young people, and assisting young people who are disadvantaged.

The second part of that first sentence of the coalition's youth policy refers to youth making decisions that may chart the course into adulthood. It is important to recognise that during their formative years young people make decisions that have lifelong consequences. It is important to provide the right level of support, assistance and guidance to young people to ensure that in charting their futures they make good decisions.

Before becoming a member of this house I spent 15 years working with young people. I am only too well aware that the decisions young people make affect their future. Those decisions could be about education — that is, whether to stay on at school or pursue a particular course to a vocation that has lifelong implications — or about attitudes to some of the social aspects of their lives and the company they keep. Young people need help and guidance in making those decisions.

I refer also to who is best positioned to provide that support and guidance to young people. I do so in the spirit of the comments made in this house by the Honourable Gavin Jennings, who often expresses well-considered personal thoughts about directions on different topics. Who is best positioned to assist young people and provide them with guidance and support? The answer is: mum and dad and the family in which that young person is brought up. No other group will have a greater influence on a young person's lifestyle than the family in which he or she is raised. A supporting family structure, which provides a young person with the help, support and love we all need, is the best start a young person can have in life. I state quite categorically from the opposition benches that the family is the best support structure we can give to young people and perhaps our policy on youth should be directed towards strengthening the family.

However, I recognise that not all children are given the same opportunities in life. Differences in family structure and economic circumstances, the geographic area in which a young person lives and even things such as a person's physical shape, sex or race can impact on opportunity. Therefore, government policy must acknowledge that not all young people have the same opportunities in life and any support that the government can give should be directed to those who seem to be disadvantaged.

It is interesting to reflect on and compare my life as a young teenager growing up with what it might be like today. Many of my colleagues would have shared my experiences. It is always difficult to imagine what it is like today but most of us have children, grandchildren or others we know who are going through that stage. Honourable members have some idea of what life might be like for a young teenager growing up today.

Last night, when I was thinking about what I would say today, I reflected on what life was like when I was growing up. Teenagers 30 or 35 years ago could

participate in a range of sporting organisations. Today teenagers have similar opportunities but the breadth of sporting activities and the participation rates are greater. We had clubs such as scouts and guides, which still exist. We had youth clubs associated with churches — they probably exist today in a lesser capacity. When we were growing up a main form of entertainment was the local picture theatre and in those days most country towns had one. That is not the case today — we see a concentration of cinemas in some of the bigger towns and young people in smaller towns or in the wrong metropolitan districts do not always have access to them. We had regular underage Saturday night dances at which alcohol was prohibited. The opportunities for young people to experience that form of entertainment are not so readily available today.

Some things have not changed drastically but others have. When we were growing up we had to deal with issues such as peer pressure and self-esteem, which are very much prevalent today. I know the Minister for Sport and Recreation is concerned about that important area. He has facilitated some ongoing programs to assist with addressing matters such as self-esteem in young people. In our day, bullying existed and still does.

The first of the two big differences that I see between teenagers growing up 30 or 35 years ago and today is the change in family structure and the impact of the hours of work. I do not think I am out of place in saying that today far more children grow up in structures other than what we would classify as a traditional family structure with mum and dad at home. In my youth it was more likely that mum or dad would be at home at regular times but today work pressures and changing work circumstances mean that parents are not always home to spend time with their children. I am not saying that that is a bad thing, but it is a fact of life that family structures have changed significantly in the past 30 or 35 years.

The other drastic difference between then and now is the level of employment opportunities available to young people. When I was growing up teenagers were guaranteed jobs when they decided to leave or finished school. In those times unemployment levels were at 2 per cent, which economists consider to be full employment. Unemployment levels are now higher than that, and that is the significant problem young people face today.

For example, the Australian Bureau of Statistics February unemployment figures reveal that for people aged between 15 and 24 the percentages ranged from 19.6 per cent in north-western Melbourne to 17.2 per cent in western Melbourne, 12.9 per cent in inner Melbourne and about 7.9 per cent in north-eastern Melbourne. The unemployment figures are much higher in country areas. In the Barwon–Western District, youth unemployment is 15.1 per cent; in the Loddon–Mallee, 17.6 per cent; and in Goulburn–Ovens–Murray, 18.9 per cent. I am not pleased to report that in the Gippsland region youth unemployment is 22.4 per cent. Therein lie some of the real issues society must tackle. The government's policies and programs must address youth unemployment.

I put those figures on the record to set the context for the debate. As I said, one of the most significant issues today is that of youth unemployment, and honourable members need to be cognisant of that when assisting the government to develop programs. The exodus of young people from country areas must also be addressed. Sadly, it is now a fact of life that children in the 15 to 19 age group are rapidly disappearing from country areas and moving towards Melbourne.

Hon. Kaye Darveniza — It has always been a fact of life.

Hon. P. R. HALL — Yes. I lived in the country and came to Melbourne to gain an education. Importantly, I returned to a country region where I was able to be employed.

The ABS figures state that in 1996, 157 000 people in the 20 to 29 age group lived in country Victoria and that by 2021 the figure will fall to 33 000. Communities will face real difficulties with social adjustment if that trend is allowed to continue. Governments need to be aware of that trend and must try to develop policies to address the exodus of young people from country areas. I am sure nobody in this house wants to see country Victoria become purely a retirement zone. Any community needs a vibrant mix of young and old. More opportunities must be provided for young people to be educated in the areas in which they live and, more importantly, to have employment opportunities in those areas.

How do we stop the brain drain of young people from country areas? There is no easy answer. Governments of both persuasions have shown a willingness to improve educational opportunities for young people by establishing university campuses in some country regions and by extending the range of programs on offer through secondary schools. I refer in particular to the vocational education and training programs in secondary schools. Although those initiatives are helpful, unless employment opportunities are created

that allow young people to live and raise families in country areas, they will not stop the exodus.

Some good work is being done in some country and outer metropolitan regions in particular trying to identify and therefore address some of those issues. For example, I am pleased to note that the government supports the Alberton project in Yarram which is examining measures to ensure the sustainability of a small country community into the future. Part the work of that project is to look at the needs of young people in the region. In an article about the project the *Yarram Standard News* of 10 May states that:

> … both the social capital and the education and training groups raised youth issues as key to community revitalisation …
>
> …
>
> The social capital subcommittee discussed the social isolation of the local area and the lack of opportunities for young people to break through that isolation, especially if they were not interested in sport.
>
> The lack of a public transport connection, social interaction for young people and activity for young people other than sport is of concern and these matters will also be addressed.

On several occasions my colleagues have mentioned that people living in rural communities do not have access to public transport and consequently young people do not have the same opportunities to engage in social activities as young people in the metropolitan area. Rural isolation impacts heavily upon young people. Issues of rural isolation and the need for public transport for young people are often raised as concerns in both the South Gippsland and the East Gippsland areas, and those issues need to be addressed.

Many other issues face young people. I refer to an article in the *Sunday Age* dealing with the needs of young people in the growth corridor of Knox. My colleague the Honourable Gerald Ashman will go into that issue in more detail and discuss the needs of the outer east. Many of the issues mentioned in that article are common to those facing rural Victoria — public transport, lack of entertainment opportunities and matters of a similar nature that concern young people.

Finally, honourable members on both sides of the house are concerned about youth suicide. The increase in rates of youth suicide are alarming. An article on youth suicide in the *MJA* of 20 July 1998 states:

> Suicide rates for 15 to 24-year-old Australian men have trebled since the early 1960s. However, these rate increases have not been uniform. In metropolitan areas they have doubled, but they have increased as much as 12-fold in towns with fewer than 4000 people.

Members who represent country electorates are only too aware of that; their minds are jolted on too many occasions about the sadness of youth suicide. It affects more than the family involved; it affects the whole community. The government needs to research the problem of youth suicide, particularly in rural areas, and to put programs in place to assist young people.

As I said, lack of self-esteem in young people is recognised as one of the critical factors that leads to youth suicide. Programs that raise the self-esteem of young people would make an invaluable contribution to their welfare, especially those in country areas. Here for Life, an organisation with which I have had some contact, consists of a group of people dedicated to addressing the problem of youth suicide. I am impressed with the work it has done to date.

The last issue I flag is youth homelessness, a serious problem that is common to both metropolitan and country areas.

We like to think that we do not have a homeless problem in country regions, but if you talk to youth workers or welfare organisations you are quickly made aware that such problems do exist in country Victoria.

Only last week the Honourable Ron Best and I spent some time with a number of organisations in Gippsland, including the Central Gippsland Accommodation and Support Services, which is funded by the government to run a number of programs. One of those programs is Reconnect, which aims to provide early intervention for young people between 10 and 18 years who are homeless or at risk of leaving home at an early age. The program tries to tie in a person's home situation with his or her school situation, encouraging young people to stay on at school and stay connected with their families. Much of the work undertaken by that program is limited by the resources available to it, but those programs are essential if we are to address both school retention rates and homelessness.

In Gippsland only one government-funded institution provides shelter for homeless young people, and that is in Morwell. Certainly a few welfare organisations such as the Salvation Army provide some relief, but they are not government funded to do that. Consequently there are only six beds in the whole of Gippsland to assist young people who find themselves without a home. That causes some problems for youth workers in the Gippsland region who are not able to adequately assist young people without a home.

The opposition has raised the issue today as a matter of public importance. I have not condemned the government in any of my comments this morning. The opposition urges the government to examine the issue. Opposition members also offer the government their assistance in developing policy that will benefit the youth of Victoria.

My colleagues will elaborate on some of the programs that exist in their electorates, and I hope the government will listen to those comments, take them on board and respond in due course either directly to the members or by putting in place the programs that are needed. We encourage the government to keep its eye on the ball in the youth area, and we remain willing and able to assist in a bipartisan way to provide assistance in this important area.

Hon. J. M. MADDEN (Minister for Youth Affairs) — I welcome the opportunity to speak on the motion and to listen to matters the opposition believes are relevant at the local level.

Honourable members recognise that they can play party politics with youth issues, but at the end of the day our young people are the future of our state and nation and the hope for us all. It is important that young people are catered for adequately and that their needs are addressed, because at the end of the day if we fail to deliver to our young people we fail as a community. That is why I suggest that caring for all young people is a whole-of-government responsibility.

Without getting too political, I will point out the differences between the Labor government and the opposition on youth issues. Under the previous government there was not a specific office dedicated to young people. In bureaucratic terms that presents difficulties because the programs and budgets then become dispersed across various government departments. Sometimes they can be hidden in large bureaucracies without any recognisable coordinating function, and without an avenue for young people to express their views.

That is why the government established the Office for Youth in January this year. Its aim is to work for the youth of Victoria and provide them with a voice. Some $750 000 per annum for the next four years has been provided for the establishment and ongoing maintenance of the Office for Youth. The office has already begun to plan a strategic policy, leadership and coordination role in youth affairs, to underpin the government's election undertakings in relation to the youth pledge.

The government has a strong commitment to ensuring that young people are involved in decision making at a regional level. The government needs to hear the voices of young rural people and their families and recognise the significant number of issues that young rural people have to face. The government also appreciates that there are higher levels of unemployment, a more limited range of educational training opportunities compared to their Melbourne counterparts, fewer youth-specific services, a lack of transport options, and various levels of social isolation.

Coming into this role as Minister for Youth Affairs, I found it interesting that across government there are more than 80 specific programs and initiatives aimed at meeting the needs of Victoria's young people. I will not go into detail about the whole 80 because that would take up the whole morning, but I will touch on a number of those programs located in various departments. I will take one or two examples from each department.

The first program is in the youth and family services division of the Department of Human Services. An initiative of the maternal and child health service targets young parents. We recognise that some young people become parents at a young age. Projects based on this initiative focus on adolescent parents and unsupported young mothers. Their position is currently being evaluated to determine what features of individual projects contribute to the capacity to engage their target group and improve health outcomes for families. The evaluations of those outcomes will be used to inform the various departments and further develop ways of attending to those matters. The department also has a number of youth programs within the youth and family services division. One of those is the school-focused youth service. That provides for coordinated health and welfare services for at-risk students and their families in local school clusters, and outreach services to schools. The program commenced in 1998. It is a joint initiative between the Department of Education, Employment and Training and the Department of Human Services, and it is managed by the Department of Human Services. It targets young people between the ages of 10 and 18 years

Hon. B. C. Boardman — You don't have to tell us about it; we developed it. Your policy is our policy!

Hon. J. M. MADDEN — I am pointing out the services at the government level as well as highlighting the services that we provide as a new government, on top of the 80 programs that exist across departments.

Hon. B. C. Boardman — Save your breath!

Hon. J. M. MADDEN — This youth service targets young people between 10 and 18 years who are at risk of developing behaviours that make them vulnerable to suicide or attempted suicide, or who are displaying behaviours which require support and intervention.

I highlight those not only because they have existed for some years but because they are important at the tertiary level, which is often considered to be a reactive level. I highlight the differences between not only what has taken place but also the initiatives being developed by the government.

Another program in the Department of Human Services youth program is the youth services grant program that targets people aged between 10 and 25 years, with a focus on those aged between 12 and 18 years. The service focuses on reducing or stabilising risk factors for young people and increasing their resilience through the development of skills and competencies.

A Full Service Schools for Students at Risk program is available in the government's education and training programs. That program is administered by the Minister for Post Compulsory Education, Training and Employment in the other place. It is funded by the commonwealth government and encourages 16 and 17-year-olds to stay at school. More than 3000 students at 105 schools and a range of other education and community providers have been involved in the program. It operates in 14 local government areas of high need, and the federal government funding will continue until December 2000.

One of the current pilot employment programs in regional Victoria is of much interest to the government and community, and its outcomes are being examined closely. It is a five-part pilot strategy called youth enterprise south-west. The strategy is particularly directed to rural and regional Victoria's south-west. The five target areas are: youth leadership; regional education, employment and training partnerships; youth enterprise and small business development; enterprise teacher education; and information and communication technology. I recently visited the area and was impressed with the initial direction in which the program is heading.

In my dual portfolios of youth affairs and sport and recreation I appreciate the importance for young people of health programs. Often their health is not necessarily a key priority for them but it will have a significant impact on the community later in life. I refer to a few health programs. One is called *Somazone — Adolescent Health*, which is a CD-ROM on adolescent health. It is a multimedia means of addressing health concerns shared by young people. The CD-ROM has been distributed to all schools and to other locations, and has been well received. It is a multifaceted Internet resource approach based on the CD-ROM version, and was launched in November last year. The Australian Drug Foundation and the Department of Human Services are involved in the distribution and management of that resource.

The other health area for young people concerns their dietary habits. Often diet is not seen as a significant concern by the young, but it is a long-term issue. It can impact on the day-to-day health of young people, including their psychological or mental health. Lack of attention to diet can impact on health, although many young people do not regard diet as a key contributor to good health.

A food and nutrition strategy has been established. A nutritional manual is currently being developed for youth workers in juvenile justice centres. It will also be a useful resource for health professionals and parents. It covers general nutritional information relating to food and drugs; eating disorders — whose effects should not be underestimated in young people; the needs of males and females — there are differences between the needs of each; nutrition in sport; and special dietary considerations such as vegetarian diets. That program is to be implemented through the Department of Human Services.

The government has a number of sport and recreation programs. One of the key demographic groups involved in sport and recreation is people aged between 11 and 30, who are at a stage of life when a significant amount of sporting activity occurs. But that does not mean all young people are interested in sport. I reinforce the comments of the Honourable Peter Hall, who said that social isolation at a rural and regional level can be caused because often the only services provided at the local community are related to sport. A young person who does not regard sport as a significant part of his or her life can feel isolated. That fact should not go unnoticed, nor does it go unnoticed in my two key portfolio areas.

One of the areas developed through sport and recreation is the physical activity strategy, which is a whole-of-government approach to encourage all Victorians to live more actively. That approach can play a key role in developing healthy lifestyles and promoting high levels of self-esteem, which is particularly important for young people. It is anticipated that the strategy will be finalised in June 2000 and will be submitted to cabinet for the appropriate response.

Sport and Recreation Victoria will continue to work to ensure there is a range of quality, accessible sport and recreational opportunities at the local level. including appropriate opportunities for school-age children and youth.

Hon. P. R. Hall — They are good programs, but what do you see as your priorities?

Hon. J. M. MADDEN — I am getting to those; thank you for the interjection, Mr Hall. It is important that I elaborate on the programs that are out there, as well as the programs and key priorities of the government.

A number of key indigenous sport and recreational programs exist in regional Victoria. Sport and Recreation Victoria is involved in supporting and working with community-based indigenous organisations and assisting in the provision of sport and recreational opportunities for indigenous youth that are relevant to local community needs. That is particularly significant for the indigenous communities because such programs can present greater opportunities for the young people within local communities, and certainly create and facilitate links to the greater community. They provide more opportunities than may be perceived to exist at present.

I commend the excellent job Victoria Police does through its youth programs. Sometimes people underestimate the role of the police in relation to youth services. The police are out there 24 hours a day; service and recreation providers sleep, but the police do not. That presents the opportunity for Victoria Police officers to establish significant integrated links between their programs and youth groups and to facilitate better outcomes for young people through the provision of services, particularly for at-risk young people.

Hon. P. R. Hall — The Start program is one.

Hon. J. M. MADDEN — I will not go into the details of the significant number of available programs, otherwise members of the opposition will not have the opportunity to refer to their local issues, about which I am keen to hear.

The youth advisory unit is a key part of Victoria Police programs. It aims to develop, coordinate and integrate police youth programs and provide advice on police and youth issues. The unit is involved in a range of activities including coordination of the needs of the Victoria youth development program — another program that I will speak about in detail. The unit is developing the program to enhance relations between police and youth through, for example, the Listen to Me program, and to support the professional development of police by providing formal police training in the youth area. The unit also represents Victoria Police on numerous committees and boards.

Housing and homelessness is a key issue for young people at risk. The support they can get at significant and critical moments in their lives often determines whether they continue to be at risk. A housing and homelessness program that provides such support is the Supported Accommodation Assistance Program, known as SAAP, which is run in conjunction with the Transitional Housing service. The program provides an integrated model of housing and support services to respond to immediate crises and to assist young people to move towards independent living. Services for young people include crisis short-term responses to address immediate need, transitional medium-term responses, longer term exit options, and targeted health and community healthy initiatives. Approximately 45 per cent of SAAP clients are 24 or younger. In 1998–99 both programs assisted approximately 25 000 young people in Victoria.

I turn to the Office for Youth Affairs. As well as having key coordination roles the office provides a number of programs, in addition to the programs that exist across the whole of government. It is imperative that the office has programs and critical that they be delivered significantly using the expertise of various other departments, and not necessarily taken over by the office. The programs have existed for some time and continue to operate. They can address specific needs of specific portfolio areas and can be delivered well by those portfolio areas to address the significant issues and needs of young people.

The government would like to see the Office for Youth Affairs not only as a coordinating body with a role of reinforcing the roles various departments play in youth issues but also as having a more proactive role. A number of the issues I have mentioned are in many ways reactive, but because the programs are significant they must be maintained and problems addressed as they occur. However, the government cannot always rely on an approach of addressing the needs and issues of young people in a reactive way, because sometimes that is too late. The Office for Youth is initiating proactive ways of addressing problems and establishing more positive programs for young people before they become at risk. The vast majority of young people are positive about their lives and need to have that positive dynamic and their courage, conviction, enthusiasm and energy reinforced by the community at large.

The Office for Youth has taken on board the Freeza program, a significant and proactive program that was initiated by the former government. In a moment I will expand on how the government is further developing it. The Victorian Youth Development program is also significant but is sometimes misunderstood. I shall elaborate on that further so it can be understood and seen in the proper light. There are also the regional youth committees. I will discuss the programs in more detail shortly, because I do not want to take up too much time, Mr Hall.

Hon. P. R. Hall — You do not have to discuss them in detail; we are aware of the programs.

Hon. J. M. MADDEN — I want to enhance understanding of how the government is attending to the programs, so I will discuss them in more detail shortly.

The government has introduced a range of new initiatives and has expanded current initiatives, as was announced in the budget. For example, it has introduced initiatives in the Department of Education, Employment and Training to focus on meeting the needs of young people aged between 12 and 26. They include teacher scholarships. The government has provided $800 000 per year for the next four years for up to 250 scholarships for selected high-quality graduates who are seeking employment in Victorian government schools in targeted geographic and curriculum areas.

I turn to student welfare in secondary schools. The government has provided extra funding of $6.1 million in 1999–2000, increasing to $12.2 million over the next four years, to aid secondary schools in responding to the welfare needs of students through the employment of student welfare coordinators. That will improve support for students who are at risk and address behavioural and learning difficulties by supporting students when they are responding to problems such as truancy, drug use, suicide risk, alienation, antisocial behaviour and lack of career direction.

The government recognises that the provision of opportunities for young people is a considerable and significant issue. It has committed $65 million to enhance the quality and availability of vocationally relevant subjects as part of a broader and more relevant approach to the Victorian certificate of education for the 2001 school year. It is allocating $25 million this year, $20 million in 2000–01 and $20 million in 2001–02. The government is committed to ensuring that students will not be confined to a single model of provision but will be offered a range of educational and training opportunities in a number of different settings.

The government is boosting public sector apprenticeships by 2035 positions. The 2000–01 budget allocated $40 million over the next five years to provide those new apprenticeships. As part of the initiative, funding will be provided to TAFE institutes to cover costs associated with the positions.

Those initiatives highlight the government's recognition that employment opportunity is a paramount issue for young people. The Office for Youth has been established in the Department of Education, Employment and Training to create the opportunities by providing proactive programs, initiatives and funding for areas that young people see as having priority.

The government has a partnership with the private sector for it to recruit 4732 apprentices and trainees. The government will provide an additional $32.4 million over the next four years, on top of the $2.5 million it has already allocated in 1999–2000, to support the recruitment of apprentices and trainees in industries experiencing skills shortages. A list of occupations experiencing skills shortages has been developed in partnership with industry organisations, unions and industry training bodies.

I turn to the youth employment line. The government has allocated $1.5 million per annum for the next four years to provide a single point of contact for assistance and advice on wages and conditions, contracts of employment, apprenticeships and traineeships, occupational health and safety and employment opportunities for young Victorians.

Hon. P. R. Hall — Is that up and running yet?

Hon. J. M. MADDEN — It is in the process of being established.

I next refer to school-to-work transition and school exit plans for students. As part of its Pathways and Standards policy the government is allocating $2 million over the next four years to develop school-to-work plans through a pilot scheme to encourage students who have left school or are at risk of leaving school early — this is again about opportunity and employment — to continue their education or training and help them negotiate pathways through school and beyond. They are critical times in their lives.

The Office for Youth will play a lead role in ensuring that all services and programs meet the changing needs of young people.

The Victorian youth round table program is a key initiative that will assist the government to develop programs and services that will meet the needs of young people. In my ministerial statement I indicated I would establish Victorian youth round tables to advise the government on a broad range of issues affecting young people. That picks up on the commitment in the Youth Pledge to 'work with young Victorians giving them a real voice in government'. The purpose of the round tables is to provide a way for the Minister for Youth Affairs and the government to hear from young people about what they think are the main issues affecting youth that the government should be addressing. That will be fluid; that is why the government expects not to determine those issues from the top down but to address them from the bottom up.

The purpose of the round tables is to discover what works well and what does not work in programs and services available to young people. That has been an issue of significance because there are 80 programs across government and many service providers in the community at different levels. Where there are overlaps there are gaps, and they are areas on which the government must focus. It must improve the wellbeing of young people and ascertain their views on particular aspects of government policy.

Each round table will allow some time for general discussion of issues, policies and programs and then spend time focusing on a particular policy area the government is currently addressing. That will allow the outcomes of the round table discussion to directly feed into current policy development. The round tables will be made up of different young people each time and involve around 250 young people each year. The round tables should represent a wide cross-section of the community in both rural and metropolitan areas. The participants will be drawn from government and non-government schools, universities and technical and further education areas.

The government will also ask youth peaks and regional youth committees to nominate young people. In that way young people who may be outside formal education and training institutions can participate. The round tables will be held at least quarterly. At least half will be held in rural areas to provide rural young people with the opportunity to let the government know the issues from their points of view and to propose solutions that will work in rural areas.

A report will be prepared following each round table. It will include a formal response from the Minister for Youth Affairs outlining how the views of the young participants will be communicated to key decision-makers in government. Each quarter, a report from the round tables held in that quarter will be presented to my ministerial colleagues and then released publicly.

The inaugural round table will be held on 9 June and will focus on issues relevant to the *Review of Post Compulsory Education and Training Pathways in Victoria*. The second round table will be held in Gippsland in October.

I turn to regional youth committees, which have an important role to play in ensuring the government is responding to the needs of young people. Regional youth committees are being reviewed with a view to strengthening their role in providing advice to the Minister for Youth Affairs and the Office for Youth. There are 15 regional youth committees across the state with the potential to play an important role in advising government about youth needs and issues in local areas. That is a key issue because sometimes local communities are more specific or hold different views on issues than other communities do. Their specific needs should be addressed. The government cannot expect to know all the issues across the entire state, and that is why different forms of communication are being established. The government wishes to enter into dialogue and partnerships with local communities to address those issues.

Through the Office for Youth the government will provide the rural committees with additional support to carry out their roles. A full-time youth liaison officer position will be created in each region to support the rural committees. Those positions will replace the half-time positions previously located with the Department of Human Services. New draft terms of reference and operating guidelines have been circulated to committees for comment prior to finalisation.

How can the government improve the lives of young Victorians? A further initiative that takes a different approach to determining youth needs is contained in a report entitled *Improving the Lives of Young People in Victoria* launched by the Minister for Community Services on 15 May. That profound report, which is based on a survey of risk and protective factors, was conducted in 1999 on behalf of the Department of Human Services by the Melbourne Centre for Adolescent Health.

The survey documents the diverse and shared experiences of 9000 young Victorians and is the first of its kind to offer evidence of the risk and protective factors that affect young people in their schools, families, communities and peer groups. The report highlights the level of risk-taking and problem behaviours displayed by young people. It examines the relationship between risk and protective factors and problem behaviours and provides selected profiles. That profound document provides the government and the opposition with material about the issues of risk. The behaviour of young people is sometimes not understood.

I turn to the Freeza program, a universal program for all Victorians aged 14 to 25 years and particularly targeting 14 to 18-year-olds. Its primary role is to provide young people with drug and alcohol-free events. Freeza events are also an important vehicle for providers to promote adolescent health. The Freeza program has been extended for one year so that youth-relevant events are delivered as part of local government community initiatives during National Youth Week and for the centenary of Federation celebrations across Victoria.

Freeza youth committees can continue to give young people, particularly those in rural and regional Victoria, a strong voice and a chance to have a real input into government policy and program development. Currently approximately 2500 young people, primarily 14 to 18-year-olds, participate as volunteers in Freeza youth committees and are committed and experienced in running safe and secure youth music events. Freeza youth committees are important because they allow young people to learn skills and be involved in skills development. They also learn skills from their peers. It allows young people to be involved and to develop high levels of self-esteem.

Some 55 youth committees, with support from local youth workers, run Freeza events in rural and regional Victoria and metropolitan Melbourne. Communities in rural and regional Victoria, with 27 per cent of Victoria's 12 to 25-year-old youth population, receive 55 per cent of Freeza funding. Some 100 000 young people in local Victorian communities participate as audience members of Freeza events. Consequently thousands of young people are finding that they can have great fun without drugs or alcohol.

Freeza has been expanded for the 2000–01 financial year with an additional 10 providers in rural and regional Victoria and an additional 4 providers in metropolitan Melbourne. That will meet the high level of demand by local communities and young people to become involved in running drug and alcohol-free youth music events. A statewide Freeza evaluation will be implemented this year to deliver better programs and to see how they can be enhanced. The Freeza evaluation will constitute a major piece of research into youth needs and issues of importance to young people in both rural and regional Victoria and metropolitan Melbourne. An evaluation tender will be advertised in July 2000, with research and consultation to be completed and recommendations made to the government by December 2000.

The Victorian Youth Development program provides the potential to significantly enhance the wellbeing of many young Victorians. This impressive community service project, which is sometimes misunderstood, was introduced to government secondary colleges in 1997. The *Herald Sun* recently said it was cadet based and had an almost military focus, but that is not what the initiative is about.

A hands-on training initiative that is voluntary for both schools and students — I emphasise that it is voluntary — it promotes leadership, team building, self-discipline, confidence and community awareness. It is particularly vital that young people in regional and rural communities be introduced to the notion of volunteerism, because organisations and service providers often exist only with the support of the voluntary work of communities. Additionally participants must learn first aid and cardiopulmonary resuscitation skills and undertake preparation for the Duke of Edinburgh Award.

Under the project schools enter into partnerships with one of several leading community service organisations. Fourteen partnership options are available and all are impressive, ranging from the Country Fire Authority or CFA Youth Crew, the Victoria Police Youth Corps, the Red Cross Community Leaders, the Environment Corps and Surf Life Saving Victoria.

The Victorian Youth Development program (VYDP) has registered a record intake at the start of the 2000 school year. About 1600 new students from years 7 to 12, along with 39 new schools, joined the program this year. That takes the total number of VYDP participants to around 5000 teenagers from almost 150 secondary schools. The Spastic Society of Victoria is the latest organisation to become involved in the program. It is offering training modules that assist students in achieving the Duke of Edinburgh Award.

The program operated on a recurrent budget of $2.1 million in the 1999–2000 financial year. The state

government's financial commitment to the program will increase by $300 000 each year for the next three years. For 2000–01 it will be $2.4 million; for 2001–02, $2.7 million; and for 2002–03, $3 million.

Of a total of 144 Victorian government schools, 78 country schools are participating in the program, equating to 54.16 per cent. Some 2313 country students among a total of 4609 secondary students are involved in the program, equating to just over 50 per cent. All 12 service provider options are available to schools in rural Victoria. Options range from the SES cadets at Mallacoota, Surf Life Saving Victoria at Warrnambool's Brauer College, the cluster CFA Youth Crew at Tallangatta, Corryong and Mount Beauty secondary colleges, to the Future Leader program at Werrimull College in Sunraysia.

In summary, the government is working hard to provide services that meet the needs of Victoria's regional and urban metropolitan youth. The government was elected to provide basic services for all Victorians, and that is what it is doing. Victoria's youth is confronted with many complex problems of a challenging nature that demand a sophisticated and multilayered response at all levels of government. The government is addressing the needs of and issues important to young people and continuing to facilitate communication with young people. The government will continue to engage young people in that process.

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — I am delighted to have the opportunity to speak on the motion before the house moved by the shadow minister for sport, recreation and youth affairs. I point out that I am not speaking on the motion because I am a young member of Parliament but because I represent the electorate with the youngest population in Victoria. The residents Mr Lucas and I have the privilege to represent have an average age of only 31 years; over 120 000 of them are aged under 30 years. Youth policy and the outlook for youth are important to people in my electorate.

The motion calls on the government to outline how its policies and services are meeting the needs of Victoria's youth. I sat in the chamber for the best part of an hour listening to the minister's contribution. I must say it was the most appalling contribution I have heard delivered in the nine months I have been in Parliament. The Office for Youth, which the minister claims to have formed, has obviously been doing some work because in the past 24 hours it has prepared a 30-page speech for the Minister for Youth Affairs, which he slavishly read and stumbled over for the past hour. It was an appalling contribution by the minister. Nowhere in that speech was it indicated what the minister feels. He has no vision or outlook for youth.

The Minister for Youth Affairs ought to be ashamed of his presentation this morning. Not once did he put anything of himself into that speech; not once did he show any interest in his portfolio. He made no contribution of his own. He slavishly read 30 pages of his adviser's contribution.

The minister's contribution detailed the policies of the Kennett government — the Victorian Youth Development program, Freeza, et cetera — all policies of the Kennett government. After 30 pages of drivel from his department, the minister made no contribution of his own.

Hon. G. D. Romanes — Have you anything else to say?

Hon. G. K. RICH-PHILLIPS — I certainly have.

Hon. J. M. Madden — Andy Warhol; this is your 15 minutes of fame!

Hon. G. K. RICH-PHILLIPS — I will make it a good 15 minutes.

The government, when it considers youth policy, should have as its core objective the creation of an environment that allows young people to achieve their full potential. The Kennett government achieved that over the past seven years. It is not about creating feelgood programs for young people; it is about creating an environment in which young people can get jobs and afford to buy houses. The Kennett government's legacy is a sound economic environment in which young people can get jobs, get a good education and go on to achieve their objectives.

Over a seven-year period the Kennett government took the necessary steps to create an environment for young people that would allow them to achieve their full potential. The minister highlighted some of the specific youth programs the Victorian Kennett government introduced — for instance, the Victorian Youth Development program and the Suicide Prevention Task Force, to which the Kennett government contributed $24 million. As Mr Hall outlined in his contribution, over the past 30 years youth suicide rates in Australia have quadrupled for males and doubled for females. It is a serious issue. Anyone who has known anyone who has committed suicide knows that it is a difficult issue for the community to deal with and that the state needs to endeavour to get on top of that.

One of the other programs of the Kennett government was called Turning the Tide, a program to minimise the impact of damage from drug abuse. That involved a commitment of $100 million to a variety of strategies to reduce the impact of drugs. That program is largely directed towards young people in Victoria.

There have been a number of initiatives for young people in my electorate. I refer briefly to the Visy Cares centre in Dandenong.

Hon. J. M. Madden — A good centre.

Hon. G. K. RICH-PHILLIPS — Are you going to support it?

Hon. J. M. Madden — It is a good centre.

Hon. G. K. RICH-PHILLIPS — Let the record show the minister's lack of commitment for the Visy Cares centre.

Hon. J. M. Madden — It is supported by the government.

Hon. G. K. RICH-PHILLIPS — The Kennett government contributed $400 000 to the centre, which is supported by the Pratt Foundation and does a lot of good work for young people in my electorate. The minister says he has visited the centre. I look forward to the government funding it. I am sure that Dave Glazebrook, the manager of Visy Cares, would welcome government funding.

I turn to the Lighthouse Foundation. I recently attended the opening of a new foundation residence in the Dandenong–Keysborough area. The Lighthouse Foundation provides accommodation for youth at risk. It sets up small residential houses in the community for young people and attempts to create a family environment in which they can live, go to school or work. It is an attempt to get away from an institutionalised approach.

Hon. P. R. Hall — Is it funded by the government?

Hon. G. K. RICH-PHILLIPS — No, it is not funded by the government; it is a private initiative supported by local business people. The foundation has been operating for some time and has four or five properties around Melbourne. It is another initiative the government could take up.

After I read the ministerial statement 'Youth at the centre' it occurred to me it was similar to the social engineering approach to youth that took place under the Cain–Kirner governments. I attended Eumemmerring Secondary College — a good college — and completed my Victorian certificate of education (VCE) at the time the Kennett government came to power, so I did not experience the Kennett Government's education reforms. When the former Premier Joan Kirner was the education minister the VCE was developed and the approach was to achieve equality of outcomes — students got a certificate regardless of whether they did well or their performance was mediocre. That was the Labor government's approach to education. It did not matter what the student did at school; the certificate was designed to make them feel good.

There is a marked contrast between that approach and the approach to education taken by the Kennett government, particularly at Eumemmerring Secondary College. Last year I had the privilege of going back to the college and seeing the improvements. Significant investments have been made in infrastructure, including in technology and vocational education and training facilities. The college has three junior campuses and a senior campus, and millions of dollars have been invested in the senior campus. It is the largest secondary college in Victoria and leads in many aspects of education. The school is a credit to its staff and executive, who worked with the Kennett government to develop it to a high level. That is in distinct contrast to how it operated under the Cain–Kirner governments. I am concerned that we are now returning to the Cain–Kirner style of youth affairs.

I now refer to the ministerial statement entitled 'Youth at the centre — governing with young Victorians'. Young Australians are often accused of being negative, disenchanted and cynical. I wonder if those attitudes are a response to the platitudes expressed in and the often patronising nature of many government policies — a good description of the contents of the ministerial statement. Young people do not want to be quarantined and patronised.

Hon. J. M. Madden — The Kennett government did not make one ministerial statement about young people in seven years!

Hon. G. K. RICH-PHILLIPS — I take up the interjection of the minister that the previous government did not make a ministerial statement on youth affairs in seven years. What has the ministerial statement achieved? The Kennett government established Freeza and other youth development programs, but the highlight of this minister's achievements is delivering a statement on youth!

Hon. J. M. Madden interjected.

Hon. G. K. RICH-PHILLIPS — The minister's interjection indicated the approach of the government. It believes it is achieving something by delivering a statement in this place. It does not have any policies, yet the minister believes he is achieving something for young people. Is it any wonder that young people are cynical and browned off? They do not need to be quarantined and patronised through the holding of youth forums and the like. Instead of platitudes they need solutions, a good environment, sound economic policies and a state that is continuing to attract investment so that job growth will continue.

The ministerial statement is full of patronising platitudes. Even the title is patronising. The statement says in part 'young people are also here and now'. Page 10 lists the former government's programs for youth. The statement refers to communicating with youth, to young people being involved in decisions reached by the government and to moving beyond the rhetoric and creating a new dialogue with young Victorians. If that is not rhetoric I do not know what is. It states:

> I believe that in order to respond to the needs of young people we need first to understand and listen to them. We need to hear the stories and voices of young people.

What action is the minister taking? It is interesting to note how many young people sit on the government benches as compared with the opposition benches.

Hon. T. C. Theophanous — How many women have you got?

Hon. G. K. RICH-PHILLIPS — It is not about women; it is about young Victorians. The youngest member on the government side is Ms Mikakos who is 30 years of age. Its next youngest member is about 37. Mr Birrell was elected at 25, as were Mr Boardman and I, and Mrs Luckins was elected at 28. The government talks about wanting to govern for young people, but what is it doing about it? It is all about platitudes. The government likes to make statements but it is not serious. It is all talk and no action.

Recently I attended a function for a leading youth group in Victoria. It is not a high-profile group but it does a lot of good work for young Victorians. What impresses me about it is that it does not set out to make young Victorians victims but rather helps them to improve their self-confidence and self-esteem so that they can have productive lives. At that meeting I represented the Leader of the Opposition. That group received considerable support from Dr Napthine when he was the Minister for Youth and Community Services in the previous government. The group also received much attention from the former Premier who, as all honourable members know, took considerable interest in youth affairs.

During that function I asked the organisers about the group's relationship with the new government. Recognising that youth affairs is addressed in a bipartisan approach, I expected to hear that the group was getting along very well with the new Minister for Youth Affairs, particularly given that as a fairly high-profile Australian Rules footballer he was involved in an area that attracts the interest of youth. I expected the group to have positive things say about the new minister. However, I was disappointed with what I heard. The group's representatives said that the new minister and the new government are all talk and when it comes to doing something nothing happens.

Hon. J. M. Madden — What was the group?

Hon. B. C. Boardman interjected.

Hon. G. K. RICH-PHILLIPS — I will tell the minister that later. They went on to contrast that with the approach of the previous government and the previous minister. It was a great disappointment to me to hear that the new Minister for Youth Affairs is all talk and no action. Those people are not getting the sort of support they got from the previous government and that they deserve.

That response is a reflection of the approach the government takes to youth affairs — it likes to talk and make ministerial statements. The minister thinks delivering the ministerial statement is a great achievement. When it comes to doing things, to taking action, nothing happens.

Hon. T. C. THEOPHANOUS (Jika Jika) — That was the most pathetic and mindless attack on the response by the Minister for Youth Affairs to what the initial opposition speaker, Mr Hall, said — —

Hon. G. K. Rich-Phillips — You were not even here for it!

Hon. T. C. THEOPHANOUS — I was listening. In case the Honourable Gordon Rich-Phillips in his youth push has not caught up with what is available in Parliament house, there is a bit of technology in each of our rooms: we all have a speaker so we can hear the inane comments of members opposite! That pathetic, mindless attack from the honourable member was a reaction to the fairly detailed set of responses in which the Minister for Youth Affairs outlined a range of government policies.

Mr Hall's motion could have been a dorothy dixer. The government could have put on the record some of the magnificent things it is doing for youth in trying to turn around the problems created under the previous administration. At least Mr Hall said the motion is being debated seriously and that honourable members opposite are interested in being a responsible opposition and so on and so forth. After the Minister for Youth Affairs made his response, the young Turk, a new member of this place, in trying to make a name for himself made a pathetic attack on the minister. This young member worked in the former Department of State Development under the Honourable Mark Birrell, then a minister. He must have endeared himself so much — —

Hon. B. C. Boardman — On a point of order, Mr Deputy President, we know exactly where Mr Theophanous is going with this. The motion is not about the individual credibility or professional qualifications of members of Parliament, so his comments are completely irrelevant.

Hon. T. C. THEOPHANOUS — Honourable members heard the previous speaker attack the Minister for Youth Affairs. In doing so Mr Rich-Phillips pointed to himself as an example of youth having come into this place through the Liberal Party. He contrasted that with his view that the government does not have enough young people on this side of the house.

The DEPUTY PRESIDENT — Order! In debates such as this members on both sides get a fair amount of latitude. The Honourable Theo Theophanous is building his case and I am sure he will now come back to the motion.

Hon. T. C. THEOPHANOUS — Thank you, Mr Deputy President. I will talk about the things the present government is achieving for youth in turning around the devastating situation it inherited from the previous government. However, the Honourable Gordon Rich-Phillips said that he represents youth and is part of the new guard in this place. The truth is he got into this place by sucking up to the former minister while he was working at the Department of State Development.

Hon. G. K. Rich-Phillips — Mr Deputy President, I take offence at that and ask Mr Theophanous to withdraw.

Hon. T. C. THEOPHANOUS — The honourable member is obviously fairly sensitive. If he is so sensitive about it, I am happy to withdraw the remark and indicate that he endeared himself to the former minister — —

Hon. D. McL. Davis — On a point of order, Mr Deputy President, the Honourable Theo Theophanous was asked to withdraw and he cannot qualify that withdrawal and ramble.

Hon. T. C. THEOPHANOUS — I did withdraw.

The DEPUTY PRESIDENT — Order! The Honourable Theo Theophanous has withdrawn his comment. I ask him to move on to addressing the motion.

Hon. T. C. THEOPHANOUS — As I said, the Honourable Gordon Rich-Phillips attempted to endear himself to the previous Minister for State Development and that is how he got into this house in the first place.

The Honourable Gordon Rich-Phillips talked about a meeting he had with some young people. He said they had told him that they were not impressed with what the government was doing. He refused to tell the house what the meeting was, who was at it and which group he was meeting with. The only thing we heard was an interjection of the Honourable Cameron Boardman that it was a meeting of Young Liberals. Perhaps that is what it was and that is why the criticism was made.

The only half-serious contribution came from Mr Hall, whose comments I will address. The policies of the previous government attempted to manipulate the young by presenting an image that somehow the previous government was trendy and in touch with young people, but the previous government did not have any policies of any substance. The best example of that is the outrageous statement the previous government put on the Internet. Members on that side of the house were proud to have a statement on the Internet in an apparent attempt to influence the youth of this state. The pre-election campaign included an advertisement with the outrageous suggestion that 'Jeff f…ing rules' and the establishment of the jeff.com web site.

An Opposition Member — I have no idea what you are on about.

Hon. T. C. THEOPHANOUS — It was on the radio. You tried to present some sort of trendy approach to the youth of this state with nonsense, with things that had no substance and no relation to any of the policies you were presenting — and you agreed to it! You agreed to it in a mindless way and followed the leader, Jeff Kennett. No wonder the people of Victoria rejected

what you were on about and no wonder they voted you out at the last election.

I was interested that Mr Hall moved the motion. He was part of a government that created what could be described only as a desert for the young people in the Gippsland region he represents.

Hon. M. T. Luckins — Have you ever been there?

Hon. T. C. THEOPHANOUS — I have been to Gippsland many times. The Honourable Peter Hall will tell you that I am a frequent visitor to Gippsland to try to fix up some of the problems that have been created in the area.

Honourable members interjecting.

Hon. T. C. THEOPHANOUS — Mr Hall is well aware that I have been down to Gippsland several times in my role as parliamentary secretary. I have talked with the local community and consulted extensively in an attempt to build an education precinct which, I am happy to put on the record, I know he supports.

An Opposition Member — He worked for 18 months on that!

Hon. T. C. THEOPHANOUS — I am sure Mr Hall is capable of saying what he did. I was asked by way of interjection whether I have been to Gippsland, and I am answering by saying not only that I have been to Gippsland but that I have been involved in many discussions to try to get an educational result in that region. The level of unemployment in the Gippsland region is 10.3 per cent and 13.1 per cent in Latrobe. By comparison, the Victorian average is 7.2 per cent.

Hon. P. R. Hall — It was about 15 per cent when we came into government. Get your starting point on the record. The unemployment level in 1992 was higher.

Hon. T. C. THEOPHANOUS — The unemployment rate was high across the whole of Victoria back then. It has come down but it did not come down in Gippsland where Mr Hall is supposed to be representing his community. In Gippsland the youth unemployment rate for 15 to 19-year-olds is currently about 22 per cent compared to the Victorian average of 14.1 per cent.

Therefore Mr Hall failed the youth in his electorate on employment. Not only that, he also failed on retention rates. In 1999 the year 12 retention rate for government schools in the Gippsland region was 59 per cent. Although he criticises the government he comes from a region with the lowest retention rate for year 12 students in the state! During the whole of the seven years he was in government, Mr Hall failed to do anything about that retention rate. Yet he has the absolute hypocrisy and cheek to try to tell the Labor government that it is not doing anything for youth in Victoria. It is bizarre.

The Bracks government is attempting to build new pathways for young Victorians so they do not finish up on the scrap heap. The government is putting an enormous amount of money into a whole range of programs that will alleviate the problems encountered in the shift from school to the workplace. It is trying to get some hope for the people in Mr Hall's electorate who were let down during the seven years he was in government. That is why the Labor government is talking about not just establishing a precinct in Gippsland, not just building a school but about creating pathways for young kids so that every child in this state has the option to continue on at school, whether by attending a technical and further education college or by undertaking other forms of training, whether it be through apprenticeships or by attending university. All those pathways will be available to assist them along the way.

A drop-out rate of 59 per cent in the Gippsland region is not good enough. It has to be changed but it will not change by having the opposition lecture the government about what it has not done for youth when its own record is so appalling. Honourable members on this side are happy to listen to constructive suggestions. The minister asked both the previous speaker and Mr Hall for suggestions. I hope that subsequent speakers from the opposition put up positive suggestions to assist young Victorians, because the government genuinely wants them to do that. I am happy to work with Mr Hall or any other member of the opposition to try to reverse or change the situation facing youth.

Hon. P. R. Hall interjected.

Hon. T. C. THEOPHANOUS — Let me give you a bit of political advice, and I have been here long enough to do that. You will not get anywhere with the electorate in this state until you start to admit you made a few mistakes. One mistake was that you failed young people in educational terms. You failed them because the retention rates were worse. You closed down schools and you did not give young people the hope they deserve. When you start saying that perhaps your great leader Jeff Kennett got it wrong, that he was too glitzy and that he had no substance and start

cooperating with the Labor government to achieve outcomes for young people, you might impress the electorate. You are not impressing it by coming in here with the sort of drivel the house has heard from the Honourable Gordon Rich-Phillips and from other members about what may or may not be happening.

I am happy to go into a whole range of initiatives the present government has put together to assist young people, but in general the government has devised a range of pathways, including apprenticeships, traineeships, providing additional funding, treating young people with respect and identifying and trying to fix problems. I am keen to hear how the opposition will add to the bank of policies and ideas floating around at the moment so that we can collectively do something for young people. Rather than having to continually identify things the government is doing — which the minister has already eloquently outlined — I would be much happier to hear positive suggestion from the opposition that will assist young Victorians.

The government is committed to assisting young people, particularly in offering a much broader range of educational opportunities and pathways for them to take their place as members of our community.

It is not about our trying to romanticise what happened in people's past. We have come a long way and it has happened among successive governments, but a different range of options is available to young people now. Over the past seven years there has been a deterioration in areas such as participation rates, retention rates, and the number of kids who feel a sense of meaning in their lives. There has been an increase in the number of young people who have committed suicide or who have a drug problem. All of those issues must be addressed collectively in some way. I commend the minister and the government for attempting to have a whole-of-government approach to a complex set of problems.

I welcome any contribution from the opposition that adds to this debate and to a sense that perhaps we are all trying to do the best we can for youth in this state rather than simply making cheap attacks on the government and the minister.

Hon. M. T. LUCKINS (Waverley) — Mr Theophanous, in the last 2 minutes of his verbose, rude, ignorant contribution, has at least had the decency to return to the motion and consider what the house is debating today. He comes into cowards' castle, defames other members and then tries to use his own limited personal experience, with no empirical evidence to back him up, and now he is leaving the chamber. It is so disappointing.

I am also disappointed with the contribution by the Minister for Youth Affairs this morning. He had an opportunity to enhance his ministerial statement rather than rehashing and defining all of the initiatives for which the Kennett government is responsible, which he is still administering and which he outlined in the ministerial statement last month.

The minister had an opportunity to come out with a new direction for the young people of this state. But instead he made a bureaucratic contribution. To my knowledge, he has never made a contribution in this place that has not been written for him. He did it in a passionless, expressionless way and I find it very disappointing that a person responsible for the youth of this state can make a contribution without any passion or foresight at all.

Most of the initiatives in the ministerial statement and the ones trotted out today are Kennett government initiatives. There was and is nothing new. The government is trying to take ownership of the policies and programs that were developed in good faith not only by the Kennett government but by the community. The former government worked in partnership with community organisations, individuals and local government and created the best programs and support mechanisms for young people in this state. I am glad the government is continuing that good work, but if the minister is to trumpet Labor's achievements in this area, it is about time he came up with an initiative himself!

I refer the house to a press release dated 11 September last year, from Lynne Kosky, the then shadow minister for youth affairs, which states:

> Victorian Labor spokeswoman Lynne Kosky said that the Premier had simply rehashed existing programs and policy announcements and called it a policy for youth.

That is ironic given that the Coalition youth policy released during the state election not only reviewed and enhanced the policies and programs that had been provided in the past, but contained new initiatives for the encouragement, protection and growth of opportunity for young people in Victoria.

I find the Labor government in every way — but particularly in youth in a public policy sense — to be providing nothing but inconsistency to the people of Victoria. One of the first initiatives by Labor upon being declared government was to introduce condom vending machines in schools. That was a great start:

'We will encourage all of our young people to go off and have sex but we will just make sure we minimise the harm'.

The government talks about decriminalising marijuana and about heroin-injecting facilities. They are both illicit and dangerous drugs which impair the user, and have particularly devastating effects on the young through injuries sustained in motor accidents, or when they are walking around impaired. Those drugs lead to violence and an increase in crime. There are already public health and safety concerns with the prevalence of drugs in our society. Therefore, rather than saying, 'We will give our young people definition and boundaries and guidance', they are saying, 'We will throw in the towel and say, 'Anything goes in the state of Victoria'.

At the same time the government is moving to ban smoking tobacco — a legal substance — in certain public places. I find that absolutely ironic. It wants to ban the smoking of a legal substance in public places, while conceding to the demand of heroin users to have so-called safe injecting facilities established in Victoria.

Young people need action not rhetoric, and as policy makers we have a responsibility to seek out the needs, hopes and aspirations of young people. They also need and crave boundaries, direction and leadership. None of those have been provided by the Bracks government and certainly not by the minister since October last year.

Our young need to know where they belong in the context of our community and it is also important for our community to provide the help, guidance and support to the next generation, to ensure that they make the most of the opportunities they have, but also do not make the mistakes that may cause potential harm in the long or short term to themselves.

Families are the basic unit of our society and they must be supported. The Kennett government in particular, through such programs as Parentline and the strengthening families initiative, recognised this need. That is why the Kennett government established the Youth and Family Services Division within the Department of Human Services. It recognised that youth affairs benefited from the integration of family health and community services, all provided through Human Services.

Like women's policy, it is crucial to recognise that young people are all individuals and that we cannot pigeonhole them. They have different needs, different backgrounds and different interests. A whole-of-government response is required across all portfolios including education, health, transport and employment. Young people have always tested the boundaries and they always will, and I am sure that most if not all of us in this chamber have engaged in some sort of risk-taking behaviour as young people.

With bravado, a new sense of self-determination and more freedom, but without strong family and community support, young people do cause harm to themselves. The Kennett government provided leadership in this area and recognised the vulnerability of young people and established, mainly through the initiative of the former Premier, the Youth Life Force. An article in the *Herald Sun* of 10 January 1997 is headed 'Kennett bid to help youth'.

In the article the former Premier outlined the main problems facing people between the ages of 7 and 25 years. They included: a lack of national goals; a sense of where young people fit into Australia's future; a cycle of low self-esteem fed by financial insecurity or peer pressure to experiment with drugs, alcohol and cigarettes; and lack of pride and self-respect created by joblessness or limited opportunities for self-development. Honourable members recognise that particularly the lack of pride, self-respect and self-esteem could lead to dramatic consequences for young people, including suicide.

The Kennett government established a Suicide Prevention Task Force, to which the Honourable Gordon Rich-Phillips referred. The former government allocated $24 million to reduce the alarming youth suicide rate. An article in the *Age* of 25 January this year states:

> The suicide rate for young men aged 20 to 24, at 36.78 per 100 000 people, is higher than all other age groups …

The article further states:

> One of the backgrounders to that is the mental health problems that a lot of young people are facing …
>
> Mental health is a key part of the burden of disease of this age group — over half of the disease burden.

Before the last election Premier Kennett gained federal government support for his commitment to establishing a national institute for depression, recognising that suicide and drug-taking behaviour are directly linked with mental health and self-esteem in young people. Parents, teachers and service providers must be provided with the tools to nurture and encourage our young people to reach their full potential.

I refer to an undated *Age* article that lists risks to young people. They include low attachment in their communities, community disorganisation, personal transitions and mobility, poor family management, poor discipline, family conflict, academic failure at school, and the usual peer pressures that every young Victorian will inevitably face.

When I was at school in the early to mid-1980s under the then Labor government my experiences with the education system and my fears for the future because of a lack of leadership by the Cain and Kirner governments encouraged me to become involved in the Liberal Party at the age of about 15. During the period of the Cain and Kirner governments the social and family fabric of our community was subjected to total disintegration. That was evidenced in many ways. One example was the devastating lack of hope for young people, the high unemployment rate, the increasing debt burden, the massive mismanagement and lack of confidence that young people — in fact, all people — had in a government that was supposedly looking after their interests. That prompted my involvement in the Liberal Party.

It was my pleasure before my election to this place to work for the former Minister for Education, the Honourable Phil Gude, to develop employment programs specifically for young people under the community business employment program.

In this year's budget I noted that the Labor government, under expected outcomes and targets for the community business employment program in 2000–01, includes a target of 10 000 placements, yet in the 1998–99 year the Kennett government placed 12 697 people into employment. The Labor government is not as committed to youth unemployment as it would like Victorians to believe.

During his contribution to the debate the Minister for Youth Affairs took full ownership of programs; he thinks he is the only person in government who has ever listened to youth. He talks about listening to youth and setting up a round-table forum. I refer to an article in the *Herald Sun* of 21 March 1999 by a young man named Wesley Ballantine. He recalled that in April 1997 he visited no. 1 Treasury Place for the inaugural meeting of the then Premier's youth council. He states:

> An advisory committee on youth issues, our value lies in the fact that we are young, all in touch with youth in our areas and uninhibited by political ties.
>
> The result is a forum of incisive debate.

That forum has been continuing since 1997.

Today the minister also mentioned the successful youth development program and the fact that the new government will continue to support it. So it should, because it has made an incredible contribution to the wellbeing of young people, particularly in disadvantaged areas. An example is Springvale Secondary College where that program has been running for some years.

In his contribution the minister also referred to the School Focused Youth Service program, which was a Kennett government initiative. I am pleased the government will carry the program through. I refer to an *Age* article of 29 May 1999 in response to concerns about teenage drug-taking and suicide. The article states:

> … the School Focused Youth Service program provides an umbrella for 41 projects coordinated by local government, community health centres and other agencies.

The minister also referred to another Kennett government initiative called the Communities that Care program. I think he said the program had been released earlier this week by the Minister for Community Services in the other place. I refer to an article in the *Age* of 23 January 2000, which states, in part:

> The state government is to consider a plan to involve 400 000 Victorians from 24 communities to steer young people away from crime and drugs by dramatically changing the way they are raised and educated.
>
> …
>
> The conclusions are drawn from research initially funded by the Department of Human Services under the Kennett government in 1998. The Bracks government has yet to sign off on the next stage but an announcement is expected after the … Minister … considers the results of a survey of 9000 Victorian students conducted as part of the program.

So far as I know that report has been sitting on the minister's desk since the October election last year. It has taken until May this year for her even to report on what is an instrumental program that provides an insight into what young people need, their aspirations and hopes for the future. I am pleased the program has been embraced by the Bracks government, but I would like it, for once, to acknowledge it has not come up with any new programs or policies for young people. The government is rehashing the programs of the Kennett government — and that is fine because they have been proven to work well.

In closing I refer to the women's health plan, which has never seen the light of day since the election of the Bracks government. The committee was chaired by Dame Margaret Guilfoyle and included many prominent clinicians. As part of its deliberations the

committee concentrated specifically on sexual, dietary and mental health, and self-esteem among young women.

An important recommendation in the report was to fund community health centres and other centres to provide gynaecological testing for young girls. In the past girls would have visited their family doctors for testing; some would have been embarrassed because other family members would visit the same doctor; the alternative would have been to visit family planning clinics, which would have been daunting for young girls. I encourage the government to finally release the report and to move on some of its important initiatives, particularly those that involve the health of young women.

I am disappointed that the house has been subjected to 30 pages of bureaucratic notes spread over 45 minutes as a contribution from the minister. He may as well have spent his time in the chamber making another ministerial statement. He failed on his second attempt to provide any hope, new initiatives, boundaries or future programs for young Victorians. I commend the motion to the house.

Hon. D. G. HADDEN (Ballarat) — I shall make a positive contribution to the debate. More than 80 specific programs and initiatives that aim to meet the needs of young Victorians are spread across government departments. The programs include the child protection and juvenile justice programs, the leaving care project, the high-risk adolescent service quality improvement initiative and secure welfare services for young people.

I turn to talk about the high-risk adolescent service quality improvement initiative, which is currently being implemented with community agencies in each region. It provides for the development of home-based care packages on a one-to-one basis to provide 50 intensively supported placements for high-risk adolescents. It also provides for the development of a coordinated and intensive case management service for high-risk adolescents through the enhancement of five existing intensive youth support services, as well as the establishment of four new intensive case management services in the Barwon South West, Gippsland, Hume and Grampians regions, the latter of which forms part of my province. Evaluation of the project is due for completion in December this year.

Another program is the important family support program run by the Department of Human Services, which includes Parentline and maternal and child health service initiatives, and which targets young parents. I would like to talk about Parentline in particular. It is a statewide telephone service that offers information, referral and advice to parents of children up to 18 years of age. Importantly for rural and regional Victorians Parentline is accessible 24 hours a day, 7 days a week for the cost of a local call. Approximately 24 per cent of calls to the service relate to emotional and behavioural issues concerning adolescents.

The Department of Human Services also has youth programs, such as the school-focused youth service, the Youth Services Grants program, and the Communities that Care program. It also provides secure welfare services for young people who are subject to protective intervention and are at substantial and immediate risk of harm, including self-harm, by providing them with secure, short-term placements. The outcomes of a 1997 review of secure welfare services are currently being implemented. They include the establishment of a multidisciplinary team with mental health, drug and alcohol expertise, and a more coordinated service response across community agencies on child protection and the placement of services. It is anticipated that during this year secure welfare services for young men will be upgraded.

Part of the child protection and juvenile justice program is the intensive treatment and residential services project, a joint initiative of the child protection and juvenile justice branch and the mental health branch of the department. The objective of the project is to develop a service response for young people who display extremely disturbed and self-harming behaviour as a consequence of abuse or neglect and who are unable to access the appropriate mainstream treatment and care agencies through existing service options. The project includes a centre of excellence to provide leadership in research, training and treatment for the client group. It also includes residential services and a day program to provide therapeutic and educational programs to the target group of young people.

The Communities that Care youth program of the Department of Human Services is a research-based community assessment planning process that mobilises community leaders and services to reduce risks for young people while creating strategies to strengthen the relationships between young people and their families, schools, peer groups and the general community. The Minister for Community Services is currently examining a proposal for the establishment of the Communities that Care model in Victoria and funding options for its establishment are currently being explored. A major research project undertaken by the Centre for Adolescent Health has provided a baseline set of data on risk and protective factors that have an

impact on young people in the state. A report on that important project is to be launched shortly.

I turn to talk about the Youth Services Grants program, to which the minister referred in his contribution. The program targets young people aged between 10 and 25 years, with a focus on the teenage years of 12 to 18. The services focus on reducing and stabilising risk factors for young people and increasing their resilience and coping abilities through the development of skills and competencies. The program is provided with $5.063 million per annum over two years for 134 early intervention and prevention services.

The government has also introduced drug treatment and drug abuse prevention programs. They include Ravesafe, a substance abuse education strategy, a parent support initiative, drug treatment services for young people and a research program on the drug treatment needs of young people. There was also the recent Drug Policy Expert Committee chaired by Dr David Penington. The committee consulted with experts in the field of youth problems, especially the experts in the community who have a knowledge of risk and protective factors pertaining to young people that have an impact on their use and abuse of drugs. As all honourable members know, the committee has recommended the trial of supervised injecting rooms in Victoria as just one facet of addressing the drug problem among youth.

Drug treatment services for young people are provided by a network of over 80 youth alcohol and drug services that operate across departments. The drug treatment services include youth outreach services, youth counselling, consultancy and continuing care services, youth residential and home-based drug withdrawal services, supported accommodation services and youth peer support services. Specific drug treatment options for young offenders and a research program on the drug treatment needs of young people are also provided.

The Ravesafe program has been mentioned briefly by previous speakers. It is a peer education project which targets high-risk illicit drug users who frequent the rave party scene. Its peer educators provide information on harm minimisation and safe using practices, as well as resources such as water, ear plugs, crisis intervention and a chill out space to ravers across Victoria each year.

Education and training programs are also provided. They include the Full Service Schools for Students at Risk program, regional Koori education committees and the Koori educator program. Currently there are 56 Koori educators located in schools that have significant Koori student populations. They provide an important service to Koori students in schools, act as mentors, and provide liaison between the schools and the Koori community. Shortly an annual statewide Koori educator conference will be held to bring together Koori and other Aboriginal educators from across the state to discuss priorities and to workshop effective practices in the delivery of education to Aboriginal students in schools.

I turn briefly to discuss the Full Service Schools for Students at Risk program, to which the minister has referred. Victorian projects funded under the commonwealth program have encouraged a significant proportion of 16-year-olds and 17-year-olds to stay on at school. The program, which operates in 14 local government areas of high need, will continue until December this year, when it will be assessed.

There are also health programs, through which are provided the food and nutrition strategy and the CD-ROM *Somazone — Adolescent Health*, which was referred to by the minister. That CD-ROM is a highly regarded, creative, multimedia way of addressing health problems of young people. It has been distributed to schools and other locations.

The program was launched in November last year and is managed by the Australian Drug Foundation. There are also housing and homelessness programs, such as the Supported Accommodation Assistance program, known as SAAP, and Traditional Housing Services, known as THM. There is also the Victorian homelessness strategy. I was recently part of the Jubilee 2000 event at the Ballarat city oval that worked with teenagers to raise $15 000 to $20 000 for the homeless. The event was organised by the Damascus Catholic schools in Ballarat and supported by local members of Parliament, the Ballarat City Council and the Aboriginal and district cooperative. It was a tremendous event in which 3500 teenagers participated. It is important to involve young people to address homelessness among their peers. The SAAP and THM programs, which are integrated models of housing and support services, seek to respond to immediate crises to assist young people to move towards independent living. That is not an easy and quick solution.

Services for young people include crisis and short-term responses to address immediate-need, transitional and medium-term responses as well as longer term options and targeted health and community care initiatives. Approximately 45 per cent of SAAP clients are young people aged 25 years or under. In 1998–99 SAAP and THM assisted about 25 000 young Victorians. I am familiar with the programs in my province because they

are funded through the Uniting Church Outreach Centre, and the Child and Family Services and others in Ballarat. Young people can also go to the various refuges.

The Office for Youth offers programs such as Freeza, which will be extended for one year and continue to provide alcohol and drug-free events for young people. There is also the Victorian Youth Development program as well as regional youth committees, grants to peak bodies, the Duke of Edinburgh's award, Student Parliament and student leadership programs.

The government is keen to examine ways young people can help the government to put policies into action. The government is about listening to young people and experts and participating with committees, and in particular with the youth forum that is coming up shortly.

The minister referred to the Vicsafe AFL Role Model project, which involves the Australian Football League Koori players who are role models for the Aboriginal community. Sport and Recreation Victoria is working in cooperation with the AFL, the Victorian Aboriginal Youth Sport and Recreation Cooperative, the Department of Justice and Koori community leaders across Victoria to implement the initiative.

Victoria Police youth programs include Victoria Blue Light, the youth advisory unit, the High Challenge program and police programs for Aboriginal youth. In my community the local police are involved in providing blue light discos, which are organised by Sergeant Gary Chandler. It has huge support among the young people involved. The Bracks government will provide $19.1 million over four years for 100 nurses in the Department of Human Services to support programs in schools, including addressing issues of healthy eating for young people, drug use and abuse and reproductive health for young girls and young women. The Life Education van will be continued at the primary school level.

The Bracks Labor government is working hard to provide services to meet the needs of all Victoria's youth, both regional and city, as well as the important youth round table that has been established by the minister. The government was elected to provide basic services for all Victorians. Victoria's youth are confronted with many complex challenges that demand a sophisticated, multilayered and coordinated response.

As Mr Hall rightly said, the family is the best support structure for youth, but it is not always practicable or possible to achieve that support. As he said, youth policies are not simple. Services for youth currently cut across about 80 programs in a number of departments. The Office for Youth will introduce departmental coordination in assessing and delivering youth services in the state.

Hon. E. J. POWELL (North Eastern) — I am pleased to support the motion. I congratulate the shadow minister for sport, recreation and youth affairs, the Honourable Peter Hall, for moving it because it enables honourable members to put on record a number of youth organisations in their communities. It will allow the government to hear first-hand the wonderful work that organisations are doing with the help of state, federal and local governments as well as the community. As the Honourable Maree Luckins said, it is a partnership. The programs must be continued and they should be motivated by the needs of the community rather than politics.

The Minister for Youth Affairs said the government will be providing a policy on youth. I am happy to contribute, particularly for policy in country Victoria. I have been involved in youth organisations since 1991 when a guest speaker from the Shepparton youth health service approached my husband's Rotary club, Shepparton Central Rotary Club, to explain that if the service did not receive funding it would close. The guest speaker dealt with issues affecting young people, especially around the Shepparton area, which is a large region that attracts people from the surrounding communities. Shepparton became a base for many young people and the Rotary club said that it would review the service. With others I was asked to review it because at the time I was a councillor of the Shepparton shire.

It was decided that the youth service should continue but should not maintain its structure as a drop-in centre. The opportunity arose to create the Bridge, a model for youth services taking into account the needs of Goulburn Valley youth. It was also decided that it would not become overly administrative and that it would be youth friendly. It was decided that when young people came to the door their needs would be assessed. The centre also provided an advisory service for organisations that were already in place and servicing young people.

That service worked exceptionally well, and I am proud of my involvement in it. I was on the board for three years until I became a member of Parliament, when I had to leave the board because I was unable to attend the meetings.

One of the reasons I became heavily involved in youth affairs was my involvement with a young girl. I had a fairly conservative upbringing, like a number of members of the house. When I was reviewing the former youth service a young girl's story came to mean quite a lot to me. She was 15 years of age and at that stage pregnant, and was attending the service for support. She said that at age 13 she had left home. I asked why she had left home and needed help with accommodation and life skills. With my conservative background, I thought she might have left home because her father was strict or did not like her boyfriend — I thought of all the reasons that we as responsible parents might think of, centring around a young person avoiding too much discipline. That vulnerable, pregnant girl said she had left home when 13 years of age because her mother had a new boyfriend, the boyfriend fancied her more than the mother so the mother kicked the daughter out. I could not believe that a mother would act in that way.

The community owes a debt of responsibility to young and vulnerable people at risk and on the streets through no fault of their own. I became very involved in youth services for that reason. Such stories are not isolated incidents but are repeated across Victoria. I commend the Minister for Youth Affairs on wanting to look at the issues. The minister highlighted that homelessness is an issue. People on the streets are preyed on in all situations. I will remain involved with youth affairs.

I put on record the work of some of the organisations in my electorate that I have been involved with and that are helping to bridge the gap between young people's needs and the services that are provided. All honourable members have a responsibility to young people, and I know all of us would like to accommodate their needs.

In 1992 the then Minister for Youth Affairs, Vin Heffernan, strongly supported the Bridge youth service. He put up the funding for the service. The Honourable Denis Napthine, as Minister for Youth and Community Services, also supported the Bridge service. He visited that Goulburn Valley service a number of times, looking at its work and giving the service his support. He put on record a number of issues that he thought the service could take up.

I hope the current minister and the government will provide support and funding for organisations such as the Bridge. The Bridge has expanded in response to the need for its services. Unfortunately that need is growing. It has offices in not only Shepparton but also Benalla, Seymour and Mansfield. It also has an outreach service, operating across the Hume district, to help young people.

A number of honourable members mentioned other youth programs. One such program is the Meals program. At the Bridge the minister mentioned the government's food and nutrition strategy. It is important that the dietary needs of young people be considered. The Meals program was set up not just to give young people a free meal twice a week but also to give them food and nutrition skills. Young people who come to the service for a meal must also go shopping for the ingredients. They are taught how to work out the nutritional value of food by looking at the labels on food packets at the supermarket and how to shop in a cost-effective manner. For many young people it is the first time they have gone into a supermarket and considered the nutritional value of items. Then they go back to the service and help prepare that nutritious food. They get a cooking lesson and help to clean up afterwards. It is not just a free meal; they also learn about the nutritional value of food.

Accommodation options have been examined. The Bridge has now merged with the Goulburn accommodation program, which runs youth-specific rental properties. That is an important component of the service. The Bridge also has a drug and alcohol service. The Honourable Peter Hall spoke about the pressures on young people today, particularly with the lack of jobs in rural Victoria. It is vitally important that our young people be able to get jobs. A number of people from country Victoria have spoken about issues such as peer pressure and isolation. It is vitally important that we get it right and are there to support our young people.

Hon. P. R. Hall — The Bridge sounds like an excellent one-stop shop.

Hon. E. J. POWELL — That is right; that is why it was set up.

The Honourables Peter Hall and Maree Luckins mentioned how important the family is. Many organisations run family reconciliation programs, which are also most important. The Bridge program is undertaken by consent. If a young person comes to the Bridge about a problem with his or her family, the Bridge will speak to the parents and try to mediate in some way.

All honourable members would understand that the family is the cornerstone of our society. It must not be eroded. We need to work hard with young people and their families. The best place for young children is with their families, but sometimes families need support and need to be taught how to be positive parents. There are

a number of programs on positive parenting in my electorate such as Goulburn Valley Family Care.

There are many other programs I would like to mention, but I am conscious of the shortage of time. I commend the minister on reviewing regional youth committees. I was a member of the first Goulburn regional youth committee, which looked at the duplication and gaps in youth services across our region. I commend the minister on looking at important local services and on examining where the duplication and gaps in our youth services arise. The important Freeza program has been mentioned time and again.

On 23 February I sent a letter to the Minister for Community Services and the Minister for Youth Affairs, inviting them to meet with representatives of Cutting Edge Youth Services, or CEYS, which runs a Freeza program based in Shepparton and Cobram. I received replies from both ministers saying they would be happy to look at that service when the parliamentary session has finished. I am pleased that they have taken up the invitation. CEYS and the Uniting Care Presbytery of Goulburn Murray run a responsive program that is important to the community.

The Honourable Dianne Hadden talked about the Koori programs, which are important to my electorate. It must be ensured they are supported and funded. Echuca and Shepparton have the highest Koori population outside Melbourne. It is important that those Koori programs continue.

I shall conclude on a positive note. I understand the time constraints and want to ensure my colleagues have the opportunity to put their issues on the record. I would like to know the government's position on leadership programs. One of the programs introduced by the Kennett government in 1997 was the Victorian Youth Development program. The minister acknowledged there was some misunderstanding of the program. Unfortunately it became known as Jeff's Cadets, which gave it an army connotation. That program helps secondary students develop life skills and work with organisations such as the State Emergency Service, the Red Cross, the Country Fire Authority and Victoria Police. It encourages our next generation of volunteers and leaders. It is important that that program set up under the Kennett government continue to be funded.

The Young Rural Ambassadors program aimed to keep our young leaders on the farm and scientists and research officers in country Victoria so our brightest and best remain in country Victoria.

I ask the government to consider a number of the policies the previous government put in place. I also ask it not to always rebadge them. The Freeza program was the result of consultation with young people. 'Freeza' was not a government-appointed name but one chosen by young people in the community. If the government is considering refunding that program, I ask that it keep that name on board. I am grateful for the opportunity to speak on the important motion before the house, and I hope all honourable members take up the opportunity to make positive comments on the motion.

Hon. B. C. BOARDMAN (Chelsea) — I suggest emphatically that young Victorians would be appalled by the government's response to the motion because government members have used it as an opportunity to outline some initiatives and policies. I acknowledge that the minister and the Honourable Dianne Hadden have researched the topic and endeavoured to find out what the government is doing in this policy area.

However, government members did not say that the overwhelming number of policies operating under the auspices of the Office for Youth were initiatives of the former Kennett government, that they have been recognised as successful and responsive to youth in Victoria and as such the government has decided to continue the policies. The critical link between the motion and what the opposition has invited the government to outline to the house is how its so-called new initiatives are meeting the needs of Victoria's youth. It is one thing to focus on an initiative; it is another to focus on the outcome or implementation of that initiative. I had hoped the minister would have outlined how the government's policies, and particularly those that it has inherited from the former Kennett government, are meeting the needs of Victoria's youth.

The other issue I direct to the minister's attention is the demographics the minister is targeting when he refers to youth. What market is he referring to when he talks about young people? Is he speaking about young people in a generalised sense, which may mean that the government is providing policies for anyone who is prepared to avail themselves of them, or is he speaking of a specific category of the community that through necessity or other unfortunate factors have to avail themselves of the policies and services provided by the government? The minister did not indicate that in his contribution.

During Mr Rich-Phillips's contribution he was unjustly lampooned and criticised by Mr Theophanous who has done nothing to contribute constructively to the motion. Mr Rich-Phillips made the point that the terminology of

youth or young people is almost a misnomer. There is an underlying connotation with the term 'youth' of disadvantage or lacking credibility. It is as if young people are in a different category from the mainstream. That is inappropriate in the 21st century. Young people are part of the mainstream. All Victorians and Australians are part of the mainstream and should be given the opportunity to contribute to the overall development and prosperity of the community in their own unique way. I ask the minister to take those points on board.

I cannot let the opportunity pass without examining some of the colourful, emotive and nonsensical clichés Mr Theophanous used during his contribution. He referred to the devastating situation inherited from the Kennett government. He said that the Kennett government manipulated the young, and that it poured enormous amounts of money into government programs yet failed in education. His contribution demonstrates his bizarre fascination with the former Kennett government. He had the opportunity to outline the government's policies but he lives in the past and uses his irrelevant comments to denigrate individuals. The minister and the Honourable Dianne Hadden contradicted the comments of Mr Theophanous because they praised the Kennett government's initiatives. They said the government's policies were largely based on Kennett government initiatives.

I make the point that there were two key issues to which the minister failed to refer. The first is the legislative framework covering youth policies. I refer to the Children and Young Persons Act which I understand the minister jointly administers with the Attorney-General. The minister did not say how the legislative framework operates and whether it reflects the attitudes and challenges of youth in the 21st century.

The second issue that is a crucial part of his portfolio which he has not mentioned during the eight months he has been minister is juvenile justice. It is a key part of the youth portfolio. There should be an appropriate and a different sentencing regime to deal with young offenders that is sensitive and responsive to the needs of the community. The minister has not taken the opportunity to talk about that. I have some thoughts about that, but this debate is not the time to reflect on them.

I refer now to an extraordinary special report featured in the *Age* of 8 May. The report is entitled 'Thirty young Australians reveal their passions'. I am not sure whether the minister or government members have read this special report compiled by Gabrielle Costa and John Elder. The newspaper interviewed 30 young Victorians under the age of 30 years and it asked them to share their views and dreams for Australia. It states in part:

> Many of those who took part had rejected high-paying jobs in favour of working for minorities and the disadvantaged, and most said they have been afforded this 'luxury of choice' by a good education and, in some cases, economic circumstances.

One gets a different picture upon reading the comments of those young people. I refer to Joseph O'Reilly, the failed Labor Party candidate for Prahran. This is Joseph 'Let's jump on any bandwagon if it gets me publicity' O'Reilly. He is aged 27 and says that he is the acting director of the Public Health Association. His dream for Australia is:

> We acknowledge that difference is a strength and not a weakness, that compassion becomes our national virtue, and that we come to truly acknowledge and appreciate our indigenous past.

Is that a dream or a statement? Are they his personal thoughts for a vision that may provide greater opportunities for young people? I believe it is the former. He is expressing personal thoughts in a selfish way.

John Safran is a reasonably well-known media celebrity of questionable talent. His dream for Australia is:

> I'd like to see Australians have a more libertarian spirit, to value and understand the benefit of freedom of speech.

What does that mean? How does it contribute to the overall benefit of Australians? What does John Safran have to contribute to young people and their views, dreams and goals?

Sarah-Jane Bond is a project officer in indigenous affairs and a full-time student. I note there are a number of representatives of indigenous affairs and other sectional community organisations in this group. Her personal goal is:

> Proving to myself, and … the indigenous community, that I have got the skills to represent and advocate on women's issues, youth issues and artists' issues.

Women and artists issues are a strong cross-section of the Victorian community! How will her personal goals create jobs or increase Victoria's development? How will they cement Victoria's competitiveness in an ever-changing global environment? There are many more examples to which I do not have time to refer.

I now mention three positive comments from people who can contribute to the community. Adam Elliot is a former Haileybury student with whom I went to school.

He is a film-maker and is doing an exceptionally good job. His dream for Australia is:

> That the arts get stronger and acknowledged more. Instead of being swamped by American culture, that we recognise our artists more.

That is a wonderful statement. The minister may care to promote the ideals that confirm the individualism, enthusiasm and initiative of Australians rather than focusing on what is happening in other communities.

Jacqui Cooper, a world champion freestyle skier, said her dream for Australia is that:

> We become more accepting of each other regardless of age, race or any other factor. We are all people, living in the best country in the world; we should enjoy every minute of it while we can. Life is just too short.

That is the sort of fantastic comment we want to hear from young people.

Jacinta Allan, the member for Bendigo East in the other place, said her dream is:

> For Australia to become a republic. I'd like to see reconciliation in my lifetime.

That is a great contribution to the community!

Finally, the comments of the Honourable Gordon Rich-Phillips contradict completely those of Jacinta Allan. He said his dream is:

> To see Australia establish and consolidate its position in an increasingly competitive world while maintaining and enhancing the social fabric and cohesion in our community.

I could not have put it better myself!

Hon. G. B. ASHMAN (Koonung) — In the short time available I shall refer briefly to a document compiled by the Centre for Adolescent Health and the Royal Children's Hospital entitled 'Improving the lives of young Victorians in our community: a survey of risk and protective factors' and make some observations. The survey found some quite disturbing evidence of general youth disenchantment with the community and a significant level of disenchantment with the structure of the community in the Rowville–Lysterfield area, one of the zones studied.

The study identified factors that raise real concerns for the community. I hasten to add that what was identified is occurring not just in the Rowville–Lysterfield area; the results of the study are probably typical of what is occurring across outer suburban Melbourne, in Melton, Mill Park, Narre Warren, Pakenham, et cetera.

The Rowville community is made up almost entirely of double-income families, almost all of whom have two cars and quite high mortgages. It is quite an affluent area but many families have significant social problems. The survey showed a high level of community disorganisation over and above the metropolitan average. It suggests the community mores are favourable to drug use, it found evidence of a higher level of rebelliousness within family and society, the early initiation of problem behaviour, and interaction with antisocial peers.

Rowville was planned for development over 20 years but that development has been compressed into 5 to 10 years. While significant child and maternal care services were established very early, the youth services did not follow. That is indicative of what is happening across outer suburban Melbourne and has led to significant problems. The Reverend Kim Cain of the Uniting Church has been advocating for more youth services for some time. He has been very active in the church in creating opportunities for youth.

The area has a major shopping centre at Stud Park and the next nearest shopping centre and only cinema complex is at Knox City, some 5 to 8 kilometres away. There is no cinema and there are very few activities for young people in the Rowville area. The proposal to establish a skateboard rink typifies some of the difficulties. Everybody agreed that the skating rink should be built but with the application of the nimby — that is, not in my backyard — principle the rink did not proceed. There are transport problems. Young people have difficulty moving out of the area to access facilities in nearby municipalities and at Waverley which are 5 to 10 kilometres away.

People in the area need easier access to sporting facilities, cinemas and recreational activities for youth to help overcome many of the identified problems. Other studies have found that when young people have high self-esteem they move away from drug use, tobacco consumption and alcohol abuse. The Minister for the Arts in the other place was asked to give an indication of the arts facilities that might be available for the Knox region. In response she suggests that:

> Cultural organisations in outer metropolitan areas such as performing arts centres and galleries access support for programming initiatives through Arts Victoria's Touring Victoria program and other funding programs with a statewide field of interest.

I cannot recall a touring program ever coming to Knox. The minister said that professional productions and exhibitions are available in central Melbourne. That is 30 kilometres away for those young people — how do

they get there? The minister's response is not appropriate. An infrastructure must be created at a local level to support the local community and enable it to address the social problems that are being generated. I make that plea as part of this debate.

I am sorry the minister will not have an opportunity to further respond and outline what the government might do to address some of the problems. However, it is not just a problem in Knox — it is a problem in Berwick, Werribee, Melton and other outer metropolitan areas, and the community must find a quick solution to it. If we do not, in 20 or 30 years time, those young people will be heading up their own families and the ongoing problem will be in the realm of being impossible to rectify.

I commend the Honourable Peter Hall for bringing the motion to the house and look forward to it receiving the full support of the house.

Hon. I. J. COVER (Geelong) — It gives me great pleasure to speak in support of the motion in the time available to me. I echo the words of the Honourable Gerald Ashman in commending the Honourable Peter Hall for bringing the motion before the house.

The contributions of opposition members indicate that there is a genuine desire on this side of the house to assist the youth of Victoria. I also take this opportunity to thank the Minister for Youth Affairs for repeating in a new version his ministerial statement of 5 April. It may not have thrown any more light on how the government's policies and services are meeting the needs of the youth of Victoria but at least honourable members know the government is doing something. Although most of those things were instituted by the former Kennett government, it is good that the government is continuing some of those policies.

I turn now to a point made at the outset by the Honourable Peter Hall but not referred to in great depth, detail or length during the debate — that is, the family. As the Honourable Cameron Boardman pointed out, youth is often looked at in isolation as though it were some other sector. However, every young person starts in a family and if the government is to take a whole-of-government approach it is important that it integrate its youth and family policies. I acknowledge that in this day and age it is easy to talk about family problems or issues and the like but it is vital that an emphasis be placed on the importance of family to every young person in the state of Victoria. That will go a long way to assisting in many of the areas of youth development that the Minister for Youth Affairs wants to promote.

I again commend the Honourable Peter Hall and the other speakers on this side. I trust that our contributions will assist the government. I know the minister is prepared to take them on board even if at least one of the contributions from his side — that of the Honourable Theo Theophanous — was not useful or helpful to the minister's policy development.

Motion agreed to.

Sitting suspended 1.01 p.m. until 2.07 p.m.

QUESTIONS WITHOUT NOTICE

Basketball Victoria

Hon. BILL FORWOOD (Templestowe) — I refer the Minister for Consumer Affairs to her answer to Mr Furletti's question yesterday that she was not aware of any investigation into Basketball Victoria. Given that her consumer affairs adviser, Damian MacDonald, wrote a letter on this subject on her letterhead dated 8 February and that her chief of staff, Rob Acton, wrote a further letter on this subject on her letterhead on 7 April, is she asking Parliament to believe she does not know what her own staff are doing in her name?

Hon. M. R. THOMSON (Minister for Consumer Affairs) — It is obvious that staff act on my behalf on matters that come to me via correspondence. The procedure when answering queries from constituents about my portfolio area is one of acknowledgment and intention to follow up. The queries are then followed up by the department. As a matter of course I am briefed at the end. That is the procedure in practice for all ministers. That is the way it is dealt with. That is the way the case in question was dealt with. I have since had advice about the case.

Mineral sands deposits

Hon. D. G. HADDEN (Ballarat) — I refer the Minister for Energy and Resources to the recently announced exploration results for mineral sands resources in the Murray Basin. What are the potential economic benefits for Victoria?

Hon. C. C. BROAD (Minister for Energy and Resources) — The recent Mineral Sands Forecast 2000 Conference held in Melbourne provided an overview of exploration opportunities in mineral sands with a focus on the Murray Basin. For honourable members who are not aware, mineral sands includes commodities such as

rutile, zircon and ilmenite, which are used in the ceramics, glass and paint pigment industries.

The conference revealed further information about the increased potential of the Murray Basin. Australian heavy mineral exports are forecast to increase by 2 per cent in the 1999–2000 financial year to a total of $1.7 billion, and more importantly are predicted to rise by a further 35 per cent by the year 2004–05. I am advised by my department that overseas deposits are currently in decline, and that therefore the Murray Basin resource will become significant not only on a state and national scale but on an international scale.

Industry consultants Sinclair Knight Metz have determined that the Murray Basin reserves of heavy mineral sands amount to more than 60 million tonnes. Those reserves have been valued at more than $13 billion in today's prices, and that value is rising as further reserves are being progressively discovered.

One of the major participants in the recovery of heavy mineral sands is the company Craton Resources NL and its Douglas project, which is located some 25 kilometres south-west of Horsham, is anticipated to contain 11 million tonnes of heavy mineral sands, equivalent to approximately $3 billion, with production anticipated to commence as early as 2003.

The similarly sized Caple–Bunbury mineral sands field in Western Australia ultimately resulted in $5 billion in exports, including significant value adding through the downstream processing of raw mineral sands. The Victorian resources can be seen, in comparison with the fully developed Western Australian stream, to be significant.

Clearly this project potentially provides extensive employment and growth opportunities for the Horsham and Portland areas, if the decision is made for the sands to be exported through Portland. The growth areas would include processing, transport and port facilities. That would lead to the upgrading of existing facilities and an obvious injection of expenditure and enthusiasm into those regional centres. The Bracks government is committed to facilitating the development of these mineral sands in line with its commitment to growing the whole of the state, including rural and regional Victoria.

Basketball Victoria

Hon. M. A. BIRRELL (East Yarra) — I refer the Minister for Sport and Recreation to his answer yesterday to Mr Forwood when he said:

> I have not been made aware of the circumstances in relation to Basketball Victoria, but I shall ask my department to investigate those matters accordingly.

I ask the minister whether he has now investigated those matters and, if so, what was the response.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I have asked my department to investigate and it is currently pursuing inquiries.

Basketball Victoria

Hon. T. C. THEOPHANOUS (Jika Jika) — Will the Minister for Consumer Affairs inform the house whether there is any substance to the allegations made by a Mr Smeaton about the internal workings of Basketball Victoria?

Honourable members interjecting.

The PRESIDENT — Order! I ask the house to settle down. The question has been asked; the minister is entitled to answer it.

Hon. M. R. THOMSON (Minister for Consumer Affairs) — I have received advice from Consumer and Business Affairs Victoria (CBAV) about the allegations made by Mr Smeaton, and I am disappointed that the Honourables Bill Forwood and Carlo Furletti felt they should raise this issue in the house without raising it privately first because they cast aspersions upon Basketball Victoria and Lindsay Gaze.

Lindsay Gaze is not only a Victorian icon, he is an Australian icon. He has done more for basketball in this country than any other single individual. On approaches from Mr Smeaton, CBAV extensively investigated his allegations. It discovered that there have been some minor breaches of the act, which do occur from time to time, by a number of incorporated associations. Those matters have been dealt with in the same way as inadvertent breaches by other incorporated associations are rectified. It was most inappropriate that aspersions were cast on one of our national sporting heroes, particularly as there is nothing to the allegations.

Fuel: prices

Hon. R. M. HALLAM (Western) — Does the Minister for Consumer Affairs support or oppose Mr Savage's private member's bill on fuel pricing?

Hon. M. R. THOMSON (Minister for Consumer Affairs) — The government certainly understands and sympathises with the reason Mr Savage sees the need to introduce such a bill into Parliament. The government is extremely concerned about fuel pricing in country

Victoria. An inquiry is being conducted by the Australian Competition and Consumer Commission, and we are actively wanting to participate in that inquiry to ensure that we can ascertain the real problems associated with fuel pricing in country Victoria.

There is no simplistic answer to the problem. The data we have at this stage is inconclusive. The government will act in a reasoned and considered way once it has ascertained the results of the data collected throughout Victoria. The issue has been placed before the National Council of Ministers for Consumer Affairs for discussion as a national issue, and the government will be following up on that matter.

Industrial relations: workplace agreements

Hon. KAYE DARVENIZA (Melbourne West) — Is the Minister for Industrial Relations aware of a recent decision made by the Australian Industrial Relations Commission raising concerns about the securing of majority votes for non-union certified workplace agreements made under the previous government? If so, what allegations have been raised about the process?

Hon. M. M. GOULD (Minister for Industrial Relations) — The Australian Industrial Relations Commission's recent decision on public — —

Honourable members interjecting.

The PRESIDENT — Order! The house appears to be particularly stroppy today. This may be the time to invoke the 20-minute rule. Members are advised that question time will finish at 2.27 p.m.; the number of questions asked in that time is up to the house.

Hon. M. M. GOULD — In the commission's recent decision on public service salaries it found circumstances leading to the approval of some non-union certified agreements under the Kennett government were unusual. An examination of claims made by the Community and Public Sector Union (CPSU) about Australian workplace agreements (AWAs) for three government departments found they were not only unusual but downright shifty.

I have been advised that the commission came to its view after hearing evidence from the CPSU about voting irregularities in securing a majority support for agreements. Among the CPSU's allegations were claims that some agreements did not meet the no-disadvantage test; they were not endorsed by a valid majority; the 14-day voting period notice had not been complied with; a number of employees who would not be covered by the agreements had voted; agreements had not been properly explained to staff; and dispute resolution requirements were not satisfied.

The commission found that the issues were so important that they were cited as a factor in its decision to grant a pay rise to public servants subject to the agreements. Initially the Kennett government acted to doctor a consultant's report to cover up staff concerns about the AWAs; now allegations made about trickery and deceit to get its way in negotiations with its employees have cost taxpayers unexpected wage increases because of the way the matter was handled.

I assure the house that the Bracks government will act to restore integrity to the process of negotiations and it has already — —

Honourable members interjecting.

The PRESIDENT — Order! I did not hear the final three words.

Hon. M. M. GOULD — I said it has abolished the AWAs.

Industrial relations: Gordon and Gotch dispute

Hon. D. McL. DAVIS (East Yarra) — I refer to the recent callous response of the Minister for Industrial Relations to the Gordon and Gotch dispute in Burwood and to a report in the *Australian Financial Review* following an incident, which states:

> Two people were rushed to hospital after the ensuing brawl and four others received medical treatment …

What action has the minister taken to ensure that union picket lines are free of violence?

Hon. M. M. GOULD (Minister for Industrial Relations) — The honourable member would be well aware that Victoria comes under the Workplace Relations Act, which encourages conflict rather than — —

Honourable members interjecting.

Hon. M. M. GOULD — I am happy to make available to Mr Davis privately the police record of what happened there. I do not think he would then be asking the questions because the injuries occurred as a result of the company attempting to break through the picket line at Gordon and Gotch. The government has regular contact with the police industrial liaison officer — that is, the police officer responsible for industrial pickets. We continually discuss with them the concern to ensure that pickets are peaceful, as is the

legal and legitimate entitlement under the Workplace Relations Act.

Sport and Recreation Victoria: web site

Hon. G. D. ROMANES (Melbourne) — Will the Minister for Sport and Recreation inform the house of any action he is taking to ensure sport and recreation information is available online?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am pleased to advise the house that the government has initiated a number of exciting new activities to ensure that Sport and Recreation Victoria provides online access to its services. The new Sport and Recreation Victoria (SRV) web site address is www.sport.vic.gov.au. I recently launched that new site, which is one of the few Australian sites that can meet the demanding guidelines developed by the World Wide Web Consortium Web Accessibility Initiative — a bit of a mouthful! — and I am proud to tell the house that the site will provide a high level of accessibility to people with vision and motor disabilities.

In addition, the site includes new features such as a section called World Class Sport, which consolidates information on major events, facilities and training opportunities in Victoria; and a section called Get Active — no doubt some honourable members could benefit from familiarising themselves with that site — which encourages people to participate in sport and active recreation.

The site also includes details of all organisations listed in the SRV directory and online forms, and organisations can use it to update details. It includes a facility for online ordering of SRV publications. The site was visited by more than 5100 hits in April; 68 per cent of those hits to the site came from outside the Australia–Oceania region, indicating that the SRV web site is an important ambassador for Victoria overseas.

I am pleased to advise the house that I have recently approved funding for another web site for the outdoor recreation industry. It will be a vital reference for outdoor recreation organisations and the public. The government is working with the Outdoor Recreation Centre to develop the site.

Industrial relations: Gordon and Gotch dispute

Hon. J. W. G. ROSS (Higinbotham) — I refer to the previous answer given by the Minister for Industrial Relations. Given the separation of powers in Victoria, how was the minister able to get control of the police record and on what authority will she make it public?

Hon. M. M. GOULD (Minister for Industrial Relations) — As I advised in my previous response, a police report was given to me to advise me on what had transpired at the Gordon and Gotch picket line. I told the house I would privately show it to the Honourable David Davis. As I said before, we are in constant contact with the police officer who is responsible for industrial relations issues with respect to picket lines. We are constantly speaking to him to ensure that the safety of the community is protected on legitimate and legal picket lines.

Hon. D. McL. Davis — On a point of order, Mr President, the minister was asked a question about the separation of powers, and how having regard to the separation of powers, she had obtained the document.

The PRESIDENT — Order! I find there is no point of order.

Industrial relations: workplace agreements

Hon. R. F. SMITH (Chelsea) — I refer the Minister for Industrial Relations to her previous answer regarding non-union collective agreements. What action is the government taking to ensure the integrity of future collective agreements between the government and public sector unions?

Hon. M. M. GOULD (Minister for Industrial Relations) — The Bracks government is about restoring the integrity of government and enhancing the level of consultation with employers, unions and the public.

Following the question mark raised over the procedures that led to the final certification of non-union collective agreements by the Kennett government, this government is working to restore fairness and honesty in its dealings with employees. That is also consistent with the government's honest broker role.

The government has commenced the development of a framework of principles that will apply to the process of negotiating public sector enterprise agreements. The framework will be developed in consultation with public sector unions, managers and department industrial liaison officers, or ILOs. It will be consistent with the government's industrial relations framework, which promotes workplace relations based on consultation, cooperation and collective bargaining and which recognises the legitimate role of unions in the workplace and the right of employees to have their interests considered. It will ensure that public sector managers act in a manner that is consistent with government policy. It will ensure that the genuine consent of employees voting for agreements is obtained.

Given the government's commitment to consult widely about industrial relations issues in the state, I believe this set of negotiating principles will provide a basis for future fruitful negotiations with the public sector unions on the terms and conditions of employees.

QUESTIONS ON NOTICE

Answers

Hon. M. M. GOULD (Minister for Industrial Relations) — By leave, I move:

> That so much of the standing orders as require answers to questions on notice to be delivered verbally in the house be suspended for the sitting of the Council this day and that the answers enumerated be incorporated in *Hansard*.

I shall read out the numbers of the questions that have been answered: 407, 408, 409, 410, 411 and 412.

Motion agreed to.

VICTORIAN LAW REFORM COMMISSION BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. M. R. THOMSON (Minister for Small Business).

STATE TAXATION ACTS (MISCELLANEOUS AMENDMENTS) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. C. C. BROAD (Minister for Energy and Resources).

PSYCHOLOGISTS REGISTRATION BILL

Second reading

Hon. M. M. GOULD (Minister for Industrial Relations) — I move:

> That this bill be now read a second time.

The current Psychologists Registration Act was passed in 1987. It establishes the Psychologists Registration Board, provides for registration and discipline of psychologists and probationary psychologists, and for approval of registered psychologists as specialist psychologists.

Review of the act was undertaken during 1997–98 in accordance with national competition policy requirements and as part of a rolling departmental review of health practitioner regulation. During review of the act, consultation occurred with a large number of organisations and professional groups.

The review recommended that restrictions on statutory registration were necessary to achieve the objectives of the legislation and should be retained. Restrictions on specialist approvals, inoperative provisions relating to psychological tests and consent to use of certain names by bodies corporate and similar entities were not considered necessary to achieve the objectives of the legislation.

In view of the substantial inconsistencies between the act and more modern health practitioner registration acts, the review recommended it be repealed and a new act introduced based on the model contained in the Medical Practice Act 1994 and incorporating the above recommendations.

Accordingly, the principal purpose of this bill is to protect the public by providing for the registration of psychologists and to enable investigations into the professional conduct and fitness to practice of registered psychologists.

The bill regulates advertising relating to provision of psychological services, establishes the Psychologists Registration Board of Victoria and the Psychologists Registration Board Fund and repeals the current Psychologists Registration Act 1987.

The bill reflects the model of health practitioner regulation contained in the Medical Practice Act 1994, together with recent improvements and amendments to that model made pursuant to the Health Practitioner Acts (Amendment) Bill 2000.

The bill provides for a nine-member board, whose principal functions will be the registration of psychologists and investigation into the professional conduct and fitness to practise of those persons. The current board is replaced with a new incorporated board of the same name, which may appoint its own staff and administer its own funds.

The bill provides for probationary, specific and general registration, and contains criteria which facilitate mutual recognition.

Probationary registration enables persons who have completed approved courses of study to undertake a period of supervised study or training prior to general registration. During the period of probationary registration, these persons must not claim to have, or hold themselves out as having, general registration.

The probationary registration provisions are intended to ensure the new board maintains scrutiny of training and supervision arrangements undertaken by probationary registrants. The bill provides that general registration will usually follow completion of a period of probationary registration.

Specific registration provisions are similar to those contained in other health practitioner registration legislation, and permit limited registration of persons who hold qualifications in psychology which do not qualify them for general registration. While specifically registered, these persons must not claim to have, or hold themselves out as having, general registration.

It is an offence against the act for persons who are not generally or specifically registered to use the title 'registered psychologist' or 'psychologist'.

The bill enables the board to impose any conditions, limitations or restrictions it thinks appropriate on the above grants of registration. It also requires registrants to return current certificates of registration for endorsement with any conditions, limitations or restrictions imposed.

The new board will also have powers to require evidence of adequate arrangements for professional indemnity insurance as a condition of general and specific registration and the board can issue guidelines about minimum terms and conditions of insurance.

The bill also provides a mechanism for the board to note qualifications on the register in addition to those required for registration. In view of the complex nature of psychology services, it is the intention that this provision operate to assist consumers who may seek information from the board in relation to registrants with qualifications in specialised areas of psychological practice.

The bill contains a legislative definition of unprofessional conduct, which is consistent with other health practitioner legislation. In addition, core provisions relating to informal and formal hearings and appeals to the Victorian Civil and Administrative Tribunal are consistent with those in other health practitioner legislation.

Advertising restrictions are included in the bill to further ensure protection of the public, and the bill enables the board to prepare guidelines for registrants on minimum acceptable standards for advertising of psychological services. These guidelines are to be published in the *Government Gazette* by order of the Governor in Council. In addition, there are powers for courts to order corrective advertising and impose penalties for continuing offences.

The new board will have powers to require that registered persons and applicants for registration provide information to the board on any criminal convictions and court ordered settlements in negligence cases and to advise the board if they are committed to stand trial for any indictable offence.

These provisions are intended to strengthen the board's ability to address issues which may affect registrants' ability to safely and competently provide psychological services.

In addition, the board will have powers to receive and investigate complaints, conduct hearings and make findings and determinations in relation to practitioners who have let their registration lapse.

A further measure to enhance public safety is the board's ability to issue and publish a code for guidance on recommended standards of practice in consultation with members of the profession. The board may refer to this code as evidence when determining whether unprofessional conduct has occurred.

I commend this bill to the house.

Debate adjourned on motion of Hon. R. A. BEST (North Western).

Debate adjourned until next day.

HEALTH PRACTITIONER ACTS (AMENDMENT) BILL

Second reading

Hon. M. M. GOULD (Minister for Industrial Relations) — I move:

That this bill be now read a second time.

The Medical Practice Act 1994 and the Dental Practice Act 1999 provide an effective legislative framework for regulation of these professions.

The purpose of this amendment bill is to update the Medical Practice Act to ensure its compliance with

competition policy principles and to ensure a responsive and modern legislative framework, which supports the provision of safe and high quality medical services.

In addition, the bill amends the indemnity provisions in the Dental Practice Act together with the board's power to prevent publication of names of practitioners before the board on disciplinary hearings.

Since the passage of the Medical Practice Act in 1994, there have been a number of revisions to the standard provisions governing regulation of health practitioners, with the passage of legislation regulating optometrists, osteopaths, chiropractors, podiatrists, physiotherapists and dental practitioners.

The national competition policy review process has provided the opportunity to review and in some cases strengthen provisions regulating medical practitioners as well as to introduce modern provisions to regulate advertising of medical services, requirements for professional indemnity insurance and an updated definition of unprofessional conduct.

The Medical Practitioners Board will have powers to require that registered practitioners and applicants for registration provide information to their board on any criminal convictions, court-ordered settlements in medical negligence cases and if they are committed to stand trial for any indictable offence.

This is intended to strengthen the board's ability to address any issues which might affect the registrant's ability to provide safe and competent medical services to the community.

The Medical Practitioners Board will also have powers to require evidence of adequate arrangements for professional indemnity insurance as a condition of initial and continuing registration.

The Medical Practitioners Board will have the power to issue guidelines about minimum terms and conditions of these insurance arrangements and to recognise mutual indemnity fund arrangements. Arrangements acceptable to the board may also vary depending on whether registrants are covered by their employers' insurance arrangements or are in non-clinical contact roles and require a lesser level of cover.

The powers of the Medical Practitioners Board are strengthened and streamlined to receive, investigate and conduct hearings into complaints of unprofessional conduct and to impose sanctions where necessary.

I do not propose to outline these provisions in detail. They are designed to ensure that the board has powers to:

receive and investigate complaints and conduct hearings and make findings and determinations in relation to practitioners who have let their registration lapse;

obtain warrants for the entry and search of premises;

select from a panel of experts appointed by Governor in Council members to sit on hearing panels;

require a practitioner undergo further education and training arising from an informal hearing;

in the interests of justice suppress the identity of a practitioner against whom a complaint has been made, up until a hearing panel makes a determination; and

require practitioners to return their current certificates of registration for endorsement with any conditions, limitations or restrictions imposed.

The bill provides that the Dental Practice Board will only be able to suppress the name of a dental practitioner who is before the board against whom a complaint has been made where the interests of justice require such a suppression.

A further measure to enhance public safety is the Medical Practitioners Board's ability to issue and publish codes for guidance as to recommended standards, in consultation with members of the professions. These codes may outline what are considered by the board to be acceptable minimum standards of practice. The board may refer to these codes as evidence when determining whether unprofessional conduct has occurred.

It is expected that development of these codes will be done with appropriate consultation with the profession and be based on sound evidence.

The bill provides for registration protection for those medical practitioners who cross into Victoria from other states and territories to assist in organ recovery, patient transport or to provide emergency treatment.

The provisions of the Medical Practice Act relating to the establishment, powers and functions of the Intern Training Accreditation Committee (ITAC) are to be repealed.

The Medical Practitioners Board will retain its powers to provisionally register interns and approve intern training positions in hospitals, but it will have the power to delegate those advisory functions previously undertaken by ITAC to an external body, such as the new Postgraduate Medical Council of Victoria.

Strengthened advertising provisions are included in the bill to further ensure protection of the public. The bill amends the prohibitions on advertising in the Medical Practice Act.

The bill creates a power for the Medical Practitioners Board to prepare guidelines for registrants on minimum acceptable standards for advertising of medical services and for these guidelines to be published by order of Governor in Council in the *Government Gazette*.

There are powers for courts to order corrective advertising and impose penalties for continuing offences, as well as an extension to three years of the limitation period for prosecution of such offences.

The bill introduces a power for the Medical Practitioners Board to require that medical students be registered while undertaking their training where they have direct clinical contact with patients. The board will have the power to conduct investigations, informal hearings and to impose conditions, limitations or restrictions on the clinical contact roles of medical students who are found to be incapacitated or alcohol or drug dependent.

It is not intended that the board publish the addresses of medical students on that part of the register that is open to the public.

The bill observes Victoria's obligations under the national agreements on mutual recognition and competition policy.

Development of the bill has involved an extensive process of consultation and discussion. The current boards and professional associations have been most helpful and constructive in shaping these amendments.

I commend this bill to the house.

Debate adjourned on motion of Hon. R. A. BEST (North Western).

Debate adjourned until next day.

HEALTH SERVICES (GOVERNANCE) BILL

Second reading

Hon. M. M. GOULD (Minister for Industrial Relations) — I move:

That this bill be now read a second time.

This bill is designed to implement a key commitment in the government's health policy. That commitment is to make public health care agencies in the metropolitan area more community focused and responsive to the needs of users of health services, and to reduce the health care network bureaucracy.

The Metropolitan Hospitals Planning Board initially developed the concept of networking health services in the metropolitan area. In 1995, over 30 former separate public hospitals in the metropolitan area were initially combined into seven groups of hospitals, each with a single board of governance.

The government agrees that networking of hospital services provides many benefits for patients, clinicians and the health system as a whole. However, contrary to the vision of the planning board, some health care networks have become too large and unwieldy. Their administration is seen as remote from the people at the very heart of health service delivery — patients and their families, and health care workers.

In order to determine the best way of achieving the government's objectives, last November the Minister for Health established the ministerial review of health care networks, chaired by one of Australia's foremost health policy experts, Professor Stephen Duckett. Professor Duckett was ably assisted by a panel consisting of Mr Stan Capp, the chief executive of Barwon Health; Ms Ella Lowe, director of nursing services at the Peninsula Health Care Network; Dr Allan Zimet, of John Fawkner Oncology; and Ms Meredith Carter, executive director of the Health Issues Centre as well as a small team of departmental officers led by Ms Penny Sharwood. The panel has worked extremely well and I wish to thank all those involved in the review process for their efforts.

The review's principal task was to advise the government on the optimal future configuration, governance and management arrangements for metropolitan public hospitals, and mechanisms to ensure coordination of health services, promotion of consumer involvement and accountability for quality of care.

The review undertook wide public consultation and its work generated an enormous amount of public interest. Over 160 written submissions were received in response to its initial public advertisements. After considering these submissions, the panel published an interim report in February of this year. Public consultation and involvement in the review process was facilitated by the creation of a home page for the review on the Internet. During February alone, the Internet site received 18 695 hits and over 8000 of these visitors downloaded a copy of the interim report.

The interim report outlined the review panel's initial thinking on the optimal configuration of metropolitan hospital structures, new governance arrangements for metropolitan hospitals and proposals for enabling legislation to facilitate the change process. It also contained detailed proposals for legislation to facilitate the reform process in a speedy and efficient manner. This bill is based on those proposals. It is an enabling bill in that it does not identify the new hospital configurations, but provides mechanisms to assist the implementation of change.

I am aware that the review has generated considerable expectation and some apprehension in the public hospital sector. It is therefore vital that the government is positioned to implement change quickly, once the review process is finalised. That is one of the key objectives of this bill.

Metropolitan health services

The bill enables the creation of new public statutory health care agencies to be known as metropolitan health services, and provides mechanisms to enable existing health care networks to be transformed into metropolitan health services. It will insert a new division 9B into part 3 of the Health Services Act 1988 which sets out the governance arrangements, functions and powers of metropolitan health services.

Metropolitan health services are to be governed by boards of directors appointed by the Governor in Council on the recommendation of the Minister for Health. Directors will be appointed for their capacity to fulfil a governance role.

Each board must include at least one person who is able to reflect the perspectives of users of health services. This is particularly important to ensure that boards are consumer focused and do not lose sight of the interests of the people whom the agency exists to serve.

The functions outlined in the bill reflect the government's vision that metropolitan health services will:

ensure that the needs of patients and clients are met in a responsive manner;

provide high quality care and continually strive to improve quality and foster innovation;

collaborate with each other and a range of other health and welfare agencies and local government; and

minimise unnecessary duplication of public health services and work to maximise system-wide efficiencies.

For the first time, there will be a clear statutory duty on boards to ensure that effective systems are in place to safeguard the overall quality of care provided and to ensure that action is taken to address any problems identified with service quality. The bill also requires boards to establish and maintain effective systems to ensure that health services provided meet the needs of their communities, and that the views of users of health services are taken into account.

The bill requires boards of metropolitan health services to appoint at least one community advisory committee and a primary care and population health advisory committee. These committees will enable metropolitan health services to benefit from active community input and facilitate effective linkages with primary care providers and population health strategies.

Restructuring of health care networks

The bill will insert a new part 9 into the Health Services Act to enable the efficient transformation of health care networks into metropolitan health services. This new part has been designed specifically to facilitate a major system-wide change. It contains mechanisms to deal with two distinct scenarios.

The first scenario involves the transformation of an existing network into a new metropolitan health service, without disaggregating that network. Under proposed new division 2 of part 9, a new metropolitan health service may be created by order in council. When such an order is made, proposed new division 5 of part 9 enables the staff, property, rights and liabilities of a former network to become staff, property, rights and liabilities of the new metropolitan health service. It also enables the incorporation of the network to be cancelled. In these circumstances, the new metropolitan health service will simply become the successor in law of the former network for all purposes, and will be able to benefit from trusts in relation to the former network and all its predecessor agencies. I will deal specifically with the issue of trusts shortly.

The second scenario is the disaggregation of existing networks and the allocation of staff, property, rights and liabilities to new health care agencies. Aside from enabling the creation of new metropolitan health services, the bill also permits the establishment of new community health centres. This scenario is more complex because staff, property, rights and liabilities will need to be divided and allocated to various newly created agencies.

Proposed new division 6 of part 9 provides for the making of orders and instruments which allocate specified staff, property, rights and liabilities of a network which is being disaggregated to designated health care agencies. Those agencies then become the successors in law of the former network in respect only of the property, rights and liabilities which are actually transferred to them. The designated agency also becomes the employer of staff who are transferred to it.

While the bill does enable the existence of multiple concurrent successors in law, it does not enable two or more agencies to be joint successors in law as this is considered to be unworkable.

An administrator may be appointed to a network which is to be disaggregated. In addition, a network which is undergoing disaggregation will continue to exist as a legal entity until it is abolished by order in council under proposed new section 223 of the act. The incorporation of a network will only be cancelled when, as far as practicable, all property, rights and liabilities have been allocated to other agencies. If there are any residual property, rights and liabilities — other than those under trusts — they will revert to the Crown.

This will enable the abolition of the entity to occur efficiently, without the need for a report to be prepared on options for continuing the services of the agency and a period of public consultation. Compliance with this process would otherwise be required under section 62 of the Health Services Act which sets out the ordinary procedures for closure of public health care agencies.

I wish to emphasise that part 9 is intended to be transitional in nature. Accordingly, new metropolitan health services and community health centres can only be created under this part within 12 months from the date of commencement of the bill. Any subsequent changes to hospital structures will need to take place pursuant to the ordinary provisions of the Health Services Act.

However, the bill provides sufficient flexibility to enable transfer of property, rights and liabilities to the new health care agencies established under part 9 beyond the initial 12-month period. In addition, network administrators will have the capacity to operate any health services which are not immediately transferred to another agency, as a transitional measure. This recognises that there may be special circumstances in which not all rights, liabilities and property may be transferred within 12 months from the date of commencement of the bill.

In relation to both of the scenarios I have described, the bill contains provisions which operate to ensure that nothing done under its provisions is to be regarded as, for instance, placing any person in breach of an act or law or any agreement; causing any agreement to be void and unenforceable; or of releasing any party from obligations given; simply because there has been a change in the legal status of the health care agencies concerned. The aim of these provisions is to preserve existing legal arrangements as far as possible, despite the change in the legal status and governance arrangements of health care agencies effected by this bill.

Statement under section 85(5) of the Constitution Act 1975

I wish to make a statement under section 85(5) of the Constitution Act 1975.

Clause 11 inserts a new section 226 into the Health Services Act 1988. Section 226 provides that nothing done under division 2, 3, 5 or 6 of part 9 or section 190 gives rise to any cause or right of action or application before any court or tribunal. Clause 10 inserts a new section 157G which provides that it is the intention of section 226 to alter or vary section 85 of the Constitution Act 1975.

The reason for altering or varying section 85 is to ensure that nothing done under divisions 2, 3, 5 or 6 of new part 9 or new section 190, including the following —

the creation of new public health care agencies;

the transformation of metropolitan health care networks into metropolitan health services;

the disaggregation and abolition of health care networks; or

the appointment of an administrator —

is delayed or prevented by legal proceedings. This provision is considered necessary to enable the essential restructuring of Melbourne's public hospital system to

proceed in an effective and coordinated manner, and without disruption to the provision of services.

Trusts

The bill also contains provisions to preserve the operation of trusts, and to transfer their application to the appropriate successor of a health care network. This means that the appropriate successor will be eligible or entitled to benefit from a trust. This is intended to ensure that a trust does not fail simply because of the changes to the legal structures which govern hospital services. Donations for public health care can therefore continue to be used for the benefit of the community.

Over time there have been a series of alterations to the corporate status of public hospitals within Victoria. The act currently contains provisions to ensure that, where an agency is amalgamated or aggregated, trusts in relation to that agency are to be applied in favour of its successor.

Where a trust was created in relation to an agency which was amalgamated, and there has been a sequence of subsequent amalgamations or aggregations involving any of the various successors of that agency, the ultimate successor of all of these former agencies is able to benefit under that trust.

The act currently provides that the health care networks now in existence are, for the purposes of trusts, the successors of the agencies that they immediately replaced, and also of all of the former agencies that, at any time, were amalgamated, as part of the chain of succession leading up to a network.

The bill builds upon these provisions, by applying a similar model in relation to the transition to metropolitan health services. It does this in two ways.

The first situation addressed in this bill is where a network's incorporation is cancelled and it is succeeded by one metropolitan health service. In this instance, all trusts that apply in relation to the network, or its former agencies, will apply to the metropolitan health service. This is appropriate as it will be assuming responsibility for the services previously provided by the network.

The second situation is where a network is disaggregated, and is therefore succeeded by more than one agency. It would not be appropriate for the bill to transfer the eligibility or entitlements under all relevant trusts to one particular successor. Instead, it creates powers for orders to be made by the Governor in Council, to ensure that trusts are to be applied in relation to the most appropriate successor.

In 1995 the original metropolitan hospitals were established. On 1 August 1995 these original metropolitan hospitals were aggregated, to form new metropolitan hospitals known as health care networks. It is from this date that it became the norm for a number of hospital campuses in the metropolitan area to be governed by one incorporated body.

Therefore new section 214 of the act provides that a new metropolitan health service is to benefit from trusts in relation to a specified original metropolitan hospital. It is also to benefit from trusts that apply to all of the former agencies of that original metropolitan hospital.

For this to occur, an order of the Governor in Council must be made specifying which metropolitan health service is to be the successor of each original metropolitan hospital, for the purposes of any trust. Regard must be had by the minister to the campuses which are to be operated by the new metropolitan health service, in recommending that such an order be made. This is intended to enable trust funds or property to follow the campus.

New section 215 applies in the case of metropolitan hospitals which were known as health care networks, and which were created on and after 1 August 1995. Orders may be made which will have the effect of ensuring that trusts specified in the order in relation to a particular network are to be applied in favour of the metropolitan health service which is specified in the order. Again, the minister must have regard to the campuses which are to be operated by the metropolitan health service in recommending that an order be made.

Section 5A of the act will continue to apply to all trusts which are applied in accordance with this act. This makes it clear that, if the person who has created the trust specified the particular purposes of the agency for which the trust was created, such as the treatment of children, then the trust may only be applied to the successor agency for a similar or corresponding purpose.

Conclusion

This bill is designed to improve the effectiveness of Victoria's metropolitan hospital system by bringing public health care agencies closer to the communities they serve, and injecting a renewed spirit of collaboration and cooperation among these agencies. It is vital to ensure that the Victorian health system is responsive to community needs, accessible to the population it serves and continues to provide high quality care.

I commend the bill to the house.

Debate adjourned on motion of Hon. R. A. BEST (North Western).

Debate adjourned until next day.

SUPERANNUATION ACTS (AMENDMENT) BILL

Second reading

Hon. M. M. GOULD (Minister for Industrial Relations) — I move:

That this bill be now read a second time.

The purpose of this bill is to introduce legislation to implement the commonwealth superannuation contributions tax on Victorian public sector superannuation schemes and make miscellaneous amendments to the Emergency Services Superannuation Act 1986, the Government Superannuation Act 1999 and the Parliamentary Salaries and Superannuation Act 1968.

With the passing of commonwealth legislation on 5 June 1997, certain contributions called surchargeable contributions made to a superannuation fund on behalf of high-income earners after 7.30 p.m. on 20 August 1996 became subject to a superannuation contributions tax, known as surcharge. Because the surcharge is imposed on the fund, legislation is being introduced to allow Victorian public sector superannuation schemes to recover the surcharge from members. This legislation will bring Victoria into line with every other state and the commonwealth as this government believes it is only fair and proper that members of Victorian public sector superannuation schemes pay the surcharge like everyone else, and it will save Victorian taxpayers an estimated $3 million a year.

The Victorian public sector superannuation schemes affected by this legislation are the defined benefit schemes of:

the Parliamentary Contributory Superannuation Fund;

the revised, new, transport and state employees retirement benefit schemes of the State Superannuation Fund;

the Emergency Services Superannuation Scheme; and

the accumulation scheme Essplan — including beneficiary accounts held within Essplan.

For defined benefit scheme members, a surcharge debt account will be established by the fund for each member to which interest will be applied to the balance as at 30 June each year. The rate of interest is the same as the rate set by the commonwealth under its surcharge legislation — that is, the 10-year bond rate.

When the benefit is due to be paid to a defined benefit scheme member, provisions are to be inserted to allow trustee discretion to apply to determine how much of the outstanding debt is to be recovered from the member's benefit payment. Trustee discretion is provided to cater for circumstances when a member's final benefit varies substantially from the benefit assumptions that had been used for surcharge assessment each year. The trustee discretion criteria are based on the same criteria that the commonwealth has given its own fund administrators — that is, the trustee must have regard to:

the surcharge debt balance;

the value of the employer-financed component of the benefit;

the values of the benefit that were assumed likely to be payable to the member on exit when working out the surchargeable contributions each year;

whether the person has or had qualified for the maximum benefit; and

any other relevant matters.

Trustee discretion also imposes a cap of 15 per cent of the post-20 August 1996 employer-financed portion of the benefit, with the member liable to pay the lesser of the amount in the surcharge debt account or the 15 per cent cap. Any outstanding surcharge debt balance is paid for by the fund. Trustee discretion guidelines will be put in place by each fund administrator to outline the method of approach for the application of the discretion required under the legislation.

Although Essplan is fully funded, for surcharge purposes it is treated as part of the unfunded defined benefits scheme, the Emergency Services Superannuation Scheme. As a result, surcharge debt accounts will be established by the fund for each Essplan member with interest, at the 10-year bond rate, being applied to the balance as at 30 June each year. When the benefit is due to be paid to the member, the member's benefit will be reduced by the amount outstanding in the member's surcharge debt account. No legislative amendment is required to give the board the power to recover such debt as current provisions already allow any tax paid or payable by the board in

respect of contributions to be deducted from an Essplan member's account.

Any defined benefit scheme or Essplan member who has a surcharge debt account may reduce the amount outstanding in his or her debt account by prepaying part or all of the debt at any time. This prepayment will be remitted to the Australian Taxation Office by the fund and the debt account reduced accordingly.

When the legislation is enacted, the surcharge recovery provisions will apply to all current members who have had any surcharge debt assessed on surchargeable contributions since 20 August 1996.

As surcharge liability is calculated on a member's adjusted taxable income for each financial year, surcharge assessments made by the Australian Taxation Office may not be received until at least one or two years after a member exits a scheme.

Where members have exited their scheme prior to enactment, the commonwealth surcharge legislation requires any surcharge paid by the fund but not recovered from the member's benefit to be reported to the Australian Taxation Office as additional surchargeable contributions for that member as the non-recovery of debt is deemed to be an additional employer-financed benefit to that former member.

Where a member has already taken or takes all of his or her benefit in cash, any surcharge assessed after exit becomes the responsibility of that former member. If the former member has rolled over his or her benefit into another superannuation fund, it becomes the responsibility of that new superannuation fund to pay the surcharge debt to the Australian Taxation Office and to reduce the member's account balance accordingly. For beneficiary account holders who have rolled over benefits within Essplan, the proposed legislation will allow the beneficiary account to be reduced by the amount paid to the Australian Taxation Office at the same time the payment is made by the fund.

Where benefits have been deferred within the State Superannuation Fund or under the Superannuation (Portability) Act 1989, then the fund is responsible to pay any surcharge assessed after exit to the Australian Taxation Office because the fund is still the holder of the surchargeable contributions. The payment by the fund to the Australian Taxation Office must be within one month of receipt of the assessment. To allow the fund to recover that payment from the member's deferred benefit, legislative amendments are to be inserted to give the fund administrator the power to actuarially reduce a member's deferred benefit for the purposes of surcharge recovery.

Where a former member is in receipt of a pension entitlement, provisions are being inserted into the governing rules of defined benefit schemes to allow that former member to elect to commute a portion of that pension entitlement to pay the debt. A time limit of three months from date of assessment is to be applied to any election request. The fund administrator is provided with the power to actuarially reduce the member's pension entitlement accordingly.

Provisions are being inserted into the Emergency Services Superannuation Act 1986 and the Government Superannuation Act 1999 at the request of the Emergency Services Superannuation Board and the Government Superannuation Office to make a number of miscellaneous amendments relating to minor administrative matters.

In the Emergency Services Superannuation Act 1986, one amendment will insert a provision to apply the standard time limit of 28 days for application for review by the Victorian Civil and Administrative Tribunal. This will bring the Emergency Services Superannuation Act 1986 in line with all other Victorian acts governing public sector superannuation which were amended to apply this 28-day time limit when VCAT became the successor to the Administrative Appeals Tribunal in July 1998.

An amendment is to be inserted in the Emergency Services Superannuation Act 1986 to allow a death benefit payable from a beneficiary account held within Essplan to be paid to either or both the member's legal personal representative and dependant/s. Current provisions only allow the beneficiary account balance to be paid to a legal personal representative. The proposed amendment is in line with all other death benefits payable under the act and with commonwealth superannuation law.

The definition of 'current equivalent of salary on termination of service' in the Emergency Services Superannuation Act 1986 is also to be amended. This definition applies to a number of uncommon benefits for former contributors throughout the act. The proposed amendment will clarify that the word 'salary' in the definition means 'final average salary' — that is, the average over two years — which is the interpretation that the board applies to this definition and is the salary used to calculate benefits to current contributors to the Emergency Services Superannuation Scheme.

In the Government Superannuation Act 1999, amendments are being inserted to provide ongoing cover of the specified standards relating to preservation and early release of benefits to members of the MTA Superannuation Fund. When the Public Sector Superannuation (Administration) Act 1993 was repealed on 1 July 1999, a provision was inserted in the Government Superannuation Act 1999 to provide continuing coverage of benefit provisions for MTA Superannuation Fund members. That substituting provision in the Government Superannuation Act 1999 was also intended to provide continuing coverage for these members in relation to any standards specified for preservation and early release of benefits. The proposed amendments will provide this continuing coverage by linking the reference to 'specified standards' to mean those specified under the Transport Superannuation Act 1988.

Amendments are also being made to the Government Superannuation Act 1999 to allow recovery of surcharge assessed against a member of the MTA Superannuation Fund and to correct an incorrect reference to a subsection under section 8 of that act.

An amendment is being made to the Parliamentary Salaries and Superannuation Act 1968 to make provision for the chairman of the parliamentary Economic Development Committee to receive an additional salary, consistent with the entitlement of a chairman of a joint investigatory committee. The additional salary will be payable to the Chairman of the Economic Development Committee from the date the Economic Development Committee was established until that committee ceases to operate.

In conclusion, this bill implements the requirements of the commonwealth's superannuation contributions tax, otherwise known as the surcharge. These changes bring Victoria into line with other states and will save taxpayers up to $3 million per annum. When combined with other changes to superannuation announced in the 2 May budget, they confirm the extent of the government's reform agenda in superannuation.

I commend the bill to the house.

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

Debate adjourned until next day.

TRANSPORT (AMENDMENT) BILL

Second reading

Hon. C. C. BROAD (Minister for Energy and Resources) — I move:

That this bill be now read a second time.

The primary purpose of this bill is to repeal or amend various sections of the Transport Act to remove references to the transport functions of the Public Transport Corporation. The bill also makes a number of consequential amendments to other acts.

As a result of the franchising of public transport to private operators, the Public Transport Corporation no longer provides any public transport services or owns land on which tram and train services are provided to the public.

The corporation therefore no longer needs the wide range of powers and functions it exercised when it was the main provider of public transport passenger services in Victoria, nor does it require the enforcement powers which it previously exercised to enforce ticket requirements and other transport offences.

Most amendments contained in the bill remove references to the Public Transport Corporation. However, some amendments insert a reference to the new tram and train operators where that is appropriate. In some instances where the relevant functions have been transferred to another body such as Victorian Rail Track, which now owns most public transport land, the name of that body has been inserted in the act.

The Public Transport Corporation is the successor at law to the statutory corporations whose assets were franchised to the private operators. The Public Transport Corporation will continue to be responsible for winding up the residual assets and liabilities of those bodies. In addition, the Public Transport Corporation continues to own some land, which was not required at franchising and also continues as a party to a number of contracts which have not yet been transferred to other bodies — the most important of these is the contract with Onelink for the automated ticketing system. For these reasons the corporation continues to require certain powers and to exercise relevant functions. The powers and functions it still requires have been inserted by this amendment or have been retained in the Transport Act.

I commend the bill to the house.

Debate adjourned on motion of Hon. G. B. ASHMAN (Koonung).

Debate adjourned until next day.

BUSINESS OF THE HOUSE

Sessional orders

Hon. M. M. GOULD (Minister for Industrial Relations) — I move:

> That so much of the sessional orders be suspended as would prevent new business being taken after 8.00 p.m. during the sitting of the Council this day.

Motion agreed to.

ACCIDENT COMPENSATION (COMMON LAW AND BENEFITS) BILL

Second reading

Debate resumed from 23 May; motion of Hon. M. M. GOULD (Minister assisting the Minister for Workcover).

Hon. P. A. KATSAMBANIS (Monash) — The bill is proof that if one starts with a flawed premise and institutes a flawed process one ends up with an extremely flawed outcome. The bill is the final outcome of an opportunistic and unprincipled stance which the current government adopted back in 1997 while in opposition and which it refuses to jettison today despite blindingly obvious signs that it is on the wrong track.

It does not make me happy to say that although the bill is wrapped up in feel-good labels, it will wreak untold harm and devastation on all Victorians. It will not provide adequate protection for injured workers. In fact, it will expose them to a legal lottery where their entitlements to compensation will be made dependent upon proving fault on the part of an employer. At the same time the bill will lead to increased Workcover premiums of approximately 15 per cent for all Victorian employers — a significant increase that will cost jobs and lead to business bankruptcies, closures or relocation to overseas or interstate places.

Members of the opposition — I want to make this clear — support a workers compensation system that provides fair and reasonable compensation to injured workers irrespective of fault or blame, provides access to medical assistance and services, provides access to rehabilitation, fosters a return-to-work culture and, importantly, is affordable for employers.

I have to stress those points because unfortunately government members too often attempt to unfairly denigrate the opposition as being somehow anti-worker or intent on removing certain rights and benefits from workers — all of which is patently false but which the government tries to assert time and again. We know that by resorting to that ancient tribal class warfare mentality the government is showing it cannot win the argument on merit because the argument has no merit. Rather, by its action the government exposes its own moral fraud and intellectual bankruptcy in the area of workers compensation by paying lip-service to workers' rights while implementing a system that is calculated for maximum political advantage. It is not a system to support and help either injured workers or employers in this state.

It is instructive to note that this government continues to harp about the fact that through this bill it is restoring a system that existed prior to the amendments made in November 1997. That was its election promise to the people of Victoria. The only promise I can clearly remember the Labor Party making in its election campaign was that it would restore common-law rights. On 11 April in a media release the Premier trumpeted the fact that the Victorian government had delivered on its commitment to restore common-law rights. However, so far as I am aware restoration means putting in place a system that was there beforehand, and the bill does not do that. This is the beginning of a charade by the government to hoodwink the public of Victoria into believing that it is providing a benefit when it is creating a legal and administrative nightmare.

This is not a restoration of any pre-existing rights — make no bones about it. This is a new hybrid system, which combines elements of no fault with elements of common law. It does not reinstate the common-law system that existed prior to 1997; it actually replaces it with another system, which I will refer to in due course.

The government talks about restoring common-law rights to injured workers, but that is a misnomer. Anyone who has even a passing interest in accident compensation is fully aware that the vast majority of workers have no access to common-law rights. The vast majority of injured workers are entitled to statutory benefits only. That is based on a principle that certainly members of the opposition, and I hope the government share — a principle that we, as a society, have introduced over the years. It is based on the idea that workers should be fairly compensated for any injuries they suffer in the workplace irrespective of fault or blame.

I do not propose to discuss in intricate detail the development of that system from its early days to today; but I commend to members of the house and the

general public the speech made by my colleague in another place, the honourable member for Box Hill, Robert Clark, on 9 May when speaking on this bill. It was an extensive but learned speech which highlighted the development of workers compensation and accident compensation law. It is clear that if a society believes workers should be fairly compensated for injuries suffered in the workplace, irrespective of any fault or blame, there is no place for an adversarial process that relies upon proving fault or negligence on the part of the employer.

If the government went to the community and said, 'We have concerns about the level of benefits paid to injured workers, and we would like to increase the range or the mix of benefits available to injured workers under an accident compensation scheme', it would be coming into the chamber with clean hands, and the opposition could assess those proposals on their merits. There may well be a good argument to alter the level of benefits and the payment structure, but instead the government's amendments endorse a scheme where you need to prove negligence and fault in order to obtain a settlement or a payment of compensation for workplace injuries. That is the principle the government wishes to enshrine in law today, and it should be exposed for what it is seeking to do.

This is clearly a hybrid system. It will not be available to all workers, to a majority of workers, or even a large minority. It will be available only to those who are 'seriously injured'. Theoretically, because it is defined as 'serious injury', the government is saying those who are most affected by a workplace injury should have entitlement to common-law rights. But when it is viewed on the basis of fault or no fault, the government is really saying that the injured workers who are most affected — because they are deemed to be seriously injured — should not get an automatic right to compensation.

The government believes those people should take part in a lottery. It wants them to go to court and prove that the employer was negligent before they have their entitlement to damages and their compensation assessed. The government is putting in a barrier for the workers most affected by a workplace injury. I do not understand where government members are coming from. Looking through the history books, it appears to have been a long-held Labor Party doctrine that injured workers should not be subjected to those tests for negligence and fault and that injured workers should have an automatic entitlement to compensation. It was the dogma of the Whitlam government which instituted the Woodward royal commission that recommended a complete removal of a fault-based and negligence-based workers compensation regime. It was certainly the dogma of the former Cain government and the Hawke federal government.

The Hawke government removed fault from the commonwealth scheme. It is instructive also to note that the new Treasurer in the other place, John Brumby, who was then a member of the Hawke government, is on record as having voted for removing access to common law. That can be seen at page 2755 of federal *Hansard* of 20 May 1988. John Brumby voted to abolish commonwealth claims in the commonwealth jurisdiction because back then he was acting out of principle, out of integrity — perhaps it was just the number crunching in the party room. But he was voting on a long-held Labor principle and belief, one that has been completely jettisoned by this cheap, opportunistic party.

The South Australian Labor government also abolished fault completely in workers compensation in 1986, but in 1997 a desperate Victorian Labor Party, looking to find any reason to differentiate itself and to ingratiate itself with a section of the Victorian public, decided to turn accident compensation in the state into a grubby, political exercise for its own cheap, petty, political advantages. And make no mistake, since 1997 the Labor Party has been using injured workers as political footballs. Labor members have not been concerned about the rights of injured workers. They have pursued their own narrow, sectional political interests and ability to somehow or other create a constituency that is likely to back them — and that is what they have done.

As a result of that flawed logic the Labor Party established a working party to assess whether access to common law for seriously injured workers should be reintroduced and asked it to report by February 2000. I have read that report and the actuarial costings accompanying it. I believe the working party did a good job based on the brief it was given, but it was a flawed brief because it was not given an option to assess whether the reintroduction of common law would be appropriate for injured workers, for employers, for Victorians or for everyone. The government left that out of the brief. The working party was not able to assess the value of supposedly restoring access to common-law damages for seriously injured workers.

The working party was told it had to come up with a system that restored access to common-law claims. The working party's work was flawed because it was forced to come up with an outcome that introduced common-law claim provisions, but it was not given the option of assessing a system on its merits and weighing up whether the system was appropriate.

It is to the eternal shame of the government that it did not give the working party an opportunity to work outside the circle and look at best solutions. The government guided the working party down the track to a narrow solution. I have examined the working party report and, despite its constraints, it did a good job. But the constraints made the report flawed. The result is the Accident Compensation (Common Law and Benefits) Bill.

Who are the winners under the bill? Will injured workers benefit substantially? No, because injured workers now have another system of accident compensation that leaves the decision on the amount of compensation payable to seriously injured workers to the mercy of the court system, our adversarial process and a long period of court interpretation of the new legislation.

Who will be the real winners under the bill? Certainly employers will not be the winners because many will have to pay 15 per cent more in premiums. The only winners from the bill will be lawyers. The bill is unprecedented.

Hon. M. M. Gould interjected.

Hon. P. A. KATSAMBANIS — Lawyers do not think the bill is any good. Although they will make money out of it, they have told the opposition that the bill is flawed. I will get to that, Minister.

The bill runs to 55 pages; that is not unique. It has a 13-page explanatory memorandum. I am on the record in this place as welcoming explanatory memorandums, and this one is okay. However, the second-reading speech is unprecedented during my time here, because a 55-page bill needed a 29-page second-reading speech to attempt to explain its provisions.

Hon. C. A. Furletti — And it failed.

Hon. P. A. KATSAMBANIS — Yes, it failed. The second-reading speech only adds to the gobbledegook. The second-reading speech is an attempt by the minister to detail the terms of the bill and to tell lawyers and judges how they should interpret the legislation. If the minister needs 29 pages of second-reading speech to tell lawyers and judges how they should interpret the bill, it is clear that its provisions are not exactly easy to understand and will not easily be implemented.

I take issue with a minister attempting to tell a judge how he or she should interpret legislation. Good legislation should be able to stand on its own feet; it should be clear and open to easy interpretation by lawyers, judges and the general population. The bill is all gobbledegook. It is legally inconsistent. In many cases its clauses are inherently inconsistent, and I will turn to that issue during the committee stage.

The government has been told by law firms that they are concerned about whether the operation of clause 18 will allow anybody to have common-law claims because of inherent inconsistencies between clauses. The opposition hopes to tease out some answers during the committee stage tonight. I repeat that the bill must be flawed if the government needs 29 pages of second-reading speech to tell judges how to interpret the law.

Lawyers will have a field day with the bill, especially when one compares proposed section 134AB inserted by clause 18 with the sections inserted by clauses 26 to 29: the provisions in clause 29 deal with new rights and claims under the Sentencing Act. That will be a lawyers' picnic; they will explore and analyse every last intricate word of every clause of the bill.

Hon. Bill Forwood — They are lining up.

Hon. P. A. KATSAMBANIS — Yes, they are rubbing their hands with glee. Scheme costs will blow out because lawyers will be able to drive trucks through the loopholes in the legislation. Victorian employers and workers will be penalised. The fact the bill has been so badly drafted and provides lawyers with the opportunity to turn it into a plaything does not stand the government in good stead. It condemns it for being not interested in good law or outcomes or in protecting workers or employers — only in protecting its own political interests in the short term.

The common-law provisions in the bill are new. They are not, as the government asserts, a restoration of the rights available to injured workers prior to 1997. They are different.

Hon. T. C. Theophanous interjected.

The ACTING PRESIDENT (Hon. R. F. Smith) — Order! Mr Theophanous is not in his place. His interjections are worth while but he should make them from his place.

Hon. P. A. KATSAMBANIS — I think the Chair is being a little unfair on Mr Theophanous. The provisions are not a replication of the provisions that existed prior to 1997. The bill exposes the government for failing to honour an election commitment. The first breach of promise was when the government failed to make the provisions applicable from November 1997, which was its election commitment. Then it said it would restore common-law rights for injured workers. In the press

release of 11 April that I quoted earlier the Premier states:

> As was the case prior to 11 November 1997 a worker must have either a whole person impairment of 30 per cent, as assessed under AMA Medical Guides, fourth edition, or satisfy the narrative test for serious injury.

But he left out one important component of the test that makes it new and unique — that is, the concept that an injured worker not only has to prove a whole-person impairment of 30 per cent or satisfy the narrative test for serious injury but that to claim for pecuniary loss and loss of earnings a worker must prove a 40 per cent loss of earning capacity. That was not in the pre-1997 legislation; that is new.

I do not know why that provision has been inserted by the government; it is not a restoration of pre-1997 rights. The government should come clean and say, 'That is what we promised but we have given Victoria another system'. It may want to argue why it considers the new system in the bill to be better. It has put in another step. It said, 'If you cannot prove 30 per cent, try to get the court to assess it under the narrative test. But if you want compensation for pecuniary loss you must prove you have a 40 per cent loss of earnings'.

That measure is new. It is not a restoration of pre-1997 rights. So come clean, Minister, and tell the Victorian public that once again you are trying to hoodwink them to cover your own political ineptitude.

Hon. T. C. Theophanous — Do you support common law?

Hon. P. A. KATSAMBANIS — Mr Theophanous should have listened to my whole speech. I have covered that and I am not going back to it.

The bill makes absurd attempts at defining serious injury. The more I look at the definition the more I am convinced it will result in a lawyers' picnic. Proposed section 134AB(38)(b) states:

> the terms 'serious' and 'severe' are to be satisfied by reference to the consequences to the worker of any impairment or loss of a body function, disfigurement, or mental or behavioural disturbance or disorder, as the case may be, with respect to —
>
> (i) pain and suffering; or
>
> (ii) loss of earning capacity —
>
> when judged by comparison with other cases in the range of possible impairments or losses of a body function, disfigurements, or mental or behavioural disturbances or disorders, respectively …

I have read and re-read that. I have spoken to lawyers — barristers and solicitors — and to the general public about it.

Hon. D. McL. Davis — It is about as clear as mud.

Hon. P. A. KATSAMBANIS — It is about as clear as mud, and it gets murkier the more I look at it. Basically whether something is serious and severe must be judged by comparison with other cases in the range of possible impairments or losses. It is a comparative test. But what should be compared to what, and where is the base? If it is simply a comparison test, where is the base? There is no base; it will be a lawyers' picnic.

Proposed section 134AB(38)(c) attempts to define impairment or disfigurement. It states that an impairment or loss of a body function or a disfigurement has to be:

> … fairly described as being more than significant or marked, and as being at least very considerable …

So, basically the minister is telling me that the term 'very considerable' means 'more than significant', and that 'very considerable' is more than 'marked', but I would like explained to me what 'very considerable' actually means.

Hon. T. C. Theophanous — It is a long-established legal term. You should know that.

Hon. P. A. KATSAMBANIS — If it is a long-established legal term, Mr Theophanous, why has the minister taken 29 pages trying to explain it? Point out to me where it is to be found in legislation or any case law.

Hon. C. A. Furletti — And why do lawyers ask us what it means?

Hon. P. A. KATSAMBANIS — We will get there. The opposition will hear what the lawyers have to say about it, including some of Mr Theophanous's favourite lawyers, so he should not worry.

Proposed section 134AB(38)(d) states that a mental or behavioural disturbance may be:

> … fairly described as being more than serious to the extent of being severe …

That is saying that the term 'severe' means more than the term 'serious'; or more to the point, the more I read it the more it tells me that 'severe' means 'severe', which is more than 'serious'. But what guidance does it provide to a court and to an injured worker? None at all. Although it is a cute attempt at interpretation it makes no sense. Judges, lawyers and injured workers will have

to fight out in court what it actually means. It will lead to delays and a considerable waste of court time and resources. It will end up creating more confusion than it dispels.

Injured workers who rely on this common-law mechanism will be waiting years and years for payment. They will be sitting with their lives in limbo while lawyers engage in legalistic arguments at the expense of injured workers. At the end of the day the only winners will be the lawyers, because by the time decisions are made on cases injured workers will be so fed up that they will simply hold the process in contempt. That was the case with many injured workers who undertook common-law proceedings prior to 1997 and who have told me and my colleagues that they believe there are serious failings in the operation of the common-law system.

The other fact that will turn the bill into a lawyers' picnic is that it allows the Court of Appeal, the most senior court in the state, to hear all cases on appeal as new hearings, or hearings de novo, in which they can take new evidence. That is how I read the bill and how the lawyers to whom I have spoken interpret it. Currently lawyers argue cases in lower courts, and if they do not like a decision they seek leave to appeal to the Court of Appeal on a matter or matters of law. Under the bill lawyers will be able to fight cases in the Court of Appeal from the start, and call new evidence if they desire to do so. That will mean a huge escalation in legal costs, not at the bottom of the scale, such as those in Magistrates Court matters or County Court matters, but for Court of Appeal matters, for which the scale of fees is at the highest end.

Instead of capping fees the bill will open up a new avenue for legal argument, provide new opportunities for legal proceedings and allow lawyers to boost their fees in the accident compensation system. Meanwhile injured workers will be sitting at home or in the courtroom scratching their heads and thinking, 'My goodness, what are these people on about? I am injured, I know I am injured, and I want a determination and compensation'. Injured workers are not interested in findings of guilt, negligence or fault — they are interested in compensation.

The government does not seem to be taking heed of those important concerns. The most important issue for the government is that the bill covers its political tracks. The bill is about a political exercise in cynicism and cheap, petty, divisive politics. It has nothing to do with assisting injured workers.

Earlier I mentioned that the government reneged on its election commitment to introduce a common-law system that would allow backdating to 11 November 1997.

Hon. Kaye Darveniza — Rubbish!

Hon. P. A. KATSAMBANIS — It did. It would be instructive for the people of Victoria if Ms Darveniza could tell the house whether in the party room she supported the introduction of common-law rights backdated to 11 November 1997, because that was Labor's election commitment.

Hon. M. M. Gould — Our election promise was to restore common-law rights — restore them!

Hon. P. A. KATSAMBANIS — I am happy to take up that interjection by Ms Gould because I have already proved conclusively that the government is restoring nothing and is introducing a new system. It is not restoring the system that was in place prior to 1997; it is introducing a new system with new definitions and a new concept of a 40 per cent loss of earning capacity prior to an injured worker being able to access the system. That is not a restoration. Clearly Labor is reneging on its commitment to introduce the amendments retrospective to 11 November 1997.

Enlighten me about where the government stood in the debate in the cabinet and party rooms. The people of Victoria want to know. To save face the government has introduced the provisions in clauses 26 to 29 relating to workers who were injured between November 1997 and October 1999. They will access a form of compensation available under section 86 of the Sentencing Act 1991.

The government has made it clear that it would like injured workers in that window to have access to compensation. To facilitate that, it has promised to introduce a case review program that was highlighted in the booklet *Restoring Your Common-Law Rights — Going Forward*, which was circulated to some segments of the public but not circulated to members of the opposition, although we got our hands on it. The government claims that under the program it will facilitate injured workers making claims under the Sentencing Act. To make a claim there must be a conviction. The government is allowing injured workers to piggyback on any conviction under the Dangerous Goods Act, the Health and Occupational Safety Act and the Equipment (Public Safety) Act. An employee can make a claim for compensation under the Sentencing Act rather than going to the Accident Compensation Tribunal.

Many offences under the Occupational Health and Safety Act are essentially strict liability offences. Whether an employer was negligent is irrelevant, whether an employer had taken all the steps is irrelevant, and if there is an industrial accident often employers would be fined under the act. It is incongruous that liability offences should give rise to compensation. Even more damning, the government has gone one step further by allowing injured workers to use the provisions in the Sentencing Act but under clause 27 retrospectively removing employers' cover under Workcover for such claims. Employers are left uninsured for such claims retrospectively because we are talking about claims that are limited from 11 November 1997 to October 1999.

Employers have relied upon insurance cover for so long. Section 7 of the Accident Compensation (Workcover Insurance) Act of 1993 makes it clear that:

> (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 in respect of all injuries arising out of or in the course of or due to the nature of all employment with that employer …

The Accident Compensation (Workcover Insurance) Act 1993 in effect says that an employer who takes out a Workcover premium is covered for any claim under any form of legal regime, be it the accident compensation system, common law or otherwise. The government is retrospectively removing that protection.

Hon. T. C. Theophanous — What!

Hon. P. A. KATSAMBANIS — Yes. If Mr Theophanous paid attention he would realise it is true. The government has made it clear through the document *Restoring Common Law Rights* that it will progressively use the Australian Industrial Relations Commission process to try to prosecute employers for accidents that have happened in the past and to give injured workers the opportunity to claim under the Sentencing Act. It leaves a significant potential liability on employers and retrospectively removes insurance cover. Government members who insist on class warfare will probably think that it serves the employers right. Most would know that many businesses operate on short cash flows. If an employee makes a significant claim it is likely to drive a business to the wall and once that business goes to the wall the worker, who could have any assessment for any amount of damages, will not receive his or her money because the employer will be bankrupt.

The removal of the insurance not only penalises employers but also significantly penalises employees who may obtain judgments under the act but will end up holding only pieces of paper. It sets a terrible example to employers and potential employers when the government retrospectively removes insurance cover for injured workers.

Many elements of the bill are flawed. During the committee stage opposition members will explore its elements and highlight its findings that not only does it fail employers but also it fails employees.

The effect the increased Workcover premiums will have on both employers and employees and the economic viability of the state will be severe. In his press statement of 11 April the Premier said Workcover premiums will increase marginally to an average of 2.18 per cent of payroll. 'Marginally' was the word he used. I calculated that it would be a 15 per cent increase if premiums were raised from 1.9 per cent to 2.18 per cent.

Hon. W. R. Baxter — That is hardly marginal!

Hon. P. A. KATSAMBANIS — It is hardly marginal. If there are 1 per cent or 2 per cent shifts in the consumer price index over one quarter we think it is significant. If there is a shift of 0.1 per cent, 0.2 per cent or 0.5 per cent in interest rates we think it significant, but this is a 15 per cent increase in Workcover premiums, representing a slug on every employer in the state.

If that is not significant, I do not know what is. Make no mistake, that increase is likely to cost jobs. Employers around the state have made it clear it is likely to cost jobs. The Victorian Automobile Chamber of Commerce in *Auto Industry Australia* of May 2000 states on Workcover:

> Victorian businesses simply cannot remain competitive when forced to absorb all of these increases.
>
> Indeed, Victoria's status as a competitive place in which to do business is now under threat …

The article continues:

> The increase in Workcover premiums will do nothing for business confidence in Victoria.

The increased premium will shatter the confidence of existing employers, who are forced to cop a 15 per cent slug simply to satisfy an irrational and illogical election promise of the Labor Party. The increase will also drive

away potential investors because it sends exactly the wrong signal.

One would think a new government would want to send positive signals to business that it would continue a pro-business approach and would continue to drive business costs down. But, no, the government has indicated it will slug business — not to benefit any section of the Victorian public at large but simply to achieve its own narrow political agenda. That the Premier calls a 15 per cent increase marginal makes me shudder at the thought of what the government is planning next. I know many employers in the community are having the same thoughts.

The government hangs its hat on the fact that the increase is taking Victoria only up to the national average. That shows the narrow vision of the government for Victoria and Victorians. The government is not interested in leading or creating a competitive environment. It is not interested in making Victoria the most attractive place to live, work and do business in Australia and, we hope, in the world. It is interested in taking us back to the pack — in killing off the significant advantages gained over seven years of coalition government and returning Victoria to the average — back to the same old thing. Yet the government trumpets as some sort of achievement going from being on top to being average!

I have never heard of such an absurdity as going backwards being trumpeted as an achievement. The people in front try to stay in front and the people behind try to catch up. I have never heard of a government trumpeting the fact that going backwards is a good thing, yet that is what Victoria is doing, make no mistake.

The premium slug will destroy competitiveness and business confidence. The opposition continues to harp on business confidence because when business confidence is destroyed investment and jobs are driven away. The government talks about protecting workers, but it does not protect them when it threatens their employment and puts their jobs at risk without creating new ones. That is what is happening as a result of the premium increase and a few other increases.

The premium slug is hurting export industries in particular. Export industries, which have boomed in the past decade, are not able to pass on their costs. Many of them compete in a worldwide environment: they are effectively price takers. They do not set the price; it is set at a global level. They need to be competitive under that price structure. If they cannot bring their costs down, they go out of business and the jobs are exported elsewhere.

Rather than exporting goods and services the government is creating an industry in exporting jobs. That is not good for Victoria. Some of my colleagues, including Mr Baxter and Mrs Powell, will take up that issue during debate and highlight how premium increases are likely to hurt exporters and rural industries in Victoria. It is a shame that the government brazenly trumpets that as an achievement.

The other issue I mention is the full funding of a workers compensation system. Earlier I made the point that the system needs to be affordable. The government is driving the costs of the system up by increasing premiums. That in itself is a negative. Just as importantly, the scheme must be fully funded. To properly protect injured workers, the state of Victoria and employers, a workers compensation scheme has to be able to meet its ongoing liabilities. There is no point in having a scheme that is underfunded, that is essentially bankrupt. That was the position of the old Workcare scheme in the Guilty Party days. In 1992 it was an unfunded scheme with liabilities of $2.1 billion — a $2.1 billion shortfall.

Hon. D. McL. Davis interjected.

Hon. P. A. KATSAMBANIS — The levy was 3.2 per cent. Not only did Victoria's Workcare scheme have the highest levy in the nation, but it could not fund its liabilities. The former government managed to lower the liability while at the same time driving the premium down to 1.9 per cent, the most competitive premium in the nation. Maintaining full funding is critical.

Everyone is aware that, as a result of excessive common-law claims, the scheme suffered and went into technical shortfall. But it is made clear in the working party report that the government commissioned — namely, the *Report of the Working Party on Restoration of Access to Common Law Damages for Seriously Injured Workers* — that actuarial projections indicate that the current scheme, the one now being fiddled with by the government, under current scheme costs and premium rates would regain full funding by February 2001, only a few months away.

It is clear that once the number of common-law claims tailed off, once they had been processed through the system, the scheme would return to full funding, providing certainty for employers and employees. Employers would know there would not be any sudden increases; employees would know that if they unfortunately needed access to the compensation

scheme the money would be there to pay them. That is the importance of a return to full funding.

Now that the Labor government has come to power it states that it aims to restore full funding — but not by February 2001. The commitment, again by the Premier, is that the Workcover scheme would return to full funding some time within three years. I would have imagined that, with the intensive actuarial costings I have seen as a result of the working party's deliberations and with the ongoing actuarial projections the Victorian Workcover Authority rightly undertakes, a projected date or at least some window would be available. Instead the government says full funding will be achieved within three years.

The government is increasing premiums and at the same time blowing out the time the scheme is likely to return to full funding. That I cannot understand. The government cannot even tell us when in those three years the scheme is likely to return to full funding — in the next 6 months, 12 months, 18 months, 24 months or 36 months? Perhaps the figure of three years is just a guesstimate. The absence of certainty in the government's projections gives rise to fears of another cost blow-out similar to the cost blow-out that arose between 1985 and 1992.

The bill will be a lawyers' picnic. Have the actuaries calculated the increased legal costs that will arise as a result of the introduction of the bill? I am sure even the best actuaries could not possibly know because they cannot tell how creative lawyers will be in litigating the new scheme.

I am sure the lawyers are rubbing their hands with glee. Have the common-law claims that we know will occur been costed? When there are common-law claims not only are there legal costs but also a series of medical costs that are not incurred in treating injured workers or in assessing the injury status of injured workers; they are incurred as a procedure that is undertaken in the adversarial court process. In my view many of the medical reports are unnecessary because they are only for the benefit of the court. What will the additional costs do to the cost of the scheme? I suppose the level of uncertainty that is built into the new system indicates why the government will not commit to a time frame beyond the three-year period for returning the scheme to full funding. The government does not know what the real costs of the system will be. I suggest it does not care. The only cost it thinks about is the narrow, short-term political cost of doing nothing.

Victorians will be threatened by the return to the Guilty Party days. There will be a blow-out in the cost of the workers compensation system, resulting in a shortfall of funds, premiums being jacked up, the shortfall increasing and so on. Victorian employers will look forward to being told there is a marginal increase in the premiums, then another and another! A marginal increase may be 15 per cent or even 25 per cent! I do not want to guess. I hope it does not happen, but I cannot guarantee it because the flaws in the bill open up a window of significant risk for the public of Victoria.

I could refer to the inherent failings of the bill, but I know my colleagues want to express their concerns about it. I reiterate that the bill is flawed. It has been introduced on a flawed premise. It has been introduced on the basis of a report by a working party with a flawed brief. The legislation will not assist injured workers. It will not assist employers. It is not for the benefit of workers or in the best interests of the people of Victoria. It is legislation for the narrow, political interests of a morally and intellectually bankrupt government that puts its short-term interests ahead of the interests of Victorians.

I welcome any initiative that aims to improve the accident compensation system; that allows workers to be compensated for injuries suffered in the workplace irrespective of fault or blame; that takes out the adversarial process which is a legal minefield and which benefits only lawyers; and that ensures premiums are competitive. In the meantime I will monitor the effects of the legislation closely. I hope the fears and concerns I have expressed do not come to fruition, because if they do it will be devastating for Victorians. However, I will not hold my breath.

Hon. T. C. THEOPHANOUS (Jika Jika) — It is with a sense of pride that I speak on the Accident Compensation (Common Law and Benefits) Bill because I have spent many years in opposition arguing with the former government about preserving the rights of injured workers. I was involved in two Workcover legislation debates, one of which lasted for almost 20 hours. As the lead speaker for the opposition not only did I have to make a significant contribution to the debate, but I had to stay awake for the entire period of the debate. It was one of two extremely lengthy debates. I am sure the Hansard reporter will recall the amount of time involved and the way in which the Labor Party opposition refused to give up debating fundamental rights that were being taken away from injured workers.

The change introduced by the former Kennett government to the workers compensation legislation was one of the most callous acts I have ever seen in my time in this place. I recall the brutal way the changes

were introduced. Brutal and callous are the best descriptions of the changes that were introduced. About 10 000 injured workers were simply dumped from the system. Not one injured worker was offered alternative employment or training. They were offered nothing. They were told, 'You are off. That is it. We are legislating you out of existence'. At the time it was calculated that the additional cost to the commonwealth social security system was an $100 million per annum. Injured workers were forced on to disability pensions, old-age pensions or even unemployment benefits. It was an enormous shift.

The previous government changed the system by removing claims for journey injuries, which created their own problems. We had the absurd situation of a person driving his motor vehicle in the course of his employment being injured but not being able to sue for common-law rights, but his passenger being able to sue because the driver was using his vehicle in the course of his employment while the passenger was not.

One was covered by the Transport Accident Commission and the other by Workcover. All sorts of anomalies were established in the system. Something like 3000 public sector employees were dumped from the system and none of those people were offered jobs by the government. The then minister, Mr Hallam, came into the house and talked about the emphasis being on a return to work.

Ultimately the people of Victoria decided that their rights had been taken away. Today the opposition does not even have the capacity to shrug off the heartlessness of the Kennett stigma. It does not have the courage to admit it made a mistake and that it should never have agreed to what Mr Kennett wanted to do — that is, to remove the right of people to sue a negligent employer.

Mr Hallam is not interested in listening to the debate or contributing to it — after having put in place the most appalling workers compensation system in the country! He does not want to come in here and defend it!

Hon. E. J. Powell — He is using the technology you used and listening in his office.

Hon. T. C. THEOPHANOUS — Then I look forward to his contribution to the debate. Mr Hallam should have been leading the debate on behalf of the opposition as he spent so much time building the appalling system left to the government. Instead, Mr Katsambanis said he preferred to support a no-fault system in which people get fair compensation. The trouble is that what we got was neither a no-fault system nor fair compensation.

Hon. D. McL. Davis — It was a no-fault system.

Hon. T. C. THEOPHANOUS — Of course it was not a no-fault system. It was a system that depended on the definition of 'significant contributing factor'. Mr Katsambanis talked about how one defines what is 'serious' and what is something else. The previous government's legislation contained the term 'significant contributing factor', which had to be defined. That is why it was not a no-fault system.

Hon. P. A. Katsambanis — Which I notice you've mirrored. You thought it was so good, you've used it!

Hon. T. C. THEOPHANOUS — I will get to that. The introduction of the definition of 'significant contributing factor' meant that in certain circumstances if it could be shown that the workplace was not the only factor that might have been involved in an injury, the worker might not have received any compensation.

I am happy to put on the record the following statement. While I commend the government for what it is doing in this legislation, I also make it clear that this is not the end of the story. Workers compensation must evolve and we need to begin by addressing the inequity that was built in by the previous government. The first attempt is to restore access to common-law rights. If I understand the argument he was putting, on the one hand Mr Katsambanis said he did not support common-law rights for injured workers but on the other hand he said the government's legislation does not give workers enough common-law rights.

Hon. P. A. Katsambanis — I was just highlighting how absurd your legislation is.

Hon. T. C. THEOPHANOUS — There is nothing more absurd than Mr Katsambanis's argument that he does not support common-law rights but the government has not done enough in common-law rights!

The legislation restores access to common-law rights for injured workers. The legislation is not retrospective.

Hon. D. G. Hadden — It is to 20 October.

Hon. T. C. THEOPHANOUS — Yes, but it is not retrospective to 1997 which is the point the opposition is making. That was one of the difficult decisions made about the legislation. However, the bill restores access to common-law rights for seriously injured workers. It should be welcomed.

Common-law rights for injured workers provide that every worker is entitled to some form of compensation

for injuries that he or she has sustained. The bill also provides that where an injury was the result of negligence something beyond the simple payment should be made and that extra should go to that worker as a payment for his or her injuries having been caused by negligence on the part of an employer.

Firstly, a person is entitled to more compensation if the injury is the result of negligence; and secondly, and most importantly, negligent employers should not get off scot-free. When employers are penalised financially for actions that cause accidents in the workplace that will certainly act as a disincentive for other employers in the future. However, that is the case only where an employer faces a high payout as a result of having an unsafe workplace due to his own negligence — and there is nothing wrong with that. Further, if it is agreed that the employer should pay more in such circumstances — that is, he should be fined an enormous amount of money, why should some of that payment not go to the injured worker? To whom should it go?

Whether one considers the argument from a philosophical perspective, from the perspective of having a humane society or from the perspective of justice, the bill represents a step towards increasing equity and justice in the system. I do not suggest that it is the only step or that the job is complete. The bill is the first action by this government to restore some level of justice and fairness to the system given the other commitment it made at the election to not increase premiums beyond the national average. The bill represents what can be achieved within that constraint. The government should be congratulated on having introduced legislation to restore common-law rights for seriously injured workers and having kept its promise about premium increases.

Mr Forwood and Mr Katsambanis would have been the first to complain had the government increased premiums that were above the national average. They would have been the first to say, 'The government has broken its election promise that it would not increase premiums beyond the national average'.

I can recall people coming into our offices recounting injustices that arose time and again. Fortunately, as a result of the legislation people seriously injured in their workplaces will now have certain rights, which include access to common law. In the past, a large number of police suffered serious injuries when on duty but had no access to common law. It was an appalling situation. Members of the force who were sent out to protect the community and who were injured had no access to common law.

By way of contrast I cite the circumstance of a protective services officer (PSO) who was injured last night in the course of his duty at Parliament House. He was injured when he stepped into a brawl to try to mediate between two guests of a certain member of Parliament in another place. The guests were two members of the Footscray branch of the Liberal Party — although I must say that members of the Liberal Party from Footscray sounds a bit of an oxymoron! They went to the upstairs dining room where a brawl commenced, apparently because one of them made suggestive remarks about the other's partner or girlfriend. They finished up on the floor with blood all over the place. The PSO who tried to mediate was injured — indeed, he was headbutted and he had to have medical treatment. One of the Liberal members involved was taken in charge and held overnight by police. That PSO was injured through no fault of his own. The one thing that officer has going for him is the fact that if his injuries are serious he can now seek access to common law. He would never have been able to do that under the previous administration.

I do not know how the brawl started. I do know that the Leader of the Opposition, Dr Napthine, and Mr Forwood had addressed the group containing the two individuals. I do not know what you, Mr Birrell, told Mr Forwood to say. You obviously incited him to say something inflammatory because they immediately rushed off to have a brawl and in the process got stuck into one of the PSOs!

That is just another example of the appalling behaviour of opposition members in this house. It highlights the fact that they have so little respect for people being injured at work that they are prepared to bring in members of the Liberal Party and subject them to a speech by Mr Forwood which gets them so worked up they go out and get stuck into the PSOs; yet the opposition is not even prepared to support PSOs having access to common law, for heaven's sake!

Hon. R. F. Smith — Are they rebels?

Hon. T. C. THEOPHANOUS — I do not know if they are rebels or loyalists, but we do know there are two factions in the Liberal Party these days and those two factions are at each other's throats. I will be happy to urge the President to tighten security in Parliament House because we do not want too many Workcover claims by PSOs as a result of trying to keep members of the Liberal Party in some sort of order. You would expect that members of the Liberal Party would be able to control themselves in this place. Having said what I wanted to say about that unfortunate incident in the

dining room, I will make a couple of serious comments about the bill.

The ACTING PRESIDENT (Hon. R. A. Best) — Order! I think that would be most advisable!

Hon. T. C. THEOPHANOUS — The bill means that in future thousands of workers in this state who have been seriously injured at work — I am not talking about people who suffer minor accidents but about seriously injured workers — will have access to common law. It is more than access to common law; it is access to dignity and justice. It is something for which I have fought proudly for seven years since the previous government changed the act. I heard of case after case from people coming into my office. Over seven years I documented in this house hundreds of cases of massive injustice where people were mistreated and had their rights taken away from them. It was condemned at all levels of the community.

It was not just condemned by the union; it was condemned by all fair-thinking people. It started in a brutal way with the first round of Workcover changes, and it culminated in the removal of common law subsequent to that. I was appalled to see the effect that had on people's lives. I still believe it was one of the saddest episodes in this place and one of the things that led to the previous government being kicked out. The former government decided it would treat injured workers as something it could put on the scrap heap. It did so to its eternal shame.

The opposition will continue to be irrelevant until it has the courage to say that it mistreated the injured workers of this state over the course of seven years. It did not treat them as human beings. People in this state reacted to the mistreatment of those injured workers. It was combined with the sacking of judges, changes to the constitution to remove common-law rights and a whole range of other tools used against the most vulnerable workers over a long period.

I am proud to see the beginnings of justice coming back to injured workers, and to see common-law rights being restored, along with some other changes made in this legislation that also improve the rights of injured workers. The government will continue to monitor the situation and examine workers compensation in this state, and it will over the course of time revise and improve the workers compensation system so that once again Victorians have a workers compensation system that does both of the things we have constantly said it should do — be responsible, both financially and economically, and be fair in delivering reasonable levels of compensation to unfortunate workers who are injured in the course of their work.

Hon. W. R. BAXTER (North Eastern) — Once again we have seen Mr Theophanous come into this house and demean the debate. His frivolous references to an unfortunate incident that apparently occurred last evening have nothing to do with the bill and were simply a means of getting on the record a matter he has desperately wanted to raise all day. He tried by interjection several times earlier in the day, but in the course of his frivolous remarks about whatever happened last night he demonstrated to us all what he is really on about.

He wants a system of workers compensation in this state that encourages people to go off to the court system on a fishing expedition to see whether they can somehow prove negligence against an employer and get some sort of Tattslotto-like payout. His suggestion was that if the security officer who intervened last night had been unfortunate enough to sustain a serious injury — defined in the act as at least 30 per cent impairment under the AMA tables — somehow or other he would have been able to prove negligence against his employer, the Parliament of Victoria, when the security officer was simply doing his job of keeping order in this place. That is what he is paid to do, yet Mr Theophanous wants a system that would have encouraged a person injured in that way to go off to the courts on some sort of fishing expedition.

Mr Theophanous has this ideological hang-up that makes him believe every employer is bad and every employer is out to do his employees in the eye. Regardless of what it might cost in premiums or in lost jobs, Mr Theophanous wants to have a scheme that can be abused and rorted and can become a barristers' banquet. That is his ideology. When he put that aside and moved on to some serious matters honourable members saw, through the prism of his extreme prejudice, the views he put to the house.

As is often the case, he completely disregarded the facts and introduced red herrings, not the least being journey accidents. There is nothing in the bill about journey accidents, but he goes right back to 1992 and talks about the Kennett government introducing changes to workers compensation in a brutal and callous fashion.

I reject that description, and what I do not forget from 1992 is that the Workcare scheme — the baby of Mr Theophanous and his cohorts — was then more than $2 billion in the red. Unemployment was going through the roof and jobs were disappearing left, right and centre because employers could not afford to

employ people because Victorian premiums were the highest in the country.

The rorting that was going on under Mr Theophanous's pet scheme was so excessive that employers and prospective employers were not prepared to take on people. The system had fallen into disrepair and disarray. In his diatribe this afternoon Mr Theophanous gave no credit to the man who had to come in and pick up the mess, the Honourable Roger Hallam. Full marks to Mr Hallam for the dedication he showed and his commitment in tackling that very difficult task.

I know a bit about this issue because I served on the committee the former government had set up to examine the mess Labor had created with its Workcare scheme. It was frightening to try to work out just how it could be put back on the rails. But it was put back on the rails in less than seven years. It was put back in the black, and Victoria achieved the lowest Workcover premium levels in the land.

Workcover was held up right around the nation as being a scheme that gave fair compensation to people who were unfortunate enough to be injured but at the same time was fair and reasonable to employers and was not driving jobs away from the state. I completely reject Mr Theophanous's outrageous rewriting of history. I pay tribute to Mr Hallam and other members of the coalition cabinet who worked so assiduously to bring the scheme back into the realms of commonsense and stability.

The bill troubles me immensely. It is a triumph of ideology over commonsense and logic and of hope over experience, because the experience with Mr Theophanous's scheme was totally disastrous. Despite that, he wants to return to that system. For ideological reasons he wants to return to a scheme that has proved to be completely unworkable and to be so costly to the community that the community could not possibly bear it again.

The changes made in 1997 were appropriate for the time. The provisions in the act are still appropriate because the common-law system had previously been compared to a lottery system. Some people got big payouts because they could prove negligence; in some cases it had nothing to do with the negligence of employers but was about how good a barrister was in court. There was no rhyme or reason, or justice; sometimes the result depended on the attitude of a judge on the day.

Victoria should not have a system based on a barristers' banquet or one's capacity to engage a barrister who is able to argue better than anyone else, resulting in a Tattslotto-type payout. Somebody else may have identical injuries but cannot prove employer negligence because his or her barrister could not argue the case as well as other barristers; he or she then misses out. I see no justice in such a scheme, but I do see justice in the scheme introduced by the former government, that all workers who were injured are compensated regardless of who was at fault and at a level commensurate with the injury sustained. That is a fairer system and is one the community can certainly afford.

One of the real downsides of the previous scheme as it related to common law is that there is no incentive for an injured worker to return to work; in fact, the opposite applies because an injured worker needs to be able to demonstrate how serious the injury was. It is difficult to demonstrate that if the worker returns to work. Everyone knows how slow lawyers are and the court system is, so the injured worker was inclined to defer his or her return to work for as long as possible. There is no incentive for a return to work; the reverse applies.

The longer one is off work, human nature being what it is, the less one feels like returning to work at any time. One becomes accustomed to getting out of bed late in the morning and tends to just fill in the days. I consider it tragic that many people's lives were detrimentally affected by their lawyers saying, 'Hang on, don't under any circumstances return to work because that will undermine your claim for a common-law payout'. That is a dreadful situation to put anyone in, but that is what the previous Labor government had in place and that is the system the Bracks government wants to have returned. Such a system sends wrong messages to the community.

Much propaganda has been issued by lawyers, the Labor Party and interest groups that somehow the 1997 legislation removed people's rights. It was said to me in my office and in the street that Parliament had stopped people getting compensation. That belief was fostered out in the community by people such as Mr Theophanous — who does not now even remain in the chamber to hear the debate; again he shows his rudeness — that the injured workers were totally missing out on compensation because workers had no common-law rights; they could not go to court.

The then government failed to tell people that a good system was in place; it assessed the level of a person's injury, took into account his or her previous income, and made sure the worker was adequately compensated. That system put great store on getting workers back to work through rehabilitation and the

like. That system was not explained to the public; a contrary view was put by a number of barrowpushers.

In the course of examining the legislation I attended a number of excellent seminars conducted by the shadow minister, the honourable member for Box Hill in the other place, in Shepparton, Wodonga and other places. People at the seminars heard employers in, for example, the fruit, abattoir and transport industries telling horrendous stories about the old Workcare scheme.

I shall give the house one example of a small transport operator in my electorate who employed a driver who had five accidents in six months. After the fourth accident the driver was warned to lift his game because it was clear most of his accidents — bearing in mind the transport rigs cost about $500 000 each — were due to his carelessness. After the fifth accident the employer dismissed the driver, who lodged a claim for unfair dismissal. At great cost to the employer, the claim went through the system; the driver's claim was dismissed. Then, out of the blue, the dismissed driver lodged a Workcover claim. That is an example of the way the system has been rorted. The driver whose claim of unfair dismissal was found by the courts to have been baseless resorted to trying to rort and manipulate the workers compensation system. That will happen again after the bill passes. The government is opening the door yet again to outrageous rorts.

I am concerned that lawyers have been advertising on my local television station for injured people to contact them; the advertisements imply that the lawyers will get them some sort of Tattslotto-like payout. The advertisements are misleading; they make comments about 'no win, no pay', but they fail to advise people that they may be up for other costs in any event. The Law Institute of Victoria should look at the way lawyers are able to advertise — or, at least, should investigate one law firm that advertises on my local television station.

It is all very well for the government to talk about only 15 per cent increases in premiums. As Mr Katsambanis told the house, the Premier says the increases will be marginal. A 15 per cent increase is a new definition of marginal! That may be fine if you are in a clerical job where the premiums are 1 per cent or less. One example used by the government in its propaganda was a medical practice where the Workcover premium on a receptionist's salary was 0.4 per cent. But what happens to an employer in the farming, abattoir or timber industries where premiums are around 5 to 10 per cent? A 15 per cent increase will multiply those premiums by thousands of extra dollars each year. What does that automatically lead to? Fewer jobs. People will lose their jobs because of increased premium levels, which are not marginal but huge, in many cases.

I endorse what Mr Katsambanis said about changes to the Sentencing Act. I have documentation from the Victorian Farmers Federation to the effect that farmers are concerned that changes to the Sentencing Act will be used to allow backdoor entry to compensation that will affect certain industries, particularly farming, through occupational health and safety provisions becoming retrospectively sued by injured workers who are put up to it by unions or their lawyers. It is astounding that the bill removes the rights of those people to be covered by insurance. More will be heard of that aspect before the argument is over.

Finally, I have noticed a subtle change in the advertising of the Victorian Workcover Authority since the former minister, the Honourable Roger Hallam, left the Workcover portfolio after the last election. When Mr Hallam was minister the advertising was evenly balanced between the rights of employers to provide a safe workplace and the rights and duties of employees in the way they should conduct themselves. It was correctly pitched: it stressed that everyone had a responsibility to take care in the workplace.

I notice the television advertising is now based on the Labor Party fetish that every employer is crook and is out to do his or her workers in the eye. No mention is now made in the advertisements about the duties, responsibilities or care that employees should take in the workplace; it is totally based on hitting employers around the head with a big stick. That is not the way to get a safer workplace.

I would like a return to the philosophy adopted by Mr Hallam when he was the responsible minister — that is, we all have a duty of care in the workplace, that we can run a workers compensation system that is affordable and which enables those unfortunate enough to be injured to be compensated fairly, squarely and correctly.

Hon. KAYE DARVENIZA (Melbourne West) — I am pleased to have the opportunity to speak on this important bill, which puts in place commitments the Bracks Labor government made to the Victorian electorate as part of its 1999 election campaign. The bill delivers on the promises it made as part of that campaign.

The Labor government is fulfilling its election promise regarding Workcover by restoring common-law rights for seriously injured workers. Victorian workers have now regained the rights the Kennett government

abolished on 12 November 1997. This government promised the electorate it would restore the common-law rights that were so harshly taken away by the previous government, and it has restored those rights as at 20 October 1999, when it took office.

Victorians were so appalled and distressed by the changes the Kennett government made to the Workcover legislation that tens of thousands of them marched in the streets. They marched in front of Parliament House to protest in the strongest way they could to make known how disappointed they were and how they objected to and were appalled by a government that could take away rights from seriously injured workers.

There is no doubt that injured workers were simply left for dead by the Kennett government. From my own experience in the health and community services area I know the kinds of injuries that workers suffer in their day-to-day working lives. For example, nursing and direct care workers suffer severe back injuries from lifting. Sometimes the injuries result from an accumulation of problems from doing the same heavy work over a number of years, and sometimes they come about because of so-called challenging behaviour — namely, assaults they encounter in the course of their work. For example, nurses who work in accident and emergency centres who have to deal with people who are under the influence of drugs or alcohol, those who deal with people with psychiatric problems, and those in community services who deal with people with intellectual disabilities and challenging behaviour, are often assaulted in the course of their work and sustain serious injuries that require hospitalisation.

I saw such workers regularly when the Kennett government was making changes to the Workcover legislation. They are some of the most vulnerable people in the community. Turning its back on these people and literally throwing them on the scrap heap was a heartless act by the former government.

The Mitcham by-election was fought and won by Labor around the Workcover issue and the changes the Kennett government had made to the Workcover legislation. Even after Labor won the by-election the voice of not just the constituents of Mitcham but of the community as a whole echoed around Victoria with outrage at the Workcover legislation the Kennett government had introduced. Despite that outrage the previous government did not listen to the community and was not prepared to do anything about restoring the rights of injured workers.

The Victorian public has been most concerned, distressed and disappointed with the previous government's failure to treat injured workers and their families fairly and reasonably and to recognise that serious injuries need to be handled in a proper way. That means workers should have the right under common law to sue negligent employers, rights to rehabilitation and rights to return-to-work programs.

The government is committed to helping workers who have been seriously injured and are victims of the Kennett government's changes. It recognises that they are a uniquely disadvantaged group in the community. One of the vehicles for helping the workers is the intensive case review program, which will be administered through a special unit of Workcover. It will ensure that seriously injured workers get the maximum financial help they can, including opportunities where appropriate — I stress the words 'where appropriate' — to access lump-sum settlements.

Through the bill the government is giving every Victorian the right to sue for damages if he or she has been injured because of the negligence of an employer. In his contribution the Honourable Bill Baxter stated that the government is treating every employer as a crook. That is not the case. The government does not see every employer as a crook; it considers employers have a responsibility and duty of care to their workers to ensure they have safe and healthy work environments. The government is not saying they are crooks — I am affronted that Mr Baxter would say such a thing — nor is it hitting employers over the head. The bill is about being able to prove that an employer is negligent and that as a result of that negligence — —

Hon. C. A. Furletti — You have no idea.

Hon. KAYE DARVENIZA — I do know, Mr Furletti; I have a very good idea. I have seen numerous cases of employers having been negligent because after they had been made aware of health and safety issues and that particular pieces of equipment were not in place or were not operating properly, they did nothing about it and workers were injured as a result. I am talking about negligence and the right to sue for damages when an employer has been negligent.

The bill introduces a fair and just benefit for injured workers. Weekly benefits will be enhanced for many injured workers by the inclusion of regular overtime. Many injured workers will benefit from that because some workers receive more than 10 per cent of their base salaries each week in overtime. Under the bill weekly benefits will more closely reflect an injured

worker's actual pre-injury earnings because regular overtime will be included in the definition of such earnings.

The bill provides for Workcover premium levels that are competitive with those of other states and which will not unfairly burden small business. I take up a point made by Mr Katsambanis during his contribution. The bill will ensure that premium levels are competitive. Even after the restoration of common-law rights, premium rates paid by Victorian employers will be much lower than the rates paid by employers in New South Wales, South Australia, Western Australia and Tasmania.

Hon. C. A. Furletti — You want to drag this down to the lowest common denominator.

Hon. KAYE DARVENIZA — I am not talking about the lowest common denominator; I am talking about a rise in the cost of premiums from 1.9 per cent to 2.18 per cent.

It is the second-lowest premium in Australia. Other speakers, including Mr Katsambanis and Mr Baxter, have said what a terrible burden this will be on employers and how it will stop businesses employing people. With premiums that are the second lowest in Australia I cannot see how their fear campaign about employers not wanting to operate in this state could be as a result of changes to premiums.

The changes to premiums will be spread across all employers as the benefits will apply to all employees. The changes mean that negligent employers and employers with poor workplace health and safety records will be most affected. There are incentives for employers to honour their responsibility and their duty of care to their employees to ensure they have healthy and safe workplaces.

Employers who reduce workplace injuries will have their premiums reduced if they take the opportunity to ensure that workplaces are healthy and safe and that their work forces are not injured through their negligence. The government is committed to appropriate encouragement of return to work, including access to proper rehabilitation programs. It is important for an injured worker to have access to proper rehabilitation services, proper assessment and proper return-to-work programs. That means the rehabilitation service provider should be involved in discussions with the employer and perhaps with co-workers. It is a distressing time for an injured worker.

I have seen many workers seriously injured at work. I know the anxiety and the distress work injuries cause as well as the return-to-work process. That is one of the areas that fell down badly under the previous Workcover arrangements. It is now being addressed. Feelings of frustration, worthlessness and even depression are problems people can experience when they want to work or want to get back to their jobs. If they are impaired and unable to return to their previous jobs they want to be retained. They want access to meaningful work and to get on with their lives. The bill is about ensuring that appropriate encouragement is given so that workers are able to resume work and are not left in the limbo land they had to endure during the Kennett years.

The government is fully committed to ensuring that the Victorian Workcover Authority has a well integrated approach to injury management. The government sees that as crucial to the successful implementation of the changes to the Workcover scheme. Rehabilitation is complex and serious. People can be overlooked or forgotten if rehabilitation is not carried out appropriately.

Over the next 18 months, through the Victorian Workcover Authority, the government will conduct a major review of rehabilitation and return-to-work programs. The review will examine injury and claims management in Australia and overseas and also coordinate with other workers and transport accident compensation schemes and agencies to develop better integrated injury management as well as wider consultation with key stakeholders.

I know how long and hard my parliamentary colleagues fought in their effort to stop the Kennett government making the changes it made to the Workcover legislation. It was not only my parliamentary colleagues but the Labor members as a whole who fought strenuously to have the Kennett government Workcover changes not come into being and to have them overturned. We have waited a long time for this moment. I feel a great deal of pride in being part of the debate that will see the carriage of the bill. I am pleased to support the bill and commend it to the house.

Hon. C. A. FURLETTI (Templestowe) — It gives me pleasure to speak on the Accident Compensation (Common Law and Benefits) Bill. I shall pick up where Ms Darveniza left off. However, I wish the government had waited a little longer before introducing the bill; it would have done a far better job on it. As Mr Katsambanis lucidly explained, the bill is a dog's breakfast. It is rushed legislation prepared and introduced without consultation. There was no need for it to have been so rushed as its operation is retrospective. The opposition does not object to the fact

that the government is entitled to introduce the legislation it wishes. It acknowledges that this legislation was the cornerstone of the government's pre-election policy. The reason the opposition chooses to not oppose the bill rather than support it is that it is so poorly drafted and so badly conceived.

Ms Darveniza and Mr Theophanous do not want to know about negligence and its principles. Both of them have spoken and somewhat rudely left the chamber. The ideology of the government is such that it paints employers as non-caring, grossly negligent people devoid of any concern. I practised law for 30 years before coming to this place and I have spoken to employers who were distraught beyond belief because their employees had badly injured themselves.

I dare say that every member in the chamber would have insurance on his or her car and house — say, fire insurance. Why would people have that insurance if not to protect themselves from negligence? There but for the grace of God go all of us.

There is a vast difference between a degree of carelessness, negligence, and gross negligence and disregard for other people's lives and safety. All honourable members would agree that any degree of gross negligence or disregard for other people's lives or safety should be and in the current climate is punished, and punished severely. The suggestion of the Honourable Theo Theophanous that some of the money gathered from grossly negligent employers should be paid to injured workers is lunacy. What nonsense! No wonder he is still on the back bench. Rabid ideology like that would dull his brain. He has become irrational. But that is what he suggested in his contribution to the debate. He has no idea. His ideology presupposes that all employers are out to get employees, and the opposite is the case. Nevertheless, back to the bill.

I do not want to overemphasise the difficulties of the bill but I must put on record the views of the legal firm Wisewoulds, one of the major workers compensation practitioners in the city. In its monthly update it states:

> It is easy to sense the tension between the reintroduction of rights and the desire to ensure that they are exercised in a manner consonant with responsible financial management.

It continues:

> … we believe that tension has in too many identifiable instances led to confusion, clashing of concepts, and the ignoring of problems within the current common-law framework in circumstances where much of the framework has been maintained.

That gives a fair indication from an outside, unbiased perspective of what the legislation is lacking. I also quote the comments of Wisewoulds on specific parts of the bill. With respect to the inclusion of overtime in weekly payments calculations it states:

> We will not detail the potential for dispute in this clause, because it is self-evident.

If there is a complex and uncoordinated piece of drafting, it is in proposed section 134AB (38)(c) inserted by clause 18. Wisewoulds makes the following comment on the new serious injury narrative:

> … the method by which the loss of earning capacity is to be determined is borderline unintelligible.

That is the view of an independent outsider — the view of a group of people who will be working with the legislation. I have said before that the Parliament has a responsibility to ensure the legislation that is enacted is of the highest quality possible. It is a requirement on this chamber and the other place that legislation put in place in Victoria be comprehensible. The comments I have quoted referring to draft legislation were available before the bill was tabled, yet what has the government done about those comments? Absolutely nothing.

If such comments had been made only by Wisewoulds one might be inclined to say that they were a one-off, but similar comments were made on the bill by Slater and Gordon, close friends of the government, and the Australian Plaintiff Lawyers Association, also well regarded by the government. That has had a major role in influencing changes to the bill.

On the history of workers compensation I mention that when I was admitted to practice many years ago workers compensation existed, but only in the form of a minor safety net for workers who were injured. In those days if a person were able to prove negligence that person had a common-law claim, but common law was dramatically restricted so that if there were any degree of contributory negligence by the worker or the worker's fellow employee, that person would not be entitled to receive any damages. So it was that basic workers compensation schemes developed, but common law was always on the side.

The unfortunate aspect of the legislation during the late 1970s and early 1980s is that, with common law being so open ended, premiums became high. I am sure many members of the house will recall the difficulties that arose because of the compulsory nature of workers compensation cover and the huge premiums that became almost unbearable.

In 1985 it was not a Liberal government that said that something had to be done; it was a Labor government. Not only the Cain government in Victoria but Labor supporters across Australia led the attack on the common-law provisions. The left-wing unions would have preferred to have workers remain on pensions because it keeps employees tied to a payment. The unions do not want to see a person getting a payout and disappearing. Back in 1985 the Cain government, through then Treasurer Jolly, abolished common-law claims with respect to pecuniary loss. I quote the former Treasurer as reported in the *Age* of 1 July 1985:

> The government has held firm to its commitment under the scheme to remove the common-law right to sue for pecuniary loss, despite opposition from trade unions.

In 1988 the Hawke government sought to eliminate common-law rights. As I mentioned earlier, the new state Treasurer supported the elimination of common-law rights when he was the federal member for Bendigo. In 1985 the first erosion of common-law rights was introduced by a Labor government, yet 15 years later there has been a reversal. I am not sure what has changed.

I have heard much rhetoric from speakers about the restoration of common-law rights. I draw the attention of the house to the way the government's policies have varied — very subtly, but there has been a definite variation. The government's pre-election promise was to restore common-law rights to injured workers. Immediately after his election the Premier changed the tune very slightly, now suggesting the government would restore common-law rights to seriously injured workers — the government has now included the condition that the injury be serious. By the end of November the restoration of common-law rights was to be made to seriously injured workers within a responsible economic framework, and that is a major shift.

The legislation does not introduce what government members would have us believe is being introduced — namely, the restoration of common-law rights as promised before the election. The Labor Party has deceived the Victorian public, the electorate and Victorian workers. It has deceived its backers, the unions — and the unions know that. All honourable members know what the unions said before the legislation was prepared for this place. I am sure we will find out in years to come what deal the government did with the unions to keep them quiet.

For the record I mention that to restore, according to the *Concise Oxford Dictionary*, means to bring back to original state by rebuilding, repairing, et cetera; to reinstate or to bring to former place or condition. If the government believes the legislation does that, it is seeking to convince the Victorian public that it is incapable of understanding what the government is about.

The extent of the consultation process was the government asking a working party to prepare a report on the workers compensation system. The opposition met with a large number of employer groups and interested parties. The *Age* of 24 February reports the comments of Leigh Hubbard, the secretary of the Trades Hall Council and a member of the working party, on the government's relationship with the working party that it asked to report on common-law rights for injured workers. On the subject of the government's foreshadowing of workers compensation reforms, the report states:

> … it has pre-empted its own working party examination of the Workcover system. The government has not even received the final report and recommendation from the working party …
>
> The government has made a political judgement on what premiums should be not on what is fair for workers.

One of the government's own people is accusing it of dollying up proposed changes to workers compensation, something it is good at doing. In the article Mr Hubbard is pointing out to the people of Victoria the incompetence of a government that rules by committee, appoints by committee and makes decisions behind closed doors. So much for consultative and open government.

When the coalition government came to office in 1992 the workers compensation scheme was haemorrhaging with unfunded liabilities of $2.1 billion and premiums at an all-time high of 3.3 per cent. It was the worst performing scheme in the nation. By 1999 Victoria had the lowest cost scheme of any Australian scheme, and it paid the highest benefits. The savings for employers were more than $600 million a year. Irrespective of the criticism of the scheme by the current government, the latest actuarial review of the scheme in June last year indicated that by February 2001 the scheme would be fully funded and running into profit.

The government cannot guarantee the people of Victoria what will happen with the proposed changes to workers compensation. I am concerned about where the bill will take Victoria. Mr Theophanous said this is only the beginning. If this is the beginning I ask the government to revisit 1984 and 1985 to seek to learn from the errors the then Labor government made and to not fall into the same traps that led to the famous Guilty Party tag — which still persists — and to the greatest

black hole in Victoria's history — $32 billion in accumulated deficits — from which the Kennett team extracted Victorians with great management and good government.

I turn to direct a number of issues to the attention of the house. The first is the amendment of the Sentencing Act, as provided by clause 26, which was alluded to by the Honourable Peter Katsambanis. I find retrospectivity unacceptable at the best of times. However, I am particularly concerned in this case because any employer who happens to be caught in the trap set by the legislation will suffer severely. It is horrendous that the house can accept legislation that will effectively retrospectively remove the insurance cover an employer had between November 1997 and October 1999. The effect will be to expose an employer to personal liability and, as Mr Katsambanis said, to create the possibility of employees losing out if the employer is so badly affected economically that he is unable to pay any award that may be made.

The second significant point is that insurance cover guaranteed under the Accident Compensation Act is withdrawn. Employers who believed they were covered could suddenly find themselves in a dreadfully prejudicial state they would be unable to do anything about. No-one can insure for a past event. I am surprised the legislation has reached this stage in its current form given the comments made by a raft of observers in the marketplace.

In conclusion, I refer to the inclusion of section 135B by clause 24 to create structured settlements. I have an interest in this matter because of a Law Reform Committee inquiry into the legal liability of health service providers, the report of which was tabled in May 1997. The committee conducted an intensive investigation of compensation and how it should be paid. Although the report was on health service providers, the committee noted at the time that many of its recommendations applied to all forms of compensation. So far as I can determine the proposed system is unique in Victoria — it is the first time provision has been made for structured settlements.

As I said in opening, the government should have taken the time to prepare good legislation. Although an effort has been made to implement structured settlements, the system allows too much power to remain in the hands of the government. Given that it is a first experience with such a system it would have been far more appropriate for there to have been greater consultation. Structured settlements are working in many parts of the world, but I do not think the provision in the legislation will do the job intended by the government. I can only say: what's new in that regard?

Although the opposition acknowledges that the government has the right to introduce the legislation it is disappointed the government did not take more time to consult with the people who will be affected by it before its introduction and thereby avoid the problems I am confident the state will face over the next three years.

Hon. G. W. JENNINGS (Melbourne) — I am pleased to join the debate on this important legislation. The bill restores common-law rights for injured workers in Victoria, which was one of the key undertakings made to the people of Victoria by the government at the last election.

Before discussing what the government is trying to do through the introduction of the bill I will reflect on the nature of justice. Justice is an internal rhythm that exists within all citizens. It is something they gain through the processes they grow up with and is part of the value systems they establish. Justice is a key concept to us all and is revealed in the sense of fairness we display to one another. The fundamental nature of justice is perpetuated through popular culture. It is a significant theme in literature, at the cinema and on television.

Moral and ethical questions underpin many courtroom dramas. Those ideas are regular features of debate of public culture because the notion of justice and fairness is part of our internal clock and the beat with which all citizens in our democracy identify. That is one reason why the Bracks Labor government's undertaking to restore common-law rights to seriously injured workers struck a note with the Victorian community. Victorian citizens were denied the opportunity to gain some degree of justice when they sustained injuries in the workplace. That goes to the core of the appreciation of all Victorian citizens of fairness and equity and the spirit of justice.

Contributions to the debate included arguments about whether access to common law is an efficient and effective method of maintaining a scheme of workers compensation. Many valid arguments can be mounted to suggest that it would be better to have a form of constitutional law to underpin the integrity of the statutory benefits arrangements and to codify the entitlements of seriously injured workers. However, that would deny the nature of the legal framework that is part of how our democracy works and the jurisdiction of law as it applies throughout the western world, based as it is on common-law precedent and practice. The government might recognise that common law may not

be the most efficient prescriptive way to administer a workers compensation scheme but the undertaking was made because of the core commitment to common law. It is recognised in our community that common law is the last resort for citizens to achieve justice in the Victorian scheme.

The bill provides access to common law but imposes a number of legislative and statutory requirements. The second-reading speech has extensive references to the precedents established in the Victorian system and used to limit the application of common law to the scheme. The measure has been designed to ensure that the scheme is financially viable. Those key undertakings were made in the second-reading speech.

It has been interesting to listen to the debate. The opposition has taken the government to task for not going far enough by restoring the system that existed prior to the 1997 changes. At the same time members opposite have taken the opportunity to criticise the government for increasing premiums in establishing this scheme. In constructing the scheme it was important that the government create an appropriate balance between providing access to common law and ensuring that the scheme will be financially viable in the future and will not disadvantage Victorian employers through the premiums they pay.

When the Minister for Workcover in the other place established a working party in November last year one fundamental requirement was to ensure that the premiums paid by Victorian workplaces remain competitive. After receiving advice from the working party, the minister increased the premiums to an average of 2.18 per cent of wages, which is equal to or below the national average based on the various factors that come into play when comparing like elements of schemes. No analysis suggests that the Victorian premiums exceed the national average. It is clear that the premiums struck are well below those applying currently in New South Wales.

The structure of the legislation and the case law the minister relies upon in the second-reading speech reinforce the application of various tests that limit the exposure of the scheme to claims. The decision of the full court in the 1992 Supreme Court case of *Humphries v. Poljak* demonstrated that limits could be placed on various elements of the whole-person-impairment test and the nature and permanency of serious injury. That case law has been relied upon heavily in the establishment of the framework of the new scheme. Changes have been made to tighten the whole-person-impairment test and the narrative test to limit the exposure of the scheme.

That brings us to the heart of the dilemma facing the government. It needs to provide appropriate compensation for seriously injured workers that satisfies the expectation of the Victorian community that the scheme will be financially viable and stable in the future. Unfortunately a trade-off has had to be struck. On behalf of the government I acknowledge that limits have been placed on the rights and opportunities of seriously injured workers to obtain some justice. We must recognise that financial compensation can go only so far in meting out justice to an injured worker and his family. The Minister for Workcover in the other place, the department and the government have an obligation to demonstrate the importance of case management and the activities of the Victorian Workcover Authority in ensuring that the focus of the scheme is to appropriately rehabilitate, retrain and restore workers to the workplace. That is the primary focus of this exercise.

While the Minister for Workcover has satisfied his undertaking to restore common-law rights and provide access for about 5 per cent of the claims that come before the Victorian Workcover Authority, he has an unswerving commitment to ensuring that the emphasis of the scheme is to rehabilitate and restore workers to the workplace.

The bill will provide injured Victorian workers with viable, ongoing employment opportunities and income security derived from employment. That is the spirit and the undertaking that the government is clearly committed to in the management of the scheme. It is clear that the minister wants to ensure that the future reviews of the application of the whole-of-person impairment tests and the nature of the loss of earning capacity are administered by the authority with the clear intention of not standing in the way of workers being rehabilitated, retrained and restored to the workplace.

During the debate I have heard the opposition say on a number of occasions that the nature of common law itself militates against workers returning to the workplace. I recognise that unless the government is vigilant in the application of the scheme, that tension may exist. Clearly the minister and the government will work to ensure that that is not the case. The focus will be on assisting families, providing a degree of income security and enabling the long-term restoration of employment opportunities for injured Victorian workers.

One of the difficulties in this place is the adversarial nature of debates. Honourable members often lecture one another across the chamber about objectives and try to prove who was right and who was wrong at various times. I believe our intentions in this exercise should be

the same. We should ensure that the reintroduction of the common-law right does not limit the capacity of Victorian workplaces to be competitive and productive. We should ensure that workplaces are safe and that occupational health and safety practices are second to none. We should agree that the Victorian Workcover Authority must ensure that workers are restored to the workplace and have ongoing employment opportunities. We should agree that the structure of the scheme ensures that it is financially viable and that there is sufficient head room in the structure of premiums that apply in Victorian workplaces to ensure that the scheme is viable into the future. The second-reading speech made it very clear that the minister intends to achieve those outcomes. On that basis there should be agreement from both sides of the house about what the legislation seeks to achieve.

The bill increases the statutory benefits that apply. It also includes the commitment to increase the benefits that may apply, not through recourse to common law but in the application of the whole-of-person impairment test, and those benefits have been increased. That important undertaking has been met and is clearly identifiable in the second-reading speech.

The government has also made an undertaking to protect those who missed out in the period between the loss of the previous scheme and the introduction of this scheme. The minister gave a heartfelt response to the effect that case management review will apply to those people who missed out. An urgent case review will be undertaken by the minister on behalf of the government to ensure appropriate case management takes place. The government will ensure that those who have unfortunately missed out through no fault of their own are protected by the work practices of the authority.

The minister has done a very good job of getting through the eye of the needle in satisfying the various expectations that were placed upon him and the government in reintroducing common-law access. I have great confidence in the legislation and I commend the bill to the house.

Hon. E. J. POWELL (North Eastern) — The Liberal and National parties are not opposed to the bill. At the outset I note that the Labor government is under some illusion that during the 1997 Workcover debate the then coalition government removed the common-law right in such a way as to hurt injured workers. During that debate a number of members expressed concerns — I confess to being one of them — about the removal of that right. Because of that many honourable members looked at both sides of the debate — at common-law right and its removal.

When examining the arguments I spoke to the Victorian Workcover Authority and obtained some interesting facts and figures. I also talked to many other people who had been through the system. I found that few injured workers could gain access to common-law action or were successful in those actions. I also spoke to my stepfather about a time 28 years ago when he lost all the fingers on one hand. Common-law action was available at that time. I asked him how felt about the process and explained the coalition's proposals to him. He agreed with them.

He told me what happened to him while he went through the process of getting compensation. After the accident a union member said to him, 'Don't take compensation. We can take you through the courts and get you more than that'. My stepfather thought that might be a better way to do it; his complaint is that he waited three years to get compensation. I believe such delays are still the case. He also felt like a criminal. Many people who go before the courts have never been before a court of any sort before. They find it unnerving to have to deal with the legal system. My stepfather did not like that feeling at all.

One of the interesting issues he raised was his relationship with his boss. He said that over time his relationship with his boss changed. He had to prove that his boss was negligent and that the workplace or the workplace practices were unsafe. That should not have to happen. Any worker who is injured in a workplace should have a right to compensation; he or she should not have to prove negligence or that a workplace is unsafe. It should just be that the worker is compensated for an injury because it has happened at work.

As the Honourable Carlo Furletti said in his presentation, the Labor government rushed this bill. It should have looked at the best way to compensate injured workers. It should have looked at the whole system to see if all parties could work in a bipartisan way.

I am sure we would have been able to sit down together and determine the best way of compensating injured workers. We need to ensure that the money goes into injured people's pockets and not into the pockets of lawyers or the members of the medical profession who feed off those vulnerable people. They still get their money regardless of whether or not the workers win their cases.

The problem with the common-law option is that two workers with identical injuries can achieve two different court outcomes and monetary awards, depending on their lawyers. If the government is

looking to establish what it believes is a fairer system for compensating injured workers, I do not believe simply reintroducing common-law legal actions is the way to do it.

Ms Darveniza talked about negligent employers, and I agree that there are some out there. But as a number of speakers have said, most employers look after their workers by ensuring they meet all their occupational health and safety obligations — and they have a strong obligation to do so.

The former government increased the penalties for negligent employers who operate unsafe workplaces. The penalties increased from $40 000 to $250 000 for a company — a substantial rise — and from $10 000 to $50 000 for individuals. They gave businesses the strong incentive to ensure that they followed proper safety practices.

The Victorian Workcover Authority also set aside funds for advertising campaigns, which I compliment the government on continuing. We all remember the 'Safety — Think it. Talk it. Work it.' advertisements, which had almost as much impact as the Transport Accident Commission advertisements. It is worth keeping them going because they ensure not only that employees look after their own interests in the workplace but also that employers understand the importance of workers not being injured.

The former government also ran the successful tractor rollover bar campaign, which included rebates for those who took part. It was not very popular with farmers because of the initial cost of installing the rollover bars — although in some cases they were unable to install them because of the tractor designs — but the government rebate helped them meet those costs.

The prevention of tractor deaths is one of the most important health and safety issues on farms. Tractors are responsible for most of the work-related deaths on farms. Since the campaign has been running tractor deaths have declined dramatically. I am pleased that the government will continue pursuing those safety issues.

However, I am disappointed about the increased premiums because of the impact they have not just on small business operators but also on farmers. A farm is unique because it is not only a workplace but also part of the family home. The farm is probably the only workplace where all sorts of people live and work day and night. They include the family, children, old people, farm workers and visitors.

Farmers already pay fairly high premiums because of the unpredictable nature of farm work. They often work alone in all sorts of conditions — in the wet and the heat, on undulating ground, with dangerous machinery and with animals — so their premiums are already high. The government must ensure that those premiums are not increased unnecessarily. The second-reading speech refers to increased premiums; but as I said earlier, farmers do not need the additional burden of increased Workcover premiums, which are already higher than in any other industry — and we must not forget that they cannot offset their higher costs.

The shadow minister for Workcover in another place, the honourable member for Box Hill, arranged a number of meetings right across Victoria to talk to individuals and businesses about the impact of the bill. One meeting was held in my office in Shepparton, and others were held in Echuca and Wodonga. They were all well attended by a wide cross-section of people from the retail, trucking, fruit and small business sectors, who raised many concerns. For example, in the trucking sector Workcover premiums are already high. Truck drivers also have to contend with high petrol prices, so any increase in work premiums will have a strong impact on their businesses.

As we heard earlier, many of our fruit growers compete in the global arena, so it is important to understand that any increase in Workcover premiums will significantly affect their competitive advantage. I remind the house that the former government helped reduce Workcover premiums in the fruit industry. In December 1998 fruit growers in my electorate raised with me a number of concerns about their high Workcover premiums. In particular, they asked about the timing of payments and what they could do to reduce their premiums given the health and safety issues that the industry faced. We arranged a meeting in Shepparton, and the Honourable Roger Hallam, the then Minister for Workcover, came along, as did Andrew Lindberg, the then chief executive officer of the Victorian Workcover Authority. They spoke to fruit growers and other members of the industry, and I thank them for the assistance they provided. Around that time a series of information sessions were organised, which were attended by Workcover farm safety officers and representatives of the fruit industry. The sessions dealt with a range of issues — and again, the outcome was positive. I hope the government will allow the talks between various industries and Workcover to continue.

Workcover premiums in the fruit industry were reduced on 1 July 1999. Overall the fruit industry rate fell from 4.78 per cent in 1998–99 to 3.95 per cent, which is equivalent to a 17 per cent improvement across the board. One grower told me his premium for the

following year dropped by $50 000. That is the type of money we are talking about.

The growers developed a code of practice for safer workplaces. Workers in the fruit industry have to deal with all sorts of safety issues — from working in different climates to climbing ladders — and the code of practice produced good outcomes for all concerned.

Businesses are concerned about the bill, and so they should be. Under the Cain–Kirner governments the workplace premium was 3.3 per cent, and under the former coalition government it was 1.9 per cent. Victorian businesses now face a 15 per cent increase. The report on the Victorian Workcover Authority by the independent actuary Tillinghast-Towers-Perrin, dated 20 August 1999, states on page 17:

> This ongoing cost estimate with appropriate assumptions for growth and changing conditions, where relevant, enables us to project cash flows and incurred costs for the scheme over future years. Based on these projections and an ongoing premium rate of 1.9 per cent of wages —

as I said, that was the rate under the former government —

> including the superannuation component, we project full funding of the scheme by February 2001.

As the house can see, Workcover was not in crisis. The losses of the past few years were due to the pre-1997 common-law claims, because of the blow-out in medical and legal costs which was draining the system.

The 29-page second-reading speech does not deal with the human element of putting vulnerable, injured workers back into the legal system. In July 1997 a constituent contacted me about her dealings with the legal system. Although her son Adam was tragically killed in an industry accident on Monday, 18 August 1997, the coroner brought down her findings only on 23 May 2000.

Her treatment by the legal system has been less than satisfactory. She needed to be kept informed about the date of the inquest. She wanted to talk to the police and to Workcover about Adam's accident. My constituent had to do all the work involved in contacting the services — the police, the authority, the insurance company and the courts. All she wanted was to be kept informed. They called it a case; she said, 'His name is Adam. Please don't treat him like a number; call him Adam'.

I spoke to the Victorian Workcover Authority and later received a reply dated 22 December 1998 in response to my concerns about how vulnerable people are dealt with in the legal system. The VWA sent a letter to the State Coroner's Office. Because of time constraints I will read only a brief part of the letter from Andrew Lindberg, the chief executive officer of the VWA, to Graeme Johnstone of the State Coroner's Office. The letter states, in part:

> Both our organisations face the task of liaising with grieving families, often in difficult circumstances, and this requires the utmost sensitivity and solicitude from our staff and considerable communication skills. Our staff do perform this difficult role admirably and, as such, I would not usually forward such comments to your office. But, given the emotional vulnerability of the bereaved, and the misapprehension of your office I thought you would like to be made aware of this situation and to deal with the issue personally.

It goes on to say:

> To improve Workcover's services in this area, we would like to establish a link with your office. This would enable us to resolve queries at our end and to more easily resolve similar situations.

It concludes by stating:

> I believe the experience of this case highlights our common need to do more to assist family members and friends to cope with a work-related death. I am sure that a well-functioning link between Workcover and your office will help all parties.

As they have said during their contributions to the debate, government members have dealt with many people over the years while waiting to reintroduce the legislation. But I cannot believe their constituents have not talked to them about the types of issues that arise in court cases. We must ensure people are not forced into a court system that is not considered humane. The government has the opportunity to ensure injured workers are treated humanely and with dignity. I do not oppose the bill.

Hon. JENNY MIKAKOS (Jika Jika) — It is with great pride that I contribute to the debate on the Accident Compensation (Common Law and Benefits) Bill. Like many government members, I was an active supporter and contributed to the formation of the Labor Party's pre-election policy on the restoration of common-law rights for injured workers. I am proud to be able to contribute to the debate and to see the bill's passage into Victorian law.

As honourable members are aware, the bill seeks to deliver on the Labor Party's pre-election promise. The house is aware also that considerable debate has been conducted on the merits of restoring common-law rights for injured workers to enable them to commence legal proceedings against negligent employers.

Other government members have covered the details of the bill. Given the time constraints, I shall touch on only a few issues. As a lawyer, I fully sympathise with the Honourable Jeanette Powell's comments about her stepfather's experience. I concur that having to go through any type of legal proceedings is not a pleasant experience.

I have had discussions with a number of people injured in their workplaces, as was the honourable member's stepfather. In the environment existing before the introduction of Workcare by the Cain government, obtaining a common-law lump sum payment allowed them to get on with their lives and gave them a psychological boost that otherwise would not have been available had they been receiving weekly benefits.

As honourable members are aware, the restoration of common-law rights will be confined to seriously injured workers. A two-pronged test will involve either a 30 per cent whole-person impairment test under the fourth edition of the American Medical Association *Guides* or a narrative test that honourable members have discussed and that has been developed over time by case law but has been codified by the legislation. It will have reference to the impact of an injury on an injured worker. The narrative test will specifically deal with a loss of 40 per cent of an injured person's income-earning capacity. I will not go into the details of other elements of the test.

I congratulate the Minister for Workcover in the other place on the way he has gone about consulting key stakeholders in the trade union movement and industry to ensure the house now has before it a comprehensive bill that meets the needs of workers and Victorian industry.

The Honourable Jeanette Powell touched on the impact of the levy on Victorian industry. I am convinced that the introduction of the legislation, the minor increases associated with the levy and the restoration of common-law rights will ensure that Victorian industry remains competitive. The proposed increase in the levy to 2.18 per cent of payroll will make it the second-lowest in the country — second only to Queensland. An incentive is built into the new system to encourage employers to provide a safe environment for their workers, and thereby reduce their levies payable.

I noted the comments made by a number of opposition members. I do not have the time to address those issues. A number of them referred slavishly to comments made in the other place by the shadow minister, the honourable member for Box Hill. I found the speech of the honourable member to be astute when he comprehensively covered the history of workers compensation in Australia and Victoria. Despite his concerns about some elements of the bill, I am certain that the legislation will be efficient in its operation once it comes into law. It will not result in a blow-out of costs for Victorians.

I note that the honourable member for Box Hill sent a memorandum dated 5 May 1997 to the Honourable Bill Forwood and other members. It concluded for the benefit of the then government's working group on Workcover that the abolition of common-law rights would not lead to anticipated savings. The actuarial process that the Minister for Workcover in the other place has undertaken and the committee's report confirmed that the abolition of common-law rights did not lead to any great savings. I am convinced that the restoration of common-law rights is a sensible and prudent approach by the government.

I also note that the honourable member for Box Hill in the other house referred in his memorandum to the abolition of common-law rights being political suicide. In the Mitcham by-election campaign and on a number of other occasions the evidence is clear that the Victorian community remains convinced that seriously injured workers — specifically, those who have been injured through no fault of their own but through the negligence of their employers — deserve the right to access the court system in Victoria and to get on with their lives through being able to access common-law lump sum payments.

In conclusion, I note that the legislation will be accompanied by a thorough review to be undertaken by the Minister for Workcover on the case management system with a particular view to ensuring that rehabilitation remains the key focus of case management by the Victorian Workcover Authority. I certainly welcome that review and the recommendations that will flow from it. I commend the bill to the house.

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

Hon. D. McL. DAVIS (East Yarra) — I wish to make a number of comments about the Accident Compensation (Common Law and Benefits) Bill as we go through this long process. I have heard the contributions of a number of other honourable members, and I want to make a number of points by way of response. As has been pointed out a number of times, Parliament seems to regularly deal with bills relating to workers compensation, and the Accident Compensation Act seems to come back to Parliament

regularly for changes to be made in the context of the aims and objectives of the act.

It is important to say at the outset that most of the broad objectives of workers compensation are agreed across the chamber and across the community. It is important to base workers compensation on a few principles — the compensation principle, the prevention principle, the rehabilitation principle, and the need to achieve the aims within a financially responsible framework. As honourable members have said in the chamber on a number of occasions — I know the Honourable Theo Theophanous and others agree with the broad aims — it is a question of how the aims are achieved. I accept that the changes the bill will implement relate to the government's decision before the election to seek to reverse a number of changes that were introduced in 1997.

In the context of the changes it is important to state that the central aspect of the bill relates to common law. It is not my intention to revisit the material the Honourable Peter Katsambanis and the Honourable Carlo Furletti have covered in such comprehensive detail. Earlier when referring to the contribution of the Honourable Peter Katsambanis I used the word 'forensic' to describe the way he looked at certain clauses in the bill and their likely effects. However, I will refer only to the general principles of and what the government claims are the aims of the bill. The second-reading speech states:

> The government believes that the right of seriously injured workers to sue negligent employers is a fundamental right that should never have been removed. The government is committed to the restoration of common-law rights for seriously injured workers within the context of a fully funded and financially stable system, which maintains competitive premiums.

I sound a warning about the bill. While I agree with some of its aims I do not believe it will achieve what it sets out to achieve. In the context of the history of Workcover, in a short number of years aspects of it will be revisited and further legislation will be introduced.

As I said, it is not my intention to revisit every clause of the bill, as did the Honourable Peter Katsambanis. However, I point out that the bill will result in a rise in the number of claims, a shift between categories and an increase in workplace injuries. I know that seems unfortunate, but given the agreed aims the government will not achieve one of the central aims of the workers compensation scheme — that is, to provide the right incentives to maximise the prevention efforts of employers, employees and the government. That will not be achieved with the bill.

History shows that during the past 20 to 30 years an ongoing debate has taken place about the role of common law in workers compensation. The balance of opinion across the Western world is that workers compensation systems are better without common-law components. That view is not absolute and is not shared everywhere, but it is probably the balance of opinion throughout the United States and most other advanced economies that have a range of sectors in their economies. What is contained in the bill goes against the balance of opinion nationally and internationally.

The Labor Party has its own history on the role of common-law access in workers compensation. It is important to place that on the record. When researching the history of workers compensation and the impact the bill will have — Mr Baxter will agree that opposition members have had cause to do so many times in this chamber — I was struck by a news release of 11 December 1984 from then Premier Cain entitled 'Government announces major workers compensation reforms'. That was the first news release by Premier Cain about a new system, laying out the government's plan to reform workers compensation.

A central aim of the reform was the removal of common-law access. In the news release Premier Cain said:

> Our reform will shift the emphasis from litigation in the courts to accident prevention, rehabilitation and compensation.

History records that then Treasurer Jolly had similar views. He was quoted in an article in the *Age* of 1 July 1985, which states:

> The government has held firm to its commitment under the scheme to remove the common-law right to sue for pecuniary loss, despite opposition from trade unions.

History records that in that period the Labor Party was unsuccessful in achieving the full reforms it desired.

When reviewing the aim of removing common-law rights or arrangements from workers compensation acts it is interesting to look back to what happened in the 1970s. Back then former Prime Minister Gough Whitlam and the Woodhouse inquiry were determined to set up what they viewed as a better and fairer system that was not based on fault.

Other jurisdictions, such as South Australia, have removed common-law access. At the federal level the Comcare scheme does not have the same arrangements that members have argued for in this Parliament over the past few days.

Treasurer Brumby was a backbencher in the federal Parliament when Comcare removed the right to sue at common law. It is important that people understand the history. In the late 1980s and early 1990s the former Labor minister Neil Pope and the Workcare coordination unit headed at the time by Mark Robinson— Mr Baxter will remember the period well — had a similar aim to remove common-law access from the scheme along with a number of other serious reforms. They wanted to remove that access to make the system operate more effectively to achieve the aims of workers compensation on the principles of rehabilitation and prevention and to have a financially responsible framework.

Whenever workers compensation systems around Australia are spoken about and the rights of access to certain measures are brought into focus, it is important to examine the history and understand that although certain aspects may appear to be attractive on the surface they may not achieve their aims.

It is important to put on the record the performance of Workcover and its predecessors and the performances likely to be seen in the future. Workcover reforms were a spectacular success after 1992 under Roger Hallam. As minister he was able to lower injury and accident rates and improve rehabilitation efforts within a responsible financial framework and to provide just and reasonable compensation. That was not the history of the Workcare scheme set up by Premier Cain and Treasurer Jolly. It was unable to deliver financially as the number of accidents and injuries grew over the life of the scheme. Rehabilitation efforts were lamentable and the compensation available was inadequate. At its peak 2 per cent of the work force was linked with the scheme as claimants. That is an extraordinary figure.

Mr Katsambanis made the point that during the Cain and Kirner governments the unfunded Workcare liability was $2.1 billion, and the impact on businesses in Victoria was extraordinary. One of the key aspects of the scheme is to achieve key aims within a financially responsible framework. Aspects of the narrative test concern me. An important aspect of workers compensation schemes is administration, particularly the enthusiasm of the administration to fulfil its charter. Where a Treasurer or a minister responsible for workers compensation does not have in his or her mind a clear understanding of the aims of the scheme and its impact on the economy unsatisfactory outcomes will result for the whole community, including the business community and employment levels.

Over the past seven years Victoria offered businesses workers compensation premiums at levels that provided them with a competitive advantage. Although they will not reach the levels they were under Workcare, which were more than 3 per cent of payroll, rising premiums will certainly be of concern over the longer period for Victorian businesses and ultimately for employees.

The scheme is being introduced because of the influence of certain groups of lawyers in the Labor Party and certain forces within the trade union movement. That is unfortunate because it will lead to unsatisfactory outcomes for the community. The opposition is aware of the impact of Labor lawyers on the Labor Party. The amount of money taken out of the workers compensation system between 1 September 1996 to 31 August 1997 was enormous. For example, over a four-month period Maurice Blackburn took $5.922 million; Slater and Gordon, $5.524 million; Holding, Redlich, $4.315 million; Ryan Carlisle Thomas, $2.507 million; and Stringer Clarke and Newby, $1.981 million.

Those firms have strong links with the Labor Party and pushed hard for the changes. The Stringer firm includes an individual who took part in the review of the current legislation. Those links must compromise somebody. Because of that we do not have the best result. The figures are extraordinary for the number of cases involved.

Hon. D. G. Hadden — Would you clarify that?

Hon. D. McL. DAVIS — I am happy to clarify it in detail. Five firms attended the Labor Party's $1000-a-head dinner. The law firm Blake Dawson Waldron took out $2.668 million; Corrs Chambers Westgarth, $509 000; and Dunhill Madden Butler, $2.120 million. Those firms have an extraordinary vested interest and had a significant impact on the scheme which has distorted the focus and aims of the government. Recent decisions have been driven in significant measure by people associated with those and similar firms because they have a significant interest in ensuring the scheme has a certain form.

Over time the scheme will have to be revisited because unfortunately it will take on a number of characteristics of the unsatisfactory previous Workcare scheme. This legislation will be revisited in the future to ensure that the system delivers the necessary requirements of prevention, rehabilitation and compensation within a financially responsible framework.

Hon. R. F. SMITH (Chelsea) — It is a proud day for me to be contributing to debate on the Accident Compensation (Common Law and Benefits) Bill because I was one of those union leaders who

encouraged their members to march through the streets of Melbourne and up the steps of Parliament protesting against the inadequacy and unfairness of the previous government's system and in particular the removal of common-law rights. One thing Jeff Kennett could do better than most people I have met on the Labor side of politics was unite the union movement as no other could! He did that on a number of occasions. That is ironic to someone like me, who has marched side by side with people like John Halfpenny on a common issue.

In the year 1215 at Runnymede on the River Thames, near London, the barons of England extracted from the then monarch King John his signature on a document called the Magna Carta. With that document came the genesis of what we now know as common-law rights. It took around 785 years for those rights to be reduced and one Jeff Kennett to do that. He did so with the support of his sycophants in both houses of this Parliament, removing common-law rights that had taken hundreds of years to build.

What are common-law rights? Let us look at the dictionary and break that term down. 'Common' refers to something that is shared by or affects all those concerned alike. 'Law' is a rule established among a community, not an individual, enjoining or prohibiting certain action. 'Rights' are just, fair treatment. Why would someone want to remove those rights? If a member's constituent base is employers, small and large, and if they were to receive significant cost savings through the reduction of common-law rights, it is understandable that the members opposite would want to remove those rights.

The Bracks government has delivered on a cornerstone election promise — namely, to restore common-law rights. It did that at the first available opportunity — on 20 October 1999. I have heard people refer to the fact that Labor did not deliver on its election promises because the legislation is not retrospective. Labor did not promise to grant retrospectivity but to restore common-law rights, which it did at the first available opportunity.

I accept the comments of some members opposite who referred to statements made by Leigh Hubbard, the current secretary of the Victorian Trades Hall Council. He was critical of the government. The unions did not get everything they wanted, but it is rare in life to do so. I was a little disappointed that the bill did not restore retrospectivity, but on balance the government has made a hard, responsible and affordable decision.

As already mentioned by other speakers, in part the bill alludes to improvements for people trapped between the removal of common-law rights and their reinstitution. They will find themselves in better circumstances as a result.

Mr Baxter referred on a number of occasions to all unions hating employers. That is the situation as he sees it. He suggested that unions accuse employers of being ogres. That is not true, but I have met the odd individual in the union movement who has that opinion of employers. I am thankful that not too many union representatives fall into that category. By far the majority of union leaders have the opposite view. We understand the relationship between employers' profitability and our lifestyles. Our job security is directly linked to their businesses surviving. It is in our interests to ensure that is the case, but I will accept that there are a few who have a different view.

There is a philosophical difference in the way we look at the issue. Unions have a strong view that workers are extremely important and have a right to a workplace that is safe and healthy with a pretty fair chance they will come home in one piece to their families at the end of the day. Over the years union activities and the strengthening of certain occupational health and safety legislation and the like have resulted in a fair chance of that being achieved. The bill will strengthen that position.

I heard the Honourable David Davis say that changes to the Accident Compensation Act have increased the number of injuries, but they have not; they have increased the incidence of the reporting of accidents in the workplace, something the union movement has actively pursued. Unions want workers to report incidents in the workplace to prevent further, more major accidents occurring.

In the steel mill where I worked the company had an incentive scheme that paid workers a bonus for not being injured or, more importantly, not reporting an injury. If someone happened to clip his or her hand on an unguarded machine that person would be unlikely to report the incident because he or she would lose the incentive or bonus. If a crew bonus system was in place the whole crew, after a time of no injuries, would get a bonus. There was peer pressure not to report injuries. The worst example I saw was that of an individual packing coils of steel. He cut his hand so badly that 30-odd stitches were required. I saw him with a dirty old oily rag wrapped around that wound. He did not want to report it because he would have done his bonus and that of his crew.

The first thing I did as the senior union delegate was say to the company, 'You will get rid of that scheme immediately, and if you do not I will use the act to have you prosecuted'. That worked! It was not in the company's interests to have unsafe work practices continue, so it was happy to do that. Company representatives said it would be harder for me to convince my members than it would be to convince them. They were right, but I still did that. There is clearly a reason why the reporting of injuries has increased and, as a consequence, some employers have had to pay higher premiums; but that has led to a safer environment because it has applied pressure on employers to get their act together and work with their work force. What they have done is good.

I want to highlight a couple of case studies of individuals who have been extremely unlucky, not only in the way they have been injured but also in the timing of those injuries. They fell between the removal and reinstitution of common-law rights.

The first example is that of Ms Jennie Veares, an ambulance driver. On 16 September 1998 Jennie Veares was driving her ambulance from the Austin hospital, where she had just dropped off a patient, back to the depot at Camberwell. At the intersection of Whitehorse and Burke roads, Camberwell, Jennie had a green light and so continued through the intersection. Unfortunately the driver of a semitrailer drove through the red light into the side of Jennie's vehicle, hitting the ambulance with great force.

As a result of the collision the steering column of the ambulance was rammed into Jennie's face, causing her to suffer multiple facial injuries and secondary psychological difficulties from which she is still recovering. The lower part of Jennie's jaw had to be replaced with a titanium plate. She had the bones on both sides of her face shattered, necessitating their replacement with pins. She will require further plastic surgery in the future.

Jennie has, to this point in time, lost all sensation on the left side of her face and in her lower lip. She has no more than 50 per cent of pre-injury ability to open her mouth. She returned to work six months after the accident but requires time off now and then to cope with the pain she continues to suffer. Equally tragic, however, is the fact that because Jennie Veares sustained her injuries after 12 November 1997 she is unable to claim common-law damages against the driver of the truck, who would have been indemnified by the Transport Accident Commission in any event, because on 12 November 1997 the Kennett government abolished the rights of injured workers to sue for common-law damages in circumstances where they would be otherwise covered by the Accident Compensation Act.

Instead, the Kennett government replaced common-law damages with an amended no-fault, lump-sum compensation scheme, which is grossly inadequate in providing adequate compensation to injured workers. It is inadequate because it requires that in cases where the worker has not suffered the total loss or amputation of a body part the worker must be assessed as having a 10 per cent whole person impairment under the American Medical Association's guide to permanent impairment before being entitled to a cent in lump-sum compensation.

In a medical report requested by Jenny's solicitor, David Moody of Slater and Gordon, Dr Jack Gerschman, an associate professor at the School of Dental Science at the University of Melbourne, assessed Jennie as having no more than a 19 per cent whole person impairment as a result of the facial injuries. Dr Gerschman's report states, in part:

> The impairment assessment of facial trauma is inadequate in the fourth edition … For example, loss of teeth is rateable for impairment and the impairment rating for tempromandibular disorders is also greatly inadequate and not in keeping with other body joints.

The report further states:

> In essence, the chapter relating to impairment of oral facial and related structures needs to be rewritten.

Mr Moody stated that an assessment of 19 per cent whole person impairment would result in Jennie being entitled to $23 000 in lump-sum compensation under the no-fault scheme. After taking into account the impact on her speech and facial disfigurement, she will be lucky if she receives more than $35 000 in total. By contrast, Mr Moody stated that Jennie could reasonably have expected to receive several hundred thousand dollars in common-law damages if not for the fact that the Kennett government had abolished her rights. I have at least four other examples of similar incidents.

Hon. Bill Forwood — Not from the employer.

Hon. R. F. SMITH — I never suggested it was from the employer. The former government changed the law and this person lost the opportunity to sue at common law. The opposition can say what it likes, but when it was in government it changed the law and it has been exposed. A by-election occurred in Mitcham — opposition members may have heard about the result — in which Labor based its campaign on the independence of the Auditor-General and workers

compensation reform. The coalition did not listen then and it did not listen at the last election. That is why it is on that side of the house and why it will be there for some time to come.

The Bracks government is delivering on the promises it made to Victorians. The bill is a huge step forward and is a good example of social justice legislation. It should be supported by all members in the chamber.

Hon. BILL FORWOOD (Templestowe) — I will make a few brief comments about the legislation. At the outset I say that the legislation is a victory for cynical politics over sound public policy. This is not about the workers compensation system, safe workplaces, preventing accidents, rehabilitation or even compensation. This is about raw politics. The Labor Party was successful in painting a picture about the abolition of common-law rights as part of a rights issue. However, workers compensation is not and never has been about that.

If there was any sense of honesty among the honourable members opposite they would acknowledge that the traditional abolitionists of common law have always been the Labor Party. Honourable members opposite should look at the record.

Hon. R. F. Smith — Not this Labor Party.

Hon. BILL FORWOOD — It is changing its spots. I say one more time: the bill is a victory for cynical politics over sound public policy. Honourable members should make no mistake about that.

I have listened with real interest to the debate. I have been in the chamber and I have listened to every person who has spoken on the bill, apart from Mr Jennings. I look forward with real interest to the committee stage of the debate — it will start shortly — in which the opposition will demonstrate some of the inadequacies of the flawed legislation.

I congratulate the honourable members on this side of the house who spoke so well about the inadequacies of the bill. In particular I congratulate Mr Katsambanis, Mrs Powell, Mr Baxter, Mr Furletti and Mr David Davis, all of whom spoke on different aspects of the bill.

I should also place on the record that people ought to consider the speech given by the honourable member for Box Hill in the other place on the bill and the speech by the Honourable Bill Hartigan in this place in 1997. I say to Mr Bob Smith, who tried hard to tell the chamber a little about the genesis of common law, starting with the Magna Carta, that if he really wants to know about the genesis of common law he should read Mr Hartigan's speech. Mr Smith missed the mark on a number of issues which demonstrated his — —

Hon. K. M. Smith — Ignorance and stupidity.

Hon. BILL FORWOOD — Thank you for making my speech for me, Mr Smith. The house should recognise that the changes made in 1997 were made to improve the system and guarantee statutory benefits for injured workers. The Labor Party talks about the abolition of rights.

Hon. R. F. Smith — You looked after your mates and ripped us off.

Hon. D. McL. Davis — You are looking after your mates.

Hon. R. F. Smith — Absolutely. We come in here to look after working men and women.

Hon. BILL FORWOOD — Mr Bob Smith said that the Labor Party is looking after working men and women. It is a sectional government that governs for one section of the community. In fact, Mr Smith means that it governs for working men and women to the exclusion of all others.

Hon. R. F. Smith — I did not say that.

Hon. BILL FORWOOD — You did! There is no doubt that Victoria has a sectional government that is run by the trade union movement. If the government wants any more proof it should refer to the comments of Australian Workers Union head, Bill Shorten on 3AW, when he said, 'They owe us. We put them there. They owe us and they must deliver.'

Hon. R. F. Smith — They started the Labor Party.

Hon. BILL FORWOOD — Yes, they started the Labor Party and they own you today.

Honourable members interjecting.

The PRESIDENT — Order! I believe the house was quiet during the course of Mr Bob Smith's contribution. I suggest that Mr Smith wait until the committee stage to make further contributions.

Hon. BILL FORWOOD — I reiterate the comments of Mr Bill Shorten when he said, 'We put them there, they owe us.'

I turn to the legislation. The system of workers compensation designed by Mr Hallam that was put in

place over a number of years had at its genesis the best interests of working men and women.

It was designed to put in place a system of statutory benefits by which people could be compensated for workplace injuries without going through an adversarial system. The previous government designed a system predicated on the principle that it was best if people were not injured but if they were we would get them back to work. The proposed system does not do that.

In 1997, when the previous government abolished access to common law, 2.6 per cent of injured workers had access to common law. That access was not a major part of the scheme and it was not the abolition of everybody's rights. What has happened? The government has brought back a half-baked system, flawed in design and interesting in its implementation. The new system will cost Victorian employers $150 million. It will put a cost impediment in the way of employment and good business and will reward only a small number of people.

Who will really benefit from the new scheme? Page 5 of the Autumn *Victorian Bar News* is headed 'Editors Backsheet'. It is written by the editors Gerard Nash, QC, and Paul Elliott, QC, who state:

> 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, the words of the amending legislation.
>
> We welcome any expansion of the work available to members of the Bar.

At least they are honest and up front about it — it will result in snouts being back in the trough.

Hon. D. G. Hadden interjected.

Hon. BILL FORWOOD — I heard a squawk from Ballarat. The editors continue:

> 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.

As I said, at least they are honest.

What are we doing? We are reinstating a hybrid system to meet a cynical political promise made as part of an election campaign. It was part of a cynical political exercise not designed in any way, shape or form to prevent workplace injuries, to rehabilitate those who are injured, or to compensate properly those who are unfortunate enough to be injured. It is not in any way designed to assist a competitive environment in Victoria or ensure that when a worker is injured in the workplace he or she is encouraged to get back to work as soon as possible.

Hon. R. F. Smith interjected.

The PRESIDENT — Order! Mr Smith, if you want to have a conversation, have it outside.

Hon. BILL FORWOOD — What sort of system do we need? How can we ensure that we produce legislation that meets the needs of injured workers? How can we ensure that we produce legislation that meets the needs of the community, encourages employment and drives Victoria forward? We will never do that so long as we put cynical politics in front of sound public policy.

Hon. K. M. SMITH (South Eastern) — The words of my colleague Mr Forwood were excellent and laid on the line some of the concerns of opposition members.

The Labor Party is only the political arm of the trade union movement. Bill Shorten admitted that he controls the members opposite. Who controls the unions? The Labor lawyers, the people who had their snouts back in the trough as soon as the bill was introduced. People at firms such as Slater and Gordon and Maurice Blackburn can hardly wait for the bill to be enacted. The lawyers will rip off the system.

Members opposite will push the bill through because they are driven by the ideological views of the trade union movement to believe that the proposed new scheme is a good thing. Members opposite will only think of the kickbacks that the Australian Labor Party will get from the lawyers for all the little cases that are sent to them. The unions also get kickbacks. We know that members opposite are financed by the trade union movement — we know how the money flows around.

The government is wrong in changing the existing legislation. Over time, with the Honourable Roger Hallam as the minister in charge of Workcover, the previous government was able to compensate workers. I honestly believe that a worker has every entitlement to go to work in the morning and come home in one piece. I was an employer for a long time and never once had an injured employee who needed to make a claim on Workcover, but it was nice to know that there was a safety net for those people.

One of the difficulties faced by members opposite is that when the Labor government introduced the former Workcare system in 1985 it built so much rubbish into the system that it could not work properly. When the

coalition took over in 1992 Workcare had unfunded liabilities of $2 billion. Victoria had the highest premiums in the country and Workcare was not delivering to the people who deserved care — that is, the injured workers.

Injured workers should be adequately compensated. I was a member of the committee that introduced the new area of compensation when the previous government cut out common-law rights. We told the workers that we were prepared to give them the very best funding available to compensate them for injuries and we were prepared to ensure that they were financed for a time so that they could go back to work if possible and be part of the community again. We brought some credibility and respect to the people who were receiving payments under Workcover.

Hon. T. C. Theophanous — I hope you've got the principles to go to the next election and say you are going to abolish it.

Hon. K. M. SMITH — Mr Theophanous had a chance to speak so he should shut up and give me a chance. I am fair dinkum about this.

Hon. M. M. Gould — On a point of order, Mr President, I find the abusive language of the honourable member unparliamentary.

Hon. K. M. SMITH — What abusive language?

Hon. M. M. Gould — Telling honourable members to shut up. I ask the member to withdraw.

The PRESIDENT — Order! There is no point of order. Clearly the Leader of the Government achieved what she wanted — that is, to slow down the debate — but I do not uphold the point of order.

Hon. K. M. SMITH — The government has difficulty when it is faced with facts about looking after people. When the previous government looked after people members opposite did not like it because it cut out their Labor lawyer mates who had had their snouts in the trough until we stopped them. In the final year of Workcare the Labor lawyers were taking some $150 million in legal fees out of the pockets of the workers who had been injured.

Remember that. It was coming out of the pockets of the workers and going into the pockets of your rich lawyer mates. Remember how many people Slater and Gordon laid off when the coalition government brought in the changes to Workcover? Plenty of people were laid off, people who had their snouts in the troughs and who were living off the backs of injured workers.

The lawyers wanted people who could appear to be crippled when they went into the courts. They were not allowed to go to the courts in any sort of fit condition. They were not allowed to go back to work because that may have ruined the case for the lawyers. That is the truth. We had a breed of people who sat in front of the television watching *Days of our Lives* and turning into vegetables because the lawyers wanted them to. Victorian injured workers loss their self-respect because people thought they were bludging on the system.

The coalition government brought respectability back to people who were on Workcover. It got them back into jobs. It worked with the employers and the employees to bring them together and begin working again. There is nothing better for the self-respect and pride of injured workers than to be back in the work force with their mates, working alongside the people they worked with before they were injured.

Mr Forwood referred to the fact that only 2.6 per cent of injured workers were eligible to go before the courts and take part in the lottery to see if their lawyers could prove negligence against their employers. I was very interested to hear what the Honourable Bob Smith said about the ambulance driver. We saw the way you dragged that poor woman out in front of the television cameras. That was a rotten trick.

Honourable members interjecting.

Hon. K. M. SMITH — I felt damn sorry for that woman because she had been used. She had been compensated for the injuries she received but you talked about whether she was going to be able to use her common-law rights. How could she prove that her employer was negligent?

Honourable members interjecting.

Hon. K. M. SMITH — Was it the driver of the ambulance who was negligent or was it the driver of the truck? Was it the ambulance itself that was a problem? No. The truth was that she would never have been able to prove in a court of law the negligence of the ambulance service that employed her. She still had the right to sue the truck driver who went against the red light, but they said she did not have that right. I am saying she did have it.

Hon. R. F. Smith — Bull!

Hon. K. M. SMITH — Well, you had your chance, Mr Smith. I say she had the right to be compensated properly. The opposition says its legislation would have compensated her properly. You can mislead the people of Victoria like you did when you got elected.

Honourable members interjecting.

Hon. K. M. SMITH — I do not care what policy you said you took to the election. You did not get a mandate to govern in this state. You never had the numbers. We got more votes than you did in the last election campaign.

Honourable members interjecting.

The PRESIDENT — Order! I know we have just had dinner and some people are getting a bit excited but I suggest that honourable members quieten down. The honourable member on his feet is, I am sure, getting near the end of his dissertation, and the house can then move into committee and examine the matter in great detail. I ask the Honourable Bob Smith not to be so provocative and for the opposition not to be so responsive.

Hon. K. M. SMITH — I do not believe I am provocative. I speak with some passion on the bill because I care about Workcover. None of the members on the other side of the chamber have ever employed anybody. They have never paid workers compensation premiums in their lives!

Hon. R. F. Smith interjected.

Hon. K. M. SMITH — He mentions having a business. I cannot believe it. All you lot on that side do is line the pockets of your mates from the Trades Hall Council and the Labor Lawyers. You are disgraceful. You should be ashamed of what you are doing with this bill.

It is a disgrace that the government is dragging the bill before Parliament with its union and Labor lawyer mates. For that it will stand condemned. When the employers start paying higher premiums to offset the costs to the community and when they find that honourable members opposite forced up the premiums and gave the workers fewer benefits than the Kennett government's Workcover scheme, they will turn against it in droves. Then the government will get what it deserves. It will be thrown out.

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

Bells rung.

Members having assembled in chamber:

The PRESIDENT — Order! I ask honourable members supporting the passage of the legislation to stand in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Read second time.

Committed.

Committee

Clause 1

Hon. P. A. KATSAMBANIS (Monash) — I note that clause 1(a) states that the purpose of the act is to provide for the restoration of common-law actions for damages with effect from 20 October 1999. The government indicated its intention at the September 1999 state election to reintroduce common-law rights effective from 11 November 1997. I also note that the report of the working party on restoration of access to common-law damages for seriously injured workers considered a range of options for the commencement of these changes, including 11 November 1997. I seek an explanation from the minister for why the date of 20 October 1999 was chosen as the commencement date for the common-law provisions introduced by the bill.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The government took office on 20 October 1999, and it was the decision of the government to introduce this legislation to be effective from that date, which was the date on which we became responsible. That is why the date is 20 October 1999.

Hon. P. A. KATSAMBANIS (Monash) — Given that prior to the election the government clearly indicated its commitment, if elected, to introduce common-law rights retrospective to the date of their abolition, and given that the opposition has received representations from organisations including the Trades Hall Council to suggest that that was also the government's intention, will the minister now accept that the introduction date of 20 October 1999 will actually be a breach of the election commitment that the Labor Party gave the people of Victoria?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I dispute that. That was not the case. Our policy was and still is to reintroduce common-law rights.

Hon. P. A. KATSAMBANIS (Monash) — I accept that it was the government's policy to reintroduce common-law rights. As I said, we have had representations from various organisations, including the Trades Hall Council, that it was their view that in fact the reintroduction would be backdated to 11 November 1997. I note the minister is not prepared to admit that this is a breach of an election promise, but it clearly has to be. There is no possible explanation for it other than the fact that the government built up an expectation of retrospectivity in the reintroduction of common-law rights, and the working party costed it. Can the minister explain what policy rationale there was in the choosing of this date?

There appears to be no real reason why 20 October 1999 was chosen unless there was some overriding matter that has not been explained to the house.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I believe I have already answered part of the number of questions the honourable member put. The date of 20 October 1999 was when we were sworn into government. I challenge the honourable member to produce any Labor Party policy document that states that there was to be retrospectivity. I believe it always was policy to reintroduce common-law rights for seriously injured workers.

Hon. C. A. FURLETTI (Templestowe) — Would the minister confirm whether the government considered retrospectivity to November 1997, and that in fact the government had some actuarial calculations done as to the amount of premium that would need to be charged to make the legislation retrospective to that date?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — As Mr Katsambanis has already indicated, in the working party a number of options were examined and put to the government and the government made the appropriate decision of having this legislation effective from 20 October 1999.

Hon. C. A. FURLETTI (Templestowe) — I asked a specific question: did the government or the cabinet consider or did it not consider whether it should make the legislation retrospective to November 1997?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I believe I have answered the question. The answer was that the working party looked at a number of options, and the government took the view that the appropriate date for this piece of legislation would be 20 October 1999.

Hon. C. A. FURLETTI (Templestowe) — The minister can squeal and squirm as much as she likes, but we all know that the working party presented a report. What I am asking the minister is a specific question, which requires a yes or no answer. It is: did the cabinet or the government consider making this bill retrospective to November 1997?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The government decided that the operative date for this piece of legislation would be 20 October 1999.

Hon. C. A. FURLETTI (Templestowe) — We are all aware that the government has done this, and if the minister wants to waste the time of the house, I will stay here until 3 o'clock in the morning and ask the same question.

Honourable Members — Then you'll get the same answer!

Hon. C. A. FURLETTI — In that case we'll be here for three days. I don't care. You are new to this place. It is a very simple question. We know that the government has made a decision. The question that I am putting to the minister is: did cabinet consider the retrospective application of this bill back to November 1997?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The honourable member has asked what was the view. The view of the government was to make it 20 October 1999. I am not going to detail in this place discussions that occur around the cabinet table. The government made a decision that the operative date for this legislation was to be 20 October 1999, which is the date that the government was sworn into office.

Hon. P. A. KATSAMBANIS (Monash) — It is quite clear that the minister has suggested that the working party made a series of recommendations.

Hon. M. M. Gould — Options.

Hon. P. A. KATSAMBANIS — It made a series of comments, options, and recommendations; the working party was commissioned by the government and reported to the government. Can the minister advise the house about any information that was provided to the government or to the cabinet with regard to the cost to the Workcover scheme of introducing a commencement date of 11 November 1997 as opposed to the commencement date that the government accepted of 20 October 1999?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The working party was established by the government, by the Minister for Workcover. A number of options were put and the government decided that the piece of legislation before the committee is what would be incorporated, and the operative date was 20 October 1999. That was the decision of the government.

Hon. P. A. KATSAMBANIS (Monash) — My question was quite specific. It related to the advice that the government received with regard to the total cost and effect on the Workcover scheme of an introduction date of 11 November 1997. The minister has chosen not to answer the question in any way, shape, or form but to effectively say, 'I do not want to answer it. I am not answering'. I point out to the house at this stage that the minister is not representing a minister in another place; this minister was sworn in by the Governor as the minister assisting in Workcover, and she has a commission to actually advise us firmly and frankly as to the advice she has received and to answer questions responsibly, and I again call on her to advise this house as to the advice the government received regarding the cost to the Workcover scheme of an introduction date of 11 November 1997. I expect a full answer.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I have answered the question. The working party had a number of options. The government assessed the options and decided that the operative date for the bill to take effect would be 20 October 1999. The honourable member said he has read the working party document. It contained a variety of options. The government made its assessment and the bill is now before the committee.

Hon. P. A. KATSAMBANIS (Monash) — I am concerned about the answer the committee has just received. I did not ask whether the minister knew I had read the report or had received advice from the working party or the Victorian Workcover Authority. I asked the minister what advice she and the government had received about the cost to the scheme of an introduction date of 11 November 1997. That is a simple question. That information should be readily and publicly available. The minister is the minister assisting the Workcover minister in the other place; she should advise the committee of the figure.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the figure that the honourable member is referring to is available on page 79 of the report.

Hon. C. A. FURLETTI (Templestowe) — I seek to clarify what the minister has said — apart from saying nothing! Is the minister telling the committee that the government did not obtain advice on the difference in costs of the scheme at various commencement dates?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — As I said, page 79 of the report has a table that sets out a number of different options, with different operative dates. It sets out what the scheme costs and what the premium rates would be.

Hon. C. A. FURLETTI (Templestowe) — Is the minister saying the government used that scale on page 79 on which to base its decision about a commencement date?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The operative date of the scheme, as I have said, was a decision of the government. The policy was clear — that the government would reintroduce common-law rights for seriously injured workers. That was the policy decision of the government. The date set was on the basis of the government's policy to restore common-law rights. A working party was established, a number of options were put to the government and the government made an assessment. It came to the view that the operative date should be 20 October 1999.

Hon. C. A. FURLETTI (Templestowe) — I cannot understand why it is so difficult for the committee to extract an answer on a simple question. Everyone knows why the government made its decision. The committee is asking the minister: is she representing to the committee that she did not obtain any advice other than that which was presented to her by the working party with respect to the various costs of the scheme? It is a simple question. The committee is asking whether the government received any extraordinary advice.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I believe I have answered the question. The government had a working party, which put up a number of options. The government made an assessment, accepted some options but not others, and from that, this piece of legislation is before the committee at the moment.

Hon. C. A. FURLETTI (Templestowe) — From that, I take it that you are saying, Minister, that you accepted the working party's figures?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am not sure how many times I have to say it, but a working party was established, a number of options were put, some were

accepted by the government and some were not. As a result of the government making an assessment, the legislation is before the committee tonight.

Hon. C. A. FURLETTI (Templestowe) — Do I take it, Minister, that you accepted the working party's recommendation?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — Page 79 contains three options. We did not accept all three of them because they are different dates; it did not make sense. The government took the view about an appropriate date for the legislation, based on the reports of the working party. It made an assessment and introduced the legislation.

Hon. P. A. KATSAMBANIS (Monash) — I profess that I am totally astounded that the minister is not prepared to offer a straight answer to essentially straight questions. They are matters of fact and the minister should be able to provide answers. Unfortunately, so far she has chosen not to answer. The record can stand for itself, that the minister is not prepared to provide a basic and brief answer but, instead, is trying to skirt around it, as Mr Furletti said. I will move on from clause 1(a) to clause 1(b) to see whether the minister is prepared to change her stance and provide information to the committee rather than providing a snowball as she has done so far. The purpose of the bill as stated in clause 1(b) is to:

> increase the amount of compensation payable for non-economic loss;

I will make it easy, Minister. The provision includes increases that were not canvassed in the working party report.

Honourable members interjecting.

The CHAIRMAN — Order! We are in for a long session tonight. I ask for calmness so the committee process can properly get under way.

Hon. P. A. KATSAMBANIS — The clause refers to compensation payable for non-economic loss. Increases in compensation will have an impact on the total cost to the scheme. I seek an answer from the minister on the advice the government received about the impact on the cost of the scheme as a result of increases in the amount of compensation payable for non-economic loss, as described in clause 1(b).

The CHAIRMAN — Order! Can the minister advise how much longer she will be; otherwise I will suspend the committee and return later. Minister, do you have some advice for me?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am sorry, Mr Chairman. I am advised that the range for the cost analysis is set out on page 83 of the report. It sets out a number of options. It was with that, with comprehensive actuarial advice all through the process and with detailed Department of Treasury and Finance advice that the compensation payable for non-economic loss increases was arrived at.

Hon. P. A. KATSAMBANIS (Monash) — Mr Chairman, I am fully aware that the report of the working party sets out a range on page 83, but the government did not accept in full any of the options that are costed at that page. As I said, there are a series of increases in the amount of compensation payable for non-economic loss. I would imagine that the increases would have been actuarially costed. I would like the minister to provide me with a figure for the actual cost of the scheme, as determined by the actuaries — of the legislative changes, not the options that were considered by the working party.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — As I have advised the committee already, during the course of the working party and the development of the legislation there was comprehensive actuarial advice, costed by the Department of Treasury and Finance, which resulted in the increase in the non-economic loss that is applicable to the bill.

Hon. P. A. KATSAMBANIS (Monash) — Can I take it from that answer, Mr Chairman, that the minister is not aware of the actual costs to the scheme of the changes for compensation for non-economic loss envisaged by the bill?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — Mr Chairman, I am advised that the cost is closest to option 4, which appears at page 83 of the report.

Hon. P. A. KATSAMBANIS (Monash) — I am starting to sound like a broken record, but unfortunately the minister is either being deliberately obfuscatory or does not have the information at her disposal. She tells us that the costs are closest to those of — was it option no. 3?

Hon. M. M. Gould — Option 4.

Hon. P. A. KATSAMBANIS — What does that mean? In what range? Is it a little bit more? Is it a little bit less? Is it a lot more? Is it a lot less? More

importantly, were not the changes that have been introduced actuarially costed? What I am seeking, Minister, is the actual cost. I am not seeking a guesstimate, a best guess, or the sort of figure you get if you throw a number up in the air, multiply it by three and take away two. I would like the actual cost of the scheme.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — As I have already indicated, option 4 on page 83 of the report is the closest to the cost. I do not have the exact figure with me. I would have to get it from the minister.

Hon. P. A. KATSAMBANIS (Monash) — Will the minister undertake to provide in writing to me the cost of the scheme at an appropriate time, say, within seven days?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I shall ask the minister to pass on the information to the honourable member in the time he requested.

Hon. P. A. KATSAMBANIS (Monash) — I seek from the minister an answer on clause 1(c) about the cost of the scheme with the introduction of the provision of regular payments for overtime and shift allowances that will be included in calculating a worker's weekly payments for the first 26 weeks. What will be the cost of the scheme without alteration?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I do not have the figures with me but will ask the minister to provide within seven days the exact figures.

Hon. C. A. FURLETTI (Templestowe) — Given that the second-reading speech indicates that the 2.18 per cent of wages will cover the cost of the scheme and will also eliminate the unfunded liability and make provision for extra, will the minister indicate the cost of the operation of the scheme without any inbuilt amount to cover the cost of the unfunded liability, or is the minister not aware of it?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I will ask the Minister for Workcover to respond within seven days with the exact figure. As the honourable member would be aware, a number of reports will show that.

Hon. C. A. FURLETTI (Templestowe) — I accept the minister's undertaking.

Clause agreed to.

Clause 2

Hon. P. A. KATSAMBANIS (Monash) — Clause 2(2) deems that new section 23(1) is to come into operation on 15 June 1994. Why was that date chosen as the commencement date?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that new section 23(1) is deemed to have come into operation on 15 June 1994 and that clause 2(1) makes the amendment, which overcomes the Walker and Rizza decisions in relation to the Workcare common-law bar. It is necessary to make this amendment retrospective to the date of the introduction of the bar.

Hon. P. A. KATSAMBANIS (Monash) — I note that clause 2(3) states that:

> Sections 27 and 28 are deemed to have come into operation on 1 July 1997.

Why was that date chosen?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — Those are the amendments that make it clear that neither the Victorian Workcover Authority nor the Transport Accident Commission are required to indemnify an offender in respect of any liability to pay compensation for pain and suffering under the Sentencing Act 1991. They have been made retrospective to the date on which the act was amended to provide for that form of compensation. The clauses are intended to put beyond doubt the decision of the Supreme Court in *Bentley v. Furlan*, which made it clear that the Transport Accident Commission was not required to indemnify a motorist convicted under the Crimes Act. While there are differences between the relevant legislative provisions, it is assumed the same jurisdictional interpretation would apply to the Accident Compensation Act.

Hon. P. A. KATSAMBANIS (Monash) — I take up that answer specifically in relation to the application of the decisions the minister cited under the Accident Compensation Act. I direct the attention of the minister to section 7(1) of the Accident Compensation (Workcover Insurance) Act 1993, which states:

> 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 the employer's liability under the Accident Compensation Act 1985 and at common law 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; and

(b) must not at any one time keep in force more than one such policy.

My reading of the section is that it makes clear that it was the intention of the Accident Compensation (Workcover Insurance) Act 1993 to ensure that Workcover provided coverage for employers for any actions in respect of all injuries arising out of, in the course of or due to the nature of all employment. Therefore the decision the minister cited, a decision specifically made in reference to the Transport Accident Commission (TAC), would not have any application to Workcover, save for the introduction of those provisions to the bill the house is currently debating.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised the Victorian Workcover Authority is strongly of the view that the statutory policy does not cover an award of compensation payable by an employer to a worker under the Sentencing Act as that type of liability arises from the consequences of a criminal act. *Bentley v. Furlan* confirms that the Transport Accident Commission is not liable to indemnify a driver in relation to compensation paid under the Sentencing Act.

As a matter of policy the government believes it is not appropriate for the scheme to insure motorists or employers for that type of liability, and the bill puts that beyond doubt.

Hon. P. A. KATSAMBANIS (Monash) — If, as the minister contends, the authority is of the firm view that *Bentley v. Furlan* makes it clear that insurance under Workcover would not cover awards of compensation under the Sentencing Act, can the minister point out what legal advice the authority has received to determine that view?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that *Bentley v. Furlan* is about the TAC, not Workcover. However, the legal advice we have received is from eminent QCs. If you want me to name them, I am happy to do so.

Hon. P. A. Katsambanis — Yes.

Hon. M. M. GOULD — Ruskin, QC, and Kaye, QC.

Hon. P. A. KATSAMBANIS (Monash) — Can the minister advise what effect the decision in the Shoebridge case would have on the advice she has provided to the house regarding the application of *Bentley v. Furlan* to accident compensation?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I would like some advice on which Shoebridge case you are referring to — whether it is the one held last week in the Magistrates Court or another one.

Hon. Bill Forwood — We can go on to something else while I organise for a copy of the case to be brought to the chamber.

Hon. P. A. KATSAMBANIS (Monash) — We will stick to clause 2 while a copy is brought to the chamber.

The CHAIRMAN — Order! So we are still working on the commencement provisions in clause 2?

Hon. P. A. KATSAMBANIS — Covering this ground may save us time later. We will obtain a copy of the judgment and provide it to the minister.

Hon. M. M. Gould — It will assist me in advising you.

Hon. P. A. KATSAMBANIS — I accept that. Perhaps we can now go to something else.

Given the minister's answer that the government has obtained legal advice that the application of *Bentley v. Furlan* would render the coverage of Workcover workers compensation insurance to employers meaningless in the case of Sentencing Act claims, why has the government chosen to introduce the provision to the legislation? It appears to me totally superfluous if the application of *Bentley v. Furlan* is as the minister has explained to the house.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised it puts that beyond doubt and ensures it is clear that employers are not covered.

Hon. P. A. KATSAMBANIS (Monash) — Do I take it from the answer of the minister that it is the intention of the government to ensure that any claim made against an employer for compensation for a workplace incident — an injury arising out of, in the course of or due to the nature of any employment with an employer — that is awarded under the provisions of the Sentencing Act should not be covered by Workcover insurance? Is that the government's policy intention?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — It is the government's

policy intention that Workcover and the TAC will not be funding claims under the Sentencing Act.

Hon. P. A. KATSAMBANIS (Monash) — Given that that is the government's intention, I note that the application of the section is deemed to have commenced on 1 July 1997, nearly three years ago. Is that not a retrospective removal of insurance cover for employers with regard to such claims?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that, yes, it is retrospective, but we believe the cover is not there. This puts that beyond doubt.

Hon. P. A. KATSAMBANIS (Monash) — The minister admits that the retrospectivity provision removes insurance cover.

Hon. T. C. Theophanous — She said that she does not think it is there.

Hon. P. A. KATSAMBANIS — 'Think' is the operative word. The minister is relying on the decision of a single judge of the Supreme Court whose decision may well be the subject of appeal for a further determination regarding the provisions of another act with different insurance cover provisions to the provisions of the Accident Compensation (Workcover Insurance) Act. The minister says the provision clearly intends to have a retrospective effect. It is extremely important because usually the provisions that flow from clauses 27 and 28 will themselves have a retrospective effect. They will subject employers to significant potential risk.

When the committee debates the substantive clauses I will continue to take up this point. However, I remind the minister that the *Shoebridge v. The Pasta Master Pty Ltd* case has been provided to her advisers. I ask her to return to my earlier question regarding the effect of the Shoebridge case on the application of the provision of accident compensation.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that it is irrelevant to the *Bentley v. Furlan* case in that it is on a different point of law, and that point was whether the Sentencing Act operated from the date of the injury or the date of the conviction.

Hon. P. A. KATSAMBANIS (Monash) — That is partly correct, but I have further advised the minister that in considering the nature of awards of compensation under the Sentencing Act regime it was found in the Shoebridge case that the awards of damages were civil and not criminal damages. In answering an earlier question the minister said that the coverage of Workcover insurance should not be extended to these claims and that the claims were in the nature of criminal damages. It was decided in the Shoebridge case that they were damages of a civil nature.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that they were compared to civil damages, but that it is still an entitlement from the criminal act.

Hon. P. A. KATSAMBANIS (Monash) — I am trying to put together the minister's series of answers. The minister is relying on a single judgment of the Supreme Court in the case of *Bentley v. Furlan* to say that at law there is no coverage under the Workcover regime, albeit the case was not actually determined under the application of accident compensation law. However, the decision of the Shoebridge case contradicts the minister's comments as to why the government believes the workers compensation regime does not apply.

I do not want to go into the legal niceties, but it highlights the fact that at best the government is guessing when it provides the answers to the committee that at law Workcover insurance does not apply to Sentencing Act claims. I call on the minister to reflect on that and to confirm once more that irrespective of whether the law currently allows coverage of the Workcover regime in those areas of the Sentencing Act it is the government's clear policy intention to bar such coverage and to backdate that bar to 1 July 1997.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — As I have already indicated to the house, I am advised that the authority is strongly of the view that a statutory policy does not cover an award for compensation payable by an employer to a worker under the Sentencing Act as that type of liability arises from the consequence of a criminal act.

Hon. P. A. KATSAMBANIS (Monash) — I would like to move on but I want the minister to answer the second part of the question I put to her. Is it the government's clear policy intention, irrespective of whether there is current coverage and the advice of the authority in that regard, to ensure legislatively that there is no coverage and backdate the provision to 1 July 1997?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I believe I have answered that.

Hon. P. A. Katsambanis — What is the answer?

Hon. M. M. GOULD — That it is quite clear that in this piece of legislation the section we are referring to is deemed to have come into operation on 1 July 1997.

Clause agreed to.

Clause 3

Hon. P. A. KATSAMBANIS (Monash) — Clause 3 provides that a question can be prescribed to be a medical question in respect of an application for leave under section 134AB(16)(b). Therefore, the Minister for Workcover intends to prescribe what will be a medical question. Could the Minister assisting the Minister for Workcover clarify what types of medical questions it is envisaged will be prescribed under the provision?

Hon. T. C. Theophanous — It is done under paragraph (i). Didn't you read that?

Hon. P. A. KATSAMBANIS — It says paragraph (h) or (i).

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that this clause extends the definition of medical question to enable new medical questions to be prescribed or determined by the court for the purpose of the narrative serious injury test for entry to common law.

I am advised that the medical panels have been established under the Accident Compensation Act 1985 to give final and binding decisions on medical questions as defined in the act. The advantage of having an expert medical tribunal determine medical matters is that it can avoid having costly and time-consuming medical experts on each side of the dispute. The clause amends the definition of medical question in section 5 of the Accident Compensation Act to enable medical questions to be either prescribed or determined by the court for the purposes of applications for leave to commence proceedings for the recovery of common-law damages under the provisions to be inserted in the act by clause 19.

I am advised that that will have the effect of enabling additional medical questions to be formulated for the purposes of assisting with the determination of the new narrative serious injury test.

Hon. P. A. KATSAMBANIS (Monash) — I understand that new medical questions will be prescribed. I ask the minister to explain to the house what type of medical questions are likely to be prescribed.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the questions could concern the loss of capacity to work or maybe the ability for retraining and whether that is possible. Those are the types of questions that could be posed to the panel. The question must be determined by the narrative.

Hon. P. A. KATSAMBANIS (Monash) — In a memorandum to the Minister for Workcover, Mr Paul Mulvany, a partner at Slater and Gordon, outlined a series of drafting concerns particularly about clause 5. He said that clause 5 is poorly defined and uncertain in its application. From the minister's answer, other than a series of generalities couched in terms of 'maybe' or 'possibly', there appears to be very little other clarity. I call on the minister once more to provide a further explanation. We can move on but on the basis of that answer the government is as uncertain about this clause as is the legal profession.

Hon. C. A. FURLETTI (Templestowe) — I was waiting for an answer which was not provided. As the minister is aware, to be prescribed means prescribe by regulation. Could the minister indicate to the house what the extent of ministerial intervention in the prescribing of those questions will be?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the minister will prescribe only by regulation.

Hon. C. A. FURLETTI (Templestowe) — It is obvious that the minister can prescribe only by regulation. The question was: to what extent will the minister go in prescribing the types of medical questions referred to in the clause?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the minister will use his judgment as the minister.

Hon. C. A. Furletti — Let us hope he has good judgment.

Hon. M. M. GOULD — I am sure he does.

Hon. C. A. FURLETTI (Templestowe) — I understand the government has been made aware of a possible conflict over separation of powers and the fact that the power to prescribe a medical question that binds a court could create a conflict when a court is capable of exercising federal jurisdiction. I know the government has been made aware of that possibility. Will the minister advise the committee of the resolution of that possibility?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the Department of Treasury and Finance has received advice from the Solicitor-General, who advises that it has no basis.

Clause agreed to.

Clause 4

Hon. P. A. KATSAMBANIS (Monash) — Clause 4 introduces the concept of incorporating regular overtime and regular shift allowances into calculating workers' weekly payments for the first 26 weeks. Firstly, how did the government come to determine the 26-week period as being the relevant applicable period? I ask that on the basis that the working party appears to have considered the application of such regular overtime payment for three options only, being 4 weeks, 104 weeks and for the duration of benefit payments.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised the 13-week option was rejected because at that point there is a step down from 95 per cent to 75 per cent; and that the 26-week period was adopted by the government because 85 per cent of claims are settled within that time.

Hon. P. A. KATSAMBANIS (Monash) — I notice the minister has referred to a 13-week step down. I reiterate the working party considered 4 weeks, 104 weeks and the duration of the benefit payments. They were the three options. The government has introduced a 26-week step down. Do I take it that in the government's final considerations a 13-week period was also considered?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I have already advised that the 26-week period was adopted by the government based on the fact that 85 per cent of claims are settled within that time. It thought that was the appropriate duration.

Hon. P. A. KATSAMBANIS (Monash) — The provision includes the words, 'payments for regular overtime and regular shift allowances'. I notice the bill attempts to explain what it means, but will the minister provide an explanation to the committee of her understanding of the meaning of the terms 'regular overtime' and 'regular shift allowances' as they apply in the clause?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — According to the explanatory memorandum clause 4, which amends the act, is:

> … to require that regular overtime and shift allowances be included in a worker's pre-injury average weekly earnings for the purposes of calculating the worker's weekly payments in respect of the first 26 weeks after an injury in respect of which a weekly payment had been paid or is payable. However, these amounts will only be included if, during the relevant period prior to the injury, the worker had worked overtime or shiftwork respectively in accordance with a regular and established pattern which, in the case of overtime, was substantially uniform in the number of hours of overtime worked and if the worker would have continued to work overtime or shiftwork in accordance with that pattern if not for the incapacity resulting from or materially contributed to by the relevant injury. The amendments made by this clause apply in respect of a claim for weekly payments given, served or lodged on or after the date of commencement of this clause.

Hon. P. A. KATSAMBANIS (Monash) — I call on the minister to explain what the relevant period is.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised it would be 12 months unless the employment had been less than that period.

Hon. P. A. KATSAMBANIS (Monash) — I thank the minister for a responsive answer. Will the minister explain what is meant by the term 'a regular and established pattern'?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that overtime has to be predictable and substantially uniform in amount. For example, if a worker worked every Saturday as overtime that would be predictable and substantial. However, if a worker worked overtime for just an odd couple of hours once a week, that is not, therefore, taken into account.

Hon. P. A. KATSAMBANIS (Monash) — I note that the concept of including overtime and shift allowances in workers compensation is new. I draw the minister's attention to the fact that the important criteria of any workers compensation system are the options available to workers and the incentives available to workers for rehabilitation and return to work.

Given that employees with workplace injuries may be unlikely, in the first instance, to return to work on full wages let alone full wages and overtime, has any calculation been made as to the effect of the incentive or disincentive for an employee to undertake rehabilitation and return to work within that initial 26-week period as a result of the introduction of this clause?

Hon. T. C. THEOPHANOUS (Jika Jika) — I make a point about this particular clause because — —

Hon. C. A. Furletti — Are you being asked the question?

Hon. T. C. THEOPHANOUS — No, but I am putting something on the record in committee, which I am perfectly entitled to do. The clause returns a significant right back to workers which was taken away by the previous government. It allows workers to get fair compensation, which includes the overtime they might have worked. In that sense it ought to be welcomed by members of the opposition rather than their picking at it and asking a series of inane questions.

Hon. Bill Forwood — Previously you spent 30 hours in committee. If you want to be here for 30 hours you just keep this up!

Hon. T. C. THEOPHANOUS — Go for it. I will exercise my right to speak. Any reasonable person who examined the clause would be able to understand what is meant by, 'That pattern was substantially uniform in the number of hours of overtime worked'.

Hon. Philip Davis — Let's say we are not reasonable people.

Hon. T. C. THEOPHANOUS — You said it, not me. In fact the act itself — —

Hon. N. B. Lucas — Why don't you give the minister a go?

Hon. T. C. THEOPHANOUS — The minister can speak as well. I want to congratulate the government for having introduced such an important provision in the act. It will allow workers to be compensated at levels that correspond to those that were previously available. As to the question of whether it will lead to people not wanting to go back to work, which is as I understand it — —

Hon. C. A. Furletti — You are no longer putting things on the record; you are answering a question.

Hon. T. C. THEOPHANOUS — I am entitled to speak any way I like, as you are, Mr Furletti. As to the issue that was raised by the honourable member, I must say that it has always been the view of Labor members that you do not create a financial disincentive as the solution to getting injured people back to work. That is not the philosophy underlining what Labor has considered to be a proper workers compensation act. Labor wants Victoria to have a proper rehabilitation system which gets people back to work in the shortest possible period rather than simply using the penal system, which was the system under the previous government.

Hon. C. A. FURLETTI (Templestowe) — I will respond to Mr Theophanous's comments. Had the honourable member stayed in the chamber after he had made his speech and listened to my contribution he might have heard me say that Wisewoulds monthly update referred specifically to this clause. It states:

> The clause that provides for this to occur is best described as 'brave'. It provides for the inclusion of overtime in the calculation where overtime is worked:
>
> > … in accordance with a regular and established pattern …
>
> and:
>
> > … that pattern was substantially uniform in the number of hours of overtime worked
>
> and:
>
> > … the worker would have continued to work overtime in accordance with that pattern.

In other words, they refer to the particular provision. These are queries that Mr Katsambanis is raising for definition. Wisewoulds concludes:

> We will not detail the potential for dispute in this clause, because it is self-evident.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The balance that the government came up with was one of fairness. There are requirements under the act relating to rehabilitation and retraining.

Earlier Mr Katsambanis alluded to the 26-week period for taking into account the average overtime and payments a worker receives and a couple of the other options in the report which would lead to 104 weeks and forever! The government believes this is a fairer approach.

Clause agreed to.

Clause 5

Hon. C. A. FURLETTI (Templestowe) — Can the minister provide examples of what the County Court would consider to be an abuse of process in terms of applications being made to the court under clause 5(3)?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that that would occur when the medical question has nothing to do with the dispute. An example would be if the County Court were determining whether a person could return to work but the question was not about his or her

injuries. That is an example that would not go to application.

Hon. C. A. FURLETTI (Templestowe) — Thank you, Minister. Given that the legislation provides for the position of costs in most instances, has the government considered where the costs would lie if an application such as this were refused?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised it is part of the costs of the case, and who will pay will be determined under section 50.

Clause agreed to; clause 6 agreed to.

Clause 7

Hon. P. A. KATSAMBANIS (Monash) — Proposed section 55A(2) inserted by clause 7 provides:

> The Authority or a self-insurer can only make an application under this section with the consent of the worker and in the absence of a dispute.

I seek advice from the minister as to what situation can be envisaged where such a question can be referred vis-a-vis the authority and the worker where there is no dispute.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that in proper claims management, in the course of a claim the authority may ask for a medical opinion. An example could be, 'What sort of medical treatment does the worker need?'.

Hon. P. A. KATSAMBANIS (Monash) — On the basis of that answer I produce for the minister the comments of Mr Mulvany of Slater and Gordon. He comments on the provision and states:

> It is also difficult to comprehend the situation where the proposed section can be effectively used where there is not a dispute other than to determine a matter where the VWA contends to dispute the claim but has not formalised the dispute.

I call on the minister to reflect and provide an answer, if possible.

Clause agreed to; clauses 8 and 9 agreed to.

Clause 10

Hon. C. A. FURLETTI (Templestowe) — I ask for clarification because I am sure the bill will eventually need to be interpreted. I refer to proposed section 63(6A) inserted by clause 10. Although I appreciate the intent of the provision I ask the minister to confirm that the clause is not intended to interfere with the operation of common law and a person's rights to claim against a consultant in negligence, for example, if the expert is negligent in the giving of that advice.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised the intent is to give the experts the same protection as the panels are entitled to.

Clause agreed to; clause 11 agreed to.

Clause 12

Hon. P. A. KATSAMBANIS (Monash) — I note that the clause provides that the minister can issue guidelines as to procedures of medical panels, to ensure procedural fairness and to facilitate the proper administration of those medical panels. I note that the Scrutiny of Acts and Regulations Committee in its *Alert Digest* No. 5 of 2000 tabled in the house on 2 May commented on the clause. It stated:

> Given the important subject matter of the guidelines and the legal effect of opinions rendered by medical panels pursuant to section 68(4) of the act on workers' rights to access compensation under the act, the committee will write to the minister to recommend that these guidelines be subject to parliamentary scrutiny.

I also note that at page 67 of *Alert Digest* No. 6, which was tabled in the house yesterday, the committee states:

> The committee notes that it has not yet received a response to its request for further information from the minister on this bill. The committee will write a further letter to seek an early response to its concerns.

I was a member of the Scrutiny of Acts and Regulations Committee (SARC) in the previous Parliament. I am aware how seriously ministers in the previous Parliament took letters written to them by the SARC, and the promptness of responses. It appears that despite a lag of three weeks the minister did not provide a response to the SARC. I now seek an assurance from the minister that that response will be provided as soon as possible.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I will raise the concern with the minister. As Mr Katsambanis is aware, I, too, used to be a member of the Scrutiny of Acts and Regulations Committee. I will pursue the minister's reply to the question posed by the SARC.

Hon. P. A. KATSAMBANIS (Monash) — I now draw the minister's attention to the recommendation of the SARC that the guidelines to be produced under

clause 12 be made subject to parliamentary scrutiny. I call on the minister to tell the committee whether the government intends to have the guidelines made subject to parliamentary scrutiny.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The honourable member has asked me to respond on behalf of the Minister for Workcover as to how he will respond to the question asked by the Scrutiny of Acts and Regulations Committee. I said I would pursue him for a response.

Hon. Bill Forwood — He is next door.

Hon. M. M. GOULD — I cannot pre-empt what the minister's response to the SARC will be.

Hon. Bill Forwood — We do not want to be here all night.

Hon. P. A. Katsambanis — I can go for another hour on this, Minister.

Hon. M. M. GOULD — As I understand it, the honourable member is asking whether the government will take up a recommendation of the SARC and will present the guidelines to Parliament. If there were a requirement, that would require an amendment to the legislation. I am trying to get — —

Hon. Bill Forwood — You are trying to get the undertaking?

Hon. M. M. GOULD — Yes.

Hon. Bill Forwood — Good on you; thank you.

Hon. P. A. KATSAMBANIS (Monash) — I note that the provision allows for the minister to make guidelines. I contrast that with the provisions of clauses 3 and 13 of the bill, for example, which make the exercise of ministerial powers subject to regulations. Under clauses 3 and 13 the decisions of the ministers need to be prescribed by regulation and are therefore subject to parliamentary scrutiny, in contrast to the provisions of clause 12. I seek advice from the minister on why it was determined that under this clause the process of ministerial guidelines should be used rather than the more common process of making the guidelines by regulation, which would make them subject to parliamentary scrutiny.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that there are already provisions for the issuing of guidelines. This is to clarify it. The provisions already exist, and this is just clarifying it. I am trying to get some information.

Hon. P. A. KATSAMBANIS (Monash) — Given that the provision is being amended, again I ask: did the government consider introducing the clause in a method that would allow the minister to issue such statements by regulation rather than by guideline?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the usual practice will apply in relation to the question the honourable member asked about the minister's response to the SARC — that is, that they will not be published in Parliament.

Hon. P. A. KATSAMBANIS (Monash) — On that basis, I ask the minister whether the guidelines have actually been drafted and are currently available?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that they have not been drafted.

Hon. P. A. KATSAMBANIS (Monash) — When is it likely that such guidelines will be drafted and be available?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that while the panels are operating smoothly there will not be a requirement for any guidelines to be issued. If there is any problem the minister will use his discretion to implement guidelines.

Hon. P. A. KATSAMBANIS (Monash) — By what mechanism will the minister determine that there is a need to issue guidelines if, as it appears from the minister's answer, there is no current intention to issue such guidelines?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the minister will take into account any backlogs, complaints or difficulties in getting cases through.

Hon. P. A. KATSAMBANIS (Monash) — Given that this is an enabling provision, which the minister indicates will at some stage — —

Hon. Bill Forwood — May.

Hon. P. A. KATSAMBANIS — It may at some stage be used, and given that the minister has effectively categorically ruled out the use of prescribing by regulation under this clause, by what method is it intended to communicate the issuing of such guidelines to the public?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the guidelines for the panel will be issued to the panel.

Hon. P. A. KATSAMBANIS (Monash) — Therefore, they will not be made available to the public generally?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that they could be.

Hon. P. A. KATSAMBANIS (Monash) — On the basis that they could be, and given that they will not be prescribed by regulation, what method of communication will be used for them to be made available and communicated to the public?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — Guidelines will be issued to the panel.

Hon. P. A. KATSAMBANIS (Monash) — The minister said the guidelines may also be issued to the public. The minister said there is no intention to use the method of regulation so that they can be communicated to the public through the Parliament. If it is not to be by regulation, how will they be used?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised they will be made available as the minister of the day determines is appropriate.

Clause agreed to.

Clause 13

Hon. P. A. KATSAMBANIS (Monash) — Clause 13 provides that the minister may by regulation modify the AMA *Guides*. Is there any intention to so modify the guides and, if so, in what way?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that there is no current intention to amend them. However, the working party recommended that certain aspects be examined. The government has asked that that be undertaken and is awaiting a response.

Hon. P. A. KATSAMBANIS (Monash) — The minister says the government has looked at the working party's recommendations and asked that some review be undertaken. Who has the government asked to undertake that review?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the original working party made recommendations to examine a number of areas. The second-reading speech identified that a working party would be established to examine those areas and that working party has not been established.

Hon. P. A. KATSAMBANIS (Monash) — The minister in her previous answer incorrectly advised the committee about the status of that issue.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I indicated in my previous answer that the original working party had suggested that there be a working party established and that that working party will examine a number of those options and report back to the government. If the honourable member believes I was saying that, that was not the intent. The intent was to advise the chamber appropriately when a working party is established. It will report and the government will await its recommendations.

Hon. P. A. KATSAMBANIS (Monash) — Assuming the working party is to be established, when is it envisaged that will happen? Has any thought been given to its composition? Have the terms of reference been determined and has a final reporting date been set for the determination of such a working party?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — With regard to the last part of your question, a date has not been set because the committee has not been established. To clarify my last response, and to try to pick up the four issues, the terms of the working party are set out in the second-reading speech. The final details of the terms of reference have not yet been finalised. The composition of the working party has not been determined but all stakeholders will be involved. The government hopes the report will be completed by the end of the year, which is not quite what I said earlier, but I am advised that it will be around that time.

Hon. P. A. KATSAMBANIS (Monash) — I refer to question on notice 148. Mr Birrell asked the minister to advise whether she had assisted the Minister for Workcover with discussions to establish the working party to which I referred tonight. Is it likely the minister is also likely to assist the Minister for Workcover with discussions and determinations in the establishment of the working party to which she now refers?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I will be working closely with my colleague, but the final determination will be the responsibility of the minister.

Hon. P. A. KATSAMBANIS (Monash) — Given that it is possible to modify the AMA *Guides* by regulation when the bill is passed, will there be different editions of the AMA *Guides* applying to different conditions and for different injuries at the same time?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that it is possible, as is the case already with the operative dates. The date of the injury determines which AMA table applies.

Hon. P. A. KATSAMBANIS (Monash) — If one incident gives rise to multiple injuries, is it possible that on the assessment of impairment a different edition of the guide may be used on one or more injuries as opposed to one or other of the injuries?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — Yes, it is possible, but only if the component of the other additions is prescribed by regulation. It will not happen by accident. It will happen if there is a decision to amend them.

Hon. P. A. KATSAMBANIS (Monash) — Assuming that the working party is established and makes recommendations, is this the only likely envisaged basis for modifying the guides under those regulations or are there likely to be other modifications outside the establishment of that or any other working party?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that at this stage the only area that will be examined by the working party is that foreshadowed in the bill.

Hon. P. A. KATSAMBANIS (Monash) — I do not find that answer responsive to my question, which did not ask what the terms of reference of the working party are to be but, more importantly, whether any modifications to the guide will be made by regulation other than through the mechanism to be established by the working party.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised there is nothing at this stage, as I have already advised the member.

Hon. P. A. KATSAMBANIS (Monash) — Will the regulations made under that provision be subject to the normal regulatory impact statement process?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised the normal rules will apply, and I would expect that to be the case.

Hon. P. A. KATSAMBANIS (Monash) — Will a full actuarial assessment of the costs to the scheme of any modifications be made and published prior to the implementation of any modifications to the guide?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the working party will have access to actuarial advice. Whether that advice is published will be determined by the government.

Clause agreed to.

Clause 14

Hon. C. A. FURLETTI (Templestowe) — With respect to proposed section 92A(8A) and in particular the amount of compensation referred to, being an amount not exceeding $175 000, can the minister tell the house how that maximum amount is determined and how compensation generally is determined?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised it is the maximum available under the current provisions.

Hon. C. A. FURLETTI (Templestowe) — Is the minister saying there is another provision in the bill where that maximum compensation is stipulated and, if so, where is it?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that it is a provision in the Accident Compensation Act.

Hon. C. A. FURLETTI (Templestowe) — Perhaps the committee is at cross-purposes. Is it proposed section 92A(8A) will effect the maximum compensation of $175 000, or is it in another part of the act?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that section 92A of the principal act sets out the amounts made in the 1997 amendments.

Hon. C. A. FURLETTI (Templestowe) — In referring to the maximum amount that can be awarded, one of the major criticisms of the current legislation has been the lack of guidance to the courts in terms of their reaching decisions. Lines 30 to 33 on page 10 refer to compensation:

> … not exceeding $175 000 which the County Court considers is reasonable and appropriate to the injury to the dependent child …

Will the minister explain that innocuous but difficult to comprehend provision?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the terminology used in the clause has been used previously in equivalent acts and in the principal act and its predecessors. It encompasses loss of support, and the County Court has been interpreting it for many years.

Hon. C. A. FURLETTI (Templestowe) — I accept what you say but I do not particularly appreciate an explanation along the lines that it has been used before. The clause will, from all accounts, be worked over very carefully. With respect, I think a response that has more detail is needed. Although I appreciate the response, I would like the minister to give me some more detail so that we can have on record some degree of guidance for the courts.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — As I said in my earlier response, the words exist in equivalent acts and in previous acts and have been interpreted for years by the County Court. I do not believe my responding off the cuff will assist. I stand by my previous answer.

Hon. C. A. FURLETTI (Templestowe) — As I said in my contribution, and as has been said by a number of other honourable members, the drafting of the bill leaves a lot to be desired. If the government cannot get it right, the opposition has an obligation to seek through this process to put on record what the government means. The minister says words like those appear in other legislation. I would be more than happy for the minister to direct me to those acts, because I suspect that that is not quite right. I would not like to challenge the minister's integrity. I would be happy to take her response on notice and for the minister to provide me with the information.

The purpose of this process is to put on record a basis for interpreting what those words mean, not what similar words in other legislation might mean. While I appreciate the minister's reticence, if she needs more time and asks for it, I will be more than happy to grant more time. However, the point is that in the very near future the provision is to be interpreted by a court. The minister has four advisers sitting in the box and a few others outside. I ask her to indicate what the provision means. If she is going to ask her advisers, I ask her to concentrate specifically on the word 'injury' in the last line of page 10 of the bill which appears to be totally out of place. I understand that has been drawn to the attention of the government by experts in workers compensation claims.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I draw the honourable member's attention to section 92(3) on page 155 of the Accident Compensation Act which provides that amount of compensation will be a sum:

> … which the County Court considers is reasonable and appropriate to the injury to those dependants.

It is from those words that similar words appear in this piece of legislation.

Hon. C. A. FURLETTI (Templestowe) — I accept that but I am asking the minister, and her advisers, to put on the record either what those words have been interpreted to mean by the courts or what the government intends that they mean.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I stand by the response I made earlier when the question was first raised and I said that it encompasses loss of support.

Clause agreed to.

Clause 15

Hon. P. A. KATSAMBANIS (Monash) — What is the intended commencement date of the new compensation structure under clause 15?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I think I responded to that in question 1. The operative date is 1 July of this year.

Hon. P. A. KATSAMBANIS (Monash) — Can I clarify with the minister whether it is the intention that this new structure of payments is to apply to injuries that occur on or after 1 July only and will not apply to injuries that occurred before that date?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — Yes.

Hon. P. A. KATSAMBANIS (Monash) — With regard to clause 15 — I know we partly covered this during question 1. Will the minister give a commitment that in providing the actual costs to the scheme of the changes envisaged for non-economic loss she will incorporate within that the actual costs to the scheme of the provisions contained solely within clause 15?

Hon. M. M. Gould — I got lost in that last little bit. Will the honourable member repeat that, please?

Hon. P. A. KATSAMBANIS — You have committed to providing in clause 1 — —

Hon. M. M. Gould — Getting the minister to respond, yes?

Hon. P. A. KATSAMBANIS — Yes, responding as to the actual cost to the scheme on an actuarial basis of the increase to the amount of compensation payable for non-economic loss. The main provision for that is clause 15, and there are some other bits and pieces. As part of that answer or separately will you commit to provide the actual costs to the scheme as have been calculated of the effect of the increases in clause 15?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — Yes.

Hon. C. A. FURLETTI (Templestowe) — Will the minister be able to provide the house with the criteria on which the increased amounts referred to in clause 15 were based?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised the government looked at a number of options and made a value judgment as to what would be the appropriate compensation for payments for those injuries.

Hon. C. A. FURLETTI (Templestowe) — By definition, judgment involves the evaluation of a number of factors. My question was: what were those factors that were taken into account to reach that judgment?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — As I said earlier, the government has looked at a number of options and for the sake of fairness it was deemed that the cuts that were introduced by the previous government in 1997 were too harsh, particularly those under the 30 per cent, and adjustments needed to be made.

Hon. C. A. FURLETTI (Templestowe) — Given that they were considered too harsh, the government must have taken into account some elements to create a base or, if it considered the amounts were fair back then, it must have considered other elements. Maybe it was based on average weekly earnings or the consumer price index. Maybe it was the price of gold or the odds you would get if you backed the government winning the last election. Some factors must have been taken into account. I do not want to make light of it but the point is there must have been more factors taken into consideration than looking at a number of options and saying it was too harsh. All I am asking is, what were those factors?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — As I said, the government looked at what it believed was a fair figure. It looked at the overall package and the cuts that occurred in 1997. It felt they were too harsh, particularly for those under the 30 per cent mark. The government took into account comments made by the stakeholders and made what it believes was a fair assessment based on those figures.

Hon. C. A. FURLETTI (Templestowe) — I thank the minister for her answer, but I am keen to find out the basis. The benefit paid under subclause (1)(a)(i) is an increase in excess of 100 per cent, whereas in subclause (1)(d), the increase is only about 3 per cent. I seek the rationale behind the increases because of those differences.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The government looked at what was a fair figure. The payments are progressive. They start with the larger increases at the bottom end and get smaller as they get closer to the 30 per cent figure. The government believed that was appropriate.

Hon. C. A. FURLETTI (Templestowe) — Let me put on record, Mr Chairman, that I hope that is not symptomatic of the way the government conducts all its economic affairs.

Clause agreed to.

Clause 16

Hon. C. A. FURLETTI (Templestowe) — I refer to proposed section 104B. Will the minister explain the reason for including proposed subsections (5A) and (5B), because to me it appears that (5B) incorporates (5A). Is there any particular reason for having those two subclauses?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that proposed subsection (5A) refers to one injury and (5B) refers to two or more.

Clause agreed to.

Clause 17

Hon. P. A. KATSAMBANIS (Monash) — Clause 17, which is headed 'Worker has choice (section 104B amended)', is a complex provision that

seems to imply that a worker may choose to go down the common-law path or the statutory non-economic-loss path. Is it the intention of the section that a worker who is unsuccessful in going down the path of a common-law claim can come back and reclaim his or her entitlements to any statutory non-economic-loss benefits?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the answer is yes.

Hon. P. A. KATSAMBANIS (Monash) — Will an injured worker who chooses to accept statutory non-economic-loss benefits be able to pursue a common-law claim, or will he or she be barred from doing so?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that a worker cannot access the common law for pain and suffering but can do so for economic loss, which I think is spelt out in the second-reading speech.

Hon. P. A. KATSAMBANIS (Monash) — Is the minister saying that once a worker has accepted a statutory non-economic-loss payment he or she is precluded from making a common-law claim for pain and suffering but can claim for economic loss at common law?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that that is correct.

Hon. P. A. KATSAMBANIS (Monash) — It appears to me that that inherently contradicts the provisions of proposed section 134AB referred to in clause 18. However, it may be more appropriate to explore the answers given by the minister when the committee debates that clause.

I note that in his commentary Mr Mulvany from Slater and Gordon pointed out that the election provision in clause 17 is harsh and unreasonable given that it may take up to two years to receive damages for pain and suffering.

Mr Mulvany also said that the provision is capable of causing an injustice to the injured worker because, for instance, the authority may have been able to advance an impairment payment in circumstances which assist an injured worker to acquire better or more suitable accommodation, but that would be prohibited under the act no matter how meritorious the claim was.

Can the minister say why the government has chosen to preclude such advances of payments in the interim period between a worker lodging a common-law claim and receiving a payment which may take up to two or three years?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — Assuming there is an injury, there are procedures in the act which will expedite the claim.

Hon. P. A. KATSAMBANIS (Monash) — Specifically returning to the pre-November 1997 position, there were provisions in the act that a worker could make a claim for his or her statutory non-economic lost benefits, and then subsequently pursue a common-law action for any amount over and above his or her entitlement at statute.

Given that the government claimed it would restore common-law rights, on what basis did it determine not to include the provision that was in the act prior to 1997 and introduce this provision in its place?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the government has increased the statutory non-economic loss (SNEL) payment in the provision, which also allows the worker and the solicitor to make an informed decision as to which course they wish to follow.

Hon. P. A. KATSAMBANIS (Monash) — It should be put on the record that the answer the minister has just provided indicates that the government deliberately chose not to introduce a provision that existed in the act prior to November 1997. Once more it gives the lie to the government's claim that the bill is in some way a restoration of common-law rights. It makes it quite clear that those sorts of claims are pure humbug and that this is a new statutory regime.

That needs to be pointed out because the government has tried to make a lot of mileage out of the claim that this is some sort of restoration. It is not a restoration. Restoration means restoring something to a state it was previously in. This is clearly a new regime with new rules, and the minister's answer has simply reinforced that.

Clause agreed to.

Clause 18

Hon. P. A. KATSAMBANIS (Monash) — Clause 18 is probably the most substantive provision of the bill, in that it intends to give rise to common-law claims in the area of workers compensation. I seek from

the minister a response to the comments initially made by Mr Mulvany from Slater and Gordon, which after examination seem to have been confirmed by a number of practitioners in the area.

I must say that on my own reading of the act I concur that the operation of section 134AA would preclude any common-law claims for damages of pecuniary loss irrespective of any further enabling provisions in section 134AB.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that these provisions govern the reintroduction of access to common-law damages for seriously injured workers. Put simply these provisions re-enact the relevant provisions that applied prior to 12 November 1997.

Given that the government's policy objective was to re-create that law and then modify it in the way set out in the bill, parliamentary counsel formed the view that the only way of doing it was to re-enact the old law rather than re-articulating it.

The draft provisions have been closely examined by practitioners experienced in the field. The advice is that the provisions achieve what was intended and at this stage they should be left as they are.

Hon. P. A. KATSAMBANIS (Monash) — Proposed section 134AA indicates that a worker is precluded from recovering any damages in respect of pecuniary loss except, as described in proposed subsection (a), in proceedings envisaged under the Transport Accident Act, with other minor variations regarding the Wrongs Act; and in subsection (b), in proceedings to which the employer is not a party — that is, against third parties. It seems clear that proposed section 134AA precludes all claims for pecuniary loss other than those in subsection (a) which relate to claims under the Transport Accident Act and those in subsection (b) which relate to claims against, effectively, for want of a better term — although it could be explored more forensically — third parties. Minister, is that correct?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that that is correct, but I remind the honourable member that both provisions have to be read concurrently, as was the case previously.

Hon. P. A. KATSAMBANIS (Monash) — If the two provisions are to be read concurrently there is an inherent contradiction. Proposed section 134AA does not allow claims for pecuniary loss, but proposed section 134AB allows some claims for pecuniary loss. Which of the two provisions should take precedence when they are clearly in conflict with each other?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised where injury or death is sustained in the course of a worker's employment as a result of a transport accident on or after 20 October 1999, proposed section 134AA permits a worker to bring common-law proceedings for the recovery of pecuniary loss against the employer and/or another party provided the proceedings are brought under the provisions of the Transport Accident Act.

Proposed section 134AA also permits common-law proceedings for the recovery of pecuniary loss to be commenced by a worker in circumstances where an injury is deemed to have arisen out of or in the course of employment. Where the worker's place of employment is fixed but the injury occurs away from the fixed place, the employer is not a party to the proceedings, and that is termed a deemed injury. The right to recover pecuniary loss damages for a deemed injury is not restricted.

Proposed section 134AB permits those workers who suffer injury in a transport accident or a deemed injury to recover, in addition to pecuniary loss damages, damages for non-pecuniary loss apart from the provisions of the Accident Compensation Act which require the declaration of the statutory benefits received by the worker, following the deductions referred to above, and a reduction made for contributory negligence; and to provide, upon settlement or judgment, that entitlements to statutory benefits cease.

The rights of the two classes of claimants are unaffected by the act. Proposed section 134AB also permits those workers who suffer injury arising out of or in the course of employment which do not result from a transport accident or deemed injury to institute common-law proceedings for the recovery of pecuniary and non-pecuniary loss. Such proceedings are subject to the provisions of proposed section 134AB.

Hon. P. A. KATSAMBANIS (Monash) — I hear the minister's explanation of the two provisions, but what does the answer mean in the context of the specific question I asked? Given there is a conflict between proposed sections 134AA and 134AB, which of the two provisions is to take precedence?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that there is no conflict. As I indicated earlier, these provisions have

been in place since 1992 and the courts have not found any conflict. They are read concurrently.

Hon. P. A. KATSAMBANIS (Monash) — I will take the minister's answer that they are to be read concurrently and reiterate that on the face of it proposed section 134AA precludes any claim for any injury including, as in the second-last answer the minister gave, any deemed injuries, except for those two particular instances — the actions brought under the Transport Accident Act and the proceedings brought against the third party when the employer is not a party to the action. I ask the minister to clarify that it is intended that proposed section 134AA is to be read subject to the provisions of proposed section 134AB.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — There is no conflict, and the proposed sections are to be read concurrently.

Hon. P. A. KATSAMBANIS (Monash) — I once again ask the minister how there can be no conflict if proposed section 134AA says that pecuniary losses cannot be recovered except under those two heads and proposed section 134AB says that in some circumstances pecuniary losses can be recovered for some workplace accidents if certain criteria are met. How can there be no conflict unless the all-exclusive provision in proposed section 134AA has necessarily to be read subject to the provisions of proposed section 134AB?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I believe I have answered the honourable member on a couple of occasions. I have given a detailed response on the advice I have received, and that is that the two clauses are to be read concurrently. Parliamentary counsel have advised that that is the appropriate way of using the proposed sections, and they are the provisions that have been in place for a number of years.

Hon. P. A. KATSAMBANIS (Monash) — I will let the minister's answer stand for the record and reiterate that I believe — and it is quite obvious that legal practitioners, including Mr Mulvany from Slater and Gordon, believe — there may be a requirement for some clarification. I submit that the words 'subject to the provisions of section 134AB' would solve any conflict. However, I will move on to the provisions of proposed section 134AA, particularly paragraph (b), which relates to proceedings brought against a third party where an employer is not a party. I ask the minister whether it is possible for the third party — the defendant — in any such claim to join the employer as a party to the action in order to defeat the claim of the plaintiff — the injured worker — by simply saying, 'This is not a proceeding to which the employer is not a party'.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that it is possible, but we would expect that the worker would seek to have it struck out and would expect that that would occur.

Hon. P. A. KATSAMBANIS (Monash) — So although it may be envisaged that a non-employer tortfeasor could try to utilise these sorts of provisions to circumvent the operations of the act, it appears the government has no current intention to alter that. If it is established in the course of litigation that that is occurring, will the government undertake to revisit the provision to ensure that workers are protected and that their claims are not defeated by this sort of chicanery?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The government would constantly review its legislation. If there were problems with it, it would look at adjusting it. But at the same time it would expect the courts to be throwing out these claims before they got before them.

Hon. C. A. FURLETTI (Templestowe) — I understood the minister to indicate in the second or third answer on this clause that the clauses had been put to a number of practitioners who are expert in the area, and that they had all ticked off the clause, and endorsed it, and suggested it stand as it is. Will the minister advise the house of the names of those practitioners?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that we have received legal advice from Blake Dawson Waldron and from Gadens Lawyers, and internal advice from the Workcover legal staff.

Hon. C. A. FURLETTI (Templestowe) — Is the minister aware of the submissions made by Slater and Gordon, the submission made by the Australian Plaintiff Lawyers Association and the circular of Wisewoulds, all of which suggest, among other things, that the clause appears to preclude claims for damages based on pecuniary loss and criticise the clause extensively?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am aware of them.

Hon. C. A. FURLETTI (Templestowe) — Did the government consider making amendments to take into account those submissions and, if not, why not?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — As I have indicated, the government has taken advice from a number of lawyers and accepts the advice.

Hon. P. A. KATSAMBANIS (Monash) — Given that it is recognised in the house that both Wisewoulds and Slater and Gordon seem to take significant issue with the intention of the government and the issue could be fixed with the addition of a couple of numbers, why does the government insist on going down this path and not considering the learned opinions of the practitioners in the area?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I have already advised the house and the honourable member that the government took advice from the lawyers from the parliamentary counsel point of view that the way to do this was to re-enact the old law rather than trying to rearticulate it.

Hon. P. A. KATSAMBANIS (Monash) — With regard to the proposed sections 134AA and 134AB inserted by clause 18, what effect will the operation of these two sections have on the provisions of proposed section 135C of the principal act with regard to claims made under part III of the Wrongs Act 1958?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that it has no effect.

Hon. P. A. KATSAMBANIS (Monash) — Proposed section 134AB(17) separates the elements of serious injury between a component of pain and suffering and a component that is attributable to loss of income or pecuniary loss. Why has the separation taken place?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — There are two separate remedies, one for pain and suffering and one for economic loss.

Hon. P. A. KATSAMBANIS (Monash) — Given that the separation did not exist in the act prior to the amendments of 1997, what is the rationale behind the government's introduction of the two essentially separate elements whereas before they were treated for purposes of a claim as one element?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that there are two different tests that have to be clarified. As I indicated in my earlier response, one is for pain and suffering and one is for economic loss. The progression of claims will be monitored and the government has put tight restraints in place. The process will ensure the two different tests are met.

Hon. P. A. KATSAMBANIS (Monash) — As I read the provision, if a worker does not make out the elements for pecuniary loss, he or she can still bring a claim for the recovery of damages at common law for pain and suffering only. However, I seek clarification as to what happens in the reverse situation where a worker may not be able to make out the elements of pain and suffering but may be able to demonstrate pecuniary loss. Will the worker be able to bring a claim only for pecuniary loss?

Sitting suspended 12.15 a.m. (Thursday) until 12.46 a.m.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — Mr Chairman, I am sorry, but although I was ready to respond, because of the suspension of the sitting, the question has slipped my mind. I would appreciate it if Mr Katsambanis would repeat it.

Hon. P. A. KATSAMBANIS (Monash) — My question related to subsection (17) of new section 134AB. It specifically follows the minister's answer that action can be brought for the recovery of damages due to pain and suffering only where the person is precluded, for one reason or another, from bringing an action for pecuniary loss damages.

I asked whether that operated in the reverse and a person could prove that he or she could make a claim for pecuniary loss only where the person does not make out the elements for bringing a claim for pain and suffering.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I thank Mr Katsambanis for repeating his question. I am advised that if a person establishes a serious injury test for economic loss then he or she can serve for both pain and suffering and for economic loss.

Hon. P. A. KATSAMBANIS (Monash) — My question was: if a person establishes that threshold for claiming economic loss, can he or she bring an action for economic loss only under those provisions?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the answer is yes.

Hon. P. A. KATSAMBANIS (Monash) — Would the minister care to name the clause that gives that power?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that it is not precluded. It has not been in the act in the past, and it is just not precluded.

Hon. P. A. KATSAMBANIS (Monash) — If that is the case, it would in part answer the query that was left unanswered about clause 17, about which the minister made the claim — if I can correctly paraphrase it — about the ability of a worker to elect to take a statutory non-economic loss payment and still bring an action for economic loss under common law.

I do not believe the minister has given the house an explanation of how it is to operate. I take it that that is the government's intention, and I again seek an assurance from the minister that if in due course it is determined that the bill does not match that intention the government will revisit the act and legislate accordingly.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — As I have said in response to previous questions, if it is shown that changes need to be made — and this applies to all legislation — the government will ensure that the intention is adhered to.

Hon. P. A. KATSAMBANIS (Monash) — Mr Chairman, I move to subsection 19(c) of proposed section 134AB, which provides that:

> … no finding (other than a finding that the injury is a serious injury) made on an application for leave to bring proceedings shall give rise to an issue estoppel.

Will the minister explain to the house exactly what that provision is supposed to achieve?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the bill provides that no findings made on an application for leave under the narrative, other than a finding that the injury is a serious injury, shall give rise to issue estoppel.

The provision recognises the summary nature of the leave application. In most cases evidence is led by affidavit or through medical reports exhibited to affidavits, and limits are placed on the cross-examination of experts.

Those procedures substantially reduce the cost to a party at that stage. The government considers that because of the nature of leave applications it would be unfair if either party were bound in future litigation by findings made in a leave application. Although findings made by the court in a leave application are not binding on the parties on general legal principles, the decision concerning whether an injury is a serious injury cannot be challenged in subsequent proceedings. It can be challenged only by way of an appeal to the Court of Appeal.

Hon. P. A. KATSAMBANIS (Monash) — Does the barring from raising an issue of estoppel also relate to the granting of leave to bring proceedings under this clause?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the granting of leave is a decision of the court and not an issue between the parties in any subsequent proceedings for damages.

Hon. C. A. FURLETTI (Templestowe) — The penultimate answer the minister gave led me to believe that it would be possible for an applicant to make substantial changes to the basis of his or her claim after leave had been granted. I understood the minister to be saying that the material submitted for the application for leave does not necessarily have to be the same material as that ultimately presented to the court at the hearing of the facts. Is that what the minister meant?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that that is what is intended.

Hon. P. A. KATSAMBANIS (Monash) — By what procedure or mechanism were the threshold amounts in proposed section 134AB(22) determined by the government?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am informed that they are the existing amounts under the previous legislation and that they have been indexed.

Hon. P. A. KATSAMBANIS (Monash) — They have been indexed for what and by what?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the pecuniary losses have been indexed through the consumer price index in line with average weekly earnings and compensation for pain and suffering.

Hon. C. A. FURLETTI (Templestowe) — Proposed section 134AB(23) identifies a number of matters, facts and circumstances of which a jury must not be informed. Would the minister explain the purpose of that subclause?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the

question of whether someone has an injury is irrelevant to a damages trial, as are thresholds.

Hon. P. A. KATSAMBANIS (Monash) — Given that the thresholds are published in the legislation is it not realistic to expect that a jury would have some knowledge of them?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — It would be unlikely that a jury would know the details of the provisions of the act, but it is possible.

Hon. C. A. FURLETTI (Templestowe) — The fact that subsection (23) of proposed section 134AB is in the bill indicates the provision is of some relevance. If it were intended that a jury should not take that provision into account perhaps the appropriate way would have been to word the provision so that the jury would disregard those matters. The reason I asked my earlier question was to identify what the government believed was the significance of these factors, because if the purpose of the proposed subsection is to prevent the jury becoming aware of its provisions it will not work. When the bill has passed people will read in the newspapers elements relating to the provisions. You could have a situation where a member of a jury became aware of these conditions and it could turn into a lottery if the conditions were relevant, as I suppose they would be. That is why I asked for an explanation of the government's policy.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I have been advised that in some cases juries have been advised what is in the legislation and the government wants to make it clear that that should not occur. I stand by the response I gave before — that it is irrelevant to damages trials as a threshold.

Hon. BILL FORWOOD (Templestowe) — Did the minister say that juries have been advised what was in the legislation?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that in previous cases juries have been aware what compensation is available. The government wants to make sure that that no longer occurs. The provision indicates that the jury is not to be informed of the details specified in the proposed subsection. The question of whether someone has an injury is irrelevant to the damages trial.

Hon. C. A. FURLETTI (Templestowe) — The minister is begging the question. Whether a person has an injury or whether there are monetary thresholds must of necessity be of relevance because those elements are listed in the bill. If the jury should not be informed of the provisions in the proposed subsection, but it happens to be informed anyway, whatever consequence the government is seeking to avoid must flow. That is why in trying to assist in the production of better legislation I am suggesting that if the government's intention is that juries should not take into account the matters provided for in the proposed subsection, the provision should read that all juries should disregard those matters rather than stating that they should not be informed of them. If a member of the jury happens to know of the matters dealt with in the provision there could be a different result as compared with the result obtained from a jury that had no knowledge of the matters.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I have answered the question, I believe. The government's policy is that the jury not be informed.

Hon. BILL FORWOOD (Templestowe) — Isn't it the case, Minister, that if the jury did have the information the way members of the jury thought about the case might change?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the answer is yes. That, however, is something that cannot be measured, whereas this is something that can be measured. You can ask the court to take it into account and as part of the proceedings to not inform the jury.

Hon. P. A. KATSAMBANIS (Monash) — In the circumstance that it is found that a jury has been informed of all or some of these matters, what would be the outcome?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that if the jury were told by the court there would be an application for a retrial.

Hon. C. A. FURLETTI (Templestowe) — And if the jury were not told by an officer of the court but happened to find out independently, what would be the outcome?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — We would know. And that is why the government has put this clause in the bill, to have a measure of control over what is presented to jury members in the court.

Hon. C. A. FURLETTI (Templestowe) — You seem to be missing the point. I could ask you a very

simple question — and I will: is this a relevant subclause?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — My response is yes.

Hon. C. A. FURLETTI (Templestowe) — If it is a relevant subclause I assume any breach of it would have some effect. Is that correct?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I believe I have given my answer to the question of what the government's policy is. The purpose of inserting this clause into the legislation is to have some measure of control over what is presented in the court. As to what happens outside the court, that cannot be controlled.

Hon. C. A. FURLETTI (Templestowe) — I suggest the government can control it. As I said, if the issues are serious enough to be considered and be put into legislation and if a court making them known to a jury is grounds for a retrial, they must be serious enough for the legislation to contain some preventive measure or alternative outcome if the matters become known to the jury other than through the court.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I believe I have answered the question on a number of occasions.

Hon. P. A. KATSAMBANIS (Monash) — Subclause 25(b) provides that where a judgment, order for damages, settlement or compromise is made it must be reduced to the extent that it is in respect of non-pecuniary loss by the amount of compensation, if any, paid under sections 98C and 98E. As far as I am aware those sections cover statutory non-economic loss (SNEL) payments for pain and suffering. Given that there is a payment for pain and suffering external to the assessment of any non-pecuniary loss, can there be any form of non-pecuniary loss other than payment for pain and suffering?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The legislation is partially retrospective; some of it applies back to 20 October 1999 and some people may have received a SNEL benefit. That is why the clause is included.

Hon. P. A. KATSAMBANIS (Monash) — If I understand it correctly, previous answers given tonight have indicated that if someone receives a SNEL benefit he or she is precluded from bringing an action for any form of common-law payment. I repeat my question. Clause 17 provides that if a SNEL payment is made, one cannot bring a common-law action. What other form of non-pecuniary loss is there deemed to be?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — We have already discussed the operative date for clause 17, which has not come into effect yet. Clause 17 is not a part of the bill that is backdated to 20 October 1999.

Hon. P. A. KATSAMBANIS (Monash) — I repeat my question: basically if clause 17 provides that if there is a statutory non-economic loss payment that you cannot bring a common-law action, what other form of non-pecuniary loss is there deemed to be?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The operative date of clause 17, which I think we have discussed before, has not come into effect yet. It is not part of what is backdated to 20 October 1999.

Hon. P. A. KATSAMBANIS (Monash) — I take it that apart from the system that came into place on 11 November 1997 and the system that is coming into place on the proclamation of the legislation that there is going to be another date as well? I am struggling to comprehend how you can have any form of non-pecuniary loss that is not compensation for non-economic loss under section 98C. Is non-pecuniary loss not covered in all elements by compensation for non-economic loss under section 98C?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I have been advised that once clause 17 comes into operation my previous answer is correct.

Hon. P. A. KATSAMBANIS (Monash) — It appears as though we are not going to get too far on that. It needs to be said again for the record that it appears to mean that non-pecuniary loss and pain and suffering damages seem to work in together and I cannot see how this clause is going to operate in practice. It will be left up to the courts and I am sure at some stage they will determine it in the way they see fit.

I move on to subsection (29) of proposed section 134AB and note there that the scale of costs on taxing will be reduced by 20 per cent. Given that the working party did not come up with such a recommendation, I seek the advice from the minister as to how this arbitrary 20 per cent reduction in the scale of costs was arrived at?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I refer the honourable

member to page 87 of the working document. Item 7.3, 'Other recommendations' states that the other key recommendations of the working party in relation to the restoration of common law are, firstly, that the Victorian Workcover Authority is to introduce measures to constrain legal costs and to establish an ongoing monitoring system to allow an evaluation of those costs, which is what the government has done, and secondly, that the authority will continue to monitor those costs.

Hon. P. A. KATSAMBANIS (Monash) — I repeat my question, which has still not been answered. Given that the government has not set such a limit why and how did it arrive at the figure of 20 per cent?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The government is concerned about legal costs. The previous government set the figure at 10 per cent. This government is conscious and concerned that the legal costs do not blow out and it made an assessment at 20 per cent. As I said in my previous answer, it will be monitored on an ongoing basis.

Hon. C. A. FURLETTI (Templestowe) — In deciding to reduce costs by a further 100 per cent — given that the earlier deduction was 10 per cent so 20 per cent is an increase of 100 per cent — did the minister consider the quality of legal representation that injured workers might buy with reduced costs?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The government does not believe that what the honourable member is putting would occur. However, as I said, it will be under constant review and mechanisms are available to adjust the percentage figure.

Hon. P. A. KATSAMBANIS (Monash) — Given that the government is significantly capping the amount of fees that a petitioner for an injured worker can recover from the other party in party–party costs, is it basically a shifting of the cost from the scheme to the injured worker and solicitor–client costs which will result in a decrease in the net amount payable in any award of compensation to the injured worker after taking into account legal costs owed by the worker to his or her legal practitioner?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the worker's solicitor's claimed costs may be ordered only by the court and that provisions exist for regulating those levels by Order in Council. Again, the government will constantly monitor those costs to ensure there is no blow out.

Hon. P. A. KATSAMBANIS (Monash) — Based on that answer the only response I can make is that I am sure, as many other speakers have said yesterday and today, that we will be back in this chamber before too long to debate a raft of new amendments.

I move on to proposed subsection 37, which is the definitions section. I note that there are definitions of pecuniary loss damages and pain and suffering damages but no definition of non-pecuniary loss damages. I seek some guidance from the minister on whether 'non-pecuniary loss damages' will be deemed to mean exactly the same as 'pain and suffering damages'. If not, why is 'non-pecuniary loss damages' not separately defined?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — Yes, it is intended to be the same.

Hon. I. J. COVER (Geelong) — Mr Katsambanis has been talking about definitions, and I also seek a definition. Proposed section 134AB(38)(c), which I am sure the minister has in front of her, commences with the words:

> an impairment or loss of a body function or a disfigurement shall not be held to be serious —

and finishes with the words:

> as the case may be, fairly described as being more than significant or marked, and as being at least very considerable.

What does that mean?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the definition has been set out in the second-reading speech, and proposed subsection (38)(b), (c) and (d) broadly reflect the test of *Humphries v. Poljak* — the leading authority on the narrative; accordingly that is the test the courts understand.

Hon. P. A. KATSAMBANIS (Monash) — There have always been problems with trying to codify specific decisions of the court, but in this case it is fraught with danger. If, as the minister advises the committee, the same words that were interpreted in that case had been included in the act, the definition would have certainty. However, the government has attempted to use a legislative technique to try to turn a judgment into legislative terminology. Also, the minister made this wonderful 29-page second-reading speech which has tried to redefine things.

Can the minister provide an assurance that the words simply reflect the definitions provided in the Humphries case, or will they create another avenue for legal testing, legal reasoning and basically a lawyers' picnic?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — As I have already advised the house, the second-reading speech clearly expresses the government's policy. I have already indicated the government's position on *Humphries v. Poljak*.

Hon. I. J. COVER (Geelong) — In dealing with proposed section 134AB(38)(c) the minister has provided some explanation of the reference to *Humphries v. Poljak* in the second-reading speech and how it relates to this provision. However, to my way of thinking and that of my constituents who have raised the matter with me, although the minister might be able to get some guidance from the particular case that is referred to, the provision is still open to legal interpretation or argument. What I am asking and what my constituents are asking me is: shouldn't there be a greater attempt by the government to make the legislation clear and simple?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I believe I have answered the honourable member's question. That is why in the second-reading speech we have clearly set out the issue of *Humphries v. Poljak*.

Hon. C. A. FURLETTI (Templestowe) — Still on the same clause and with a similar concern, the clause states that an injury should be judged:

> … by comparison with other cases in the range of possible impairments or losses of a body function, or disfigurements, as the case may be, fairly described as being more than significant or marked, and as being at least very considerable …

I find it difficult to understand what the first case to be dealt with under this provision will be compared with. Will the minister please explain that?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the court does not come to the case without a knowledge of the range of possible impairments and consequences, and the court will make a judgment.

Hon. P. A. KATSAMBANIS (Monash) — My contribution, along with those of Mr Cover and Mr Furletti, has made it clear that the government's attempt to define the narrative will create more legal work than the issue it is trying to solve. At this hour of the morning it may be opportune to move to proposed section 134AB(38)(e), which introduces a new step into the common-law test. It has never been in the legislation before.

It involves the concept of not only having to prove a 30 per cent whole-body impairment to make a claim for economic loss at common law but also a new step — that is, that the worker has a loss of earning capacity of 40 per centum or more, according to the measures prescribed in proposed paragraph (f). Why has the 40 per cent threshold on loss of earning capacity been introduced — to make it harder for injured workers to access common-law claims?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the 40 per cent was inserted as an objective test and to make it easier to predict the number of claims. It is set out in the second-reading speech.

Hon. P. A. KATSAMBANIS (Monash) — I fail to understand how a discussion with a ministerial adviser of so many minutes can lead to an answer of so few seconds.

It appears that the test is not just to prove a loss of earning capacity of 40 per cent. That is covered in subparagraph (i) of proposed section 134AB(38)(e). Subparagraphs (i) and (ii) inclusive have to prove a 40 per cent loss of earning capacity. The government wants to limit claims. Why does it not just say that? This is a cap on claims. Once the loss of earning capacity of 40 per cent is proved, an injured worker must also prove the elements in subparagraph (ii). The injured worker has to prove that he or she will continue permanently to have a loss of earning capacity that will produce financial loss of 40 per cent or more. The bill does not say continue permanently to have a loss of earning capacity of 40 per cent but says a loss of earning capacity that has to produce a financial loss of 40 per cent or more. It begs the question: is the definition of financial loss to be taken to be different to the definition of loss of earning capacity?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised the answer is no.

Hon. P. A. KATSAMBANIS (Monash) — Based on the answer, can I have an assurance from the minister that this subparagraph is to be interpreted again as meaning solely a loss of earning capacity and further, that it will not be deemed to mean or to include any element of non-exertion income received by the worker in the calculation of that financial loss?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised the answer is yes.

Hon. P. A. KATSAMBANIS (Monash) — Proposed new section 134AB(38)(f) defines a period within three years before and three years after the injury as most fairly reflecting the worker's earning capacity had the injury not occurred. There is a window of anywhere between zero and six years available. Why were the periods three years before and three years after the injury determined as being those that supposedly most fairly reflect the worker's earning capacity?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The second-reading speech sets out where the three years came from. It was to be fair. It was to ensure that it was not open ended and to take into account the variations in people's working lives.

Hon. P. A. KATSAMBANIS (Monash) — I will follow up on that. Proposed paragraph (f) states:

> … that part of the period within 3 years before and 3 years after the injury as most fairly reflects …

Who is to determine, and in what manner, what part of the period within three years before or three years after is to be deemed to be most fairly and accurately reflective of the earning capacity, because the bill states up to three years before and up to three years after? Who will determine, and by what method, the actual period within that six-year window?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that it will be the judge or the decision-maker.

Hon. P. A. KATSAMBANIS (Monash) — Another huge avenue is open for significant litigation, which will simply add to the costs associated with such actions. The opposition regrets that this will become the open-ended lawyers' feast that I and other speakers have alluded to today.

I move on with clause 18 to the operation of proposed sections 134AC and 134AD. Minister, based on the operation of the clauses it appears to me that the Court of Appeal, the highest court in the state, is to become a trial court, and that all matters on appeal to the Court of Appeal can be run as new cases from scratch with new evidence at the wish of either or both of the parties without the Court of Appeal having any say in the matter. Is that the case?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that in requiring the Court of Appeal to decide whether an injury is a serious injury the bill recognises the importance of the scheme and of its crucial role. The bill restores a task to be undertaken by the Court of Appeal, as was established in *Humphries v. Poljak*. The bill permits the Court of Appeal to receive further evidence in the course of the appeal but does not alter existing legal principles. The power of the Court of Appeal to receive further evidence is limited to either cases of exceptional circumstances or where there are dramatic changes in circumstances. Consequently there will only be a small number of cases in which the power to receive further evidence is actually exercised by the Court of Appeal. There are existing rules of the court that govern the admissibility of further evidence in the course of an appeal.

Hon. C. A. FURLETTI (Templestowe) — I direct the minister's attention to what is contained in the last three lines of proposed section 134AD, which seems to in some way contradict what she has said. It refers to the evidence the Court of Appeal can hear, which is the material presented before the judge who heard the application, and states:

> … and on any other evidence which the Court of Appeal may receive under any other Act or rules of court.

That to me is argumentative and not limited in any way. I repeat what was said by the Honourable Peter Katsambanis and suggest that whatever other evidence was available could be presented to the court.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I believe I have answered the question as to how such evidence would be dealt with.

Hon. P. A. KATSAMBANIS (Monash) — It has been made clear that the operation of proposed sections 134AC and 134AD will increase the burden on the court. In the following proposed section 134AE it is clear the burden on the courts will also increase, particularly in the higher courts and the Court of Appeal, because of the need to give detailed reasons to hear those sorts of appeals and take new evidence.

What estimate has the government made of the number of cases likely to be brought under the provisions? Given the initial burden to be placed on court time and resources, what provision has the government made for the allocation of additional resources to the court system, including judges and other staff, in order to meet the increase?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that in the initial stages there might be some appeals, but based on experience the government does not believe they will be substantial in number, and we believe the courts are adequately serviced.

Hon. C. A. FURLETTI (Templestowe) — I seek clarification from the minister: the normal process of appeal is from the County Court to the Supreme Court to the Court of Appeal. Could the minister clarify the circumstances in which appeals will be brought to the Court of Appeal — that is, can they be brought directly from the County Court?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the appeal is to the Court of Appeal — there is no interim step.

Hon. C. A. FURLETTI (Templestowe) — I think the minister may have misunderstood the question. On the hearing of an appeal to the Court of Appeal there is an appeal from a determination. From where is the appeal being made?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the appeal under this proposed section goes from the County Court to the Court of Appeal.

Clause agreed to.

Clause 19

Hon. P. A. KATSAMBANIS (Monash) — Clause 19 refers to legal costs orders. By order in council the Governor may make a legal costs order, which has been referred to already by the minister. I seek clarification on what orders are currently envisaged to be made.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that currently there is no proposed order, but the government will continue to monitor it as I have said in previous answers.

Hon. P. A. KATSAMBANIS (Monash) — What mechanism will be used to determine whether a legal costs order requires to be made and if it is so determined that it should be required to be made? How will the provisions within that order be determined by the government?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the government will monitor it and the minister will make the appropriate assessment.

Hon. C. A. FURLETTI (Templestowe) — In answer to a previous question on legal costs, the minister said there was an arbitrary figure of 20 per cent reduction from scale. The clause seems to give the Minister for Workcover the ability through Governor in Council to set up new scales of fees. The clause provides an out for the government to further reduce legal fees if there is a cost blow-out in legal fees anticipated through the common-law system.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — The government will monitor them. If costs blow out, as set out in the clause, the government has the provision to implement measures. The government will ensure that legal costs do not blow out. It will monitor them and under this provision the minister will take action is it becomes appropriate.

Hon. P. A. KATSAMBANIS (Monash) — The existence of the clause and the minister's answer simply confirms what everybody involved in the area knows. The inevitable consequence of the bill being passed is that legal costs will blow out. That will come as sure as night follows day. The opposition knows that, and the minister confirms it by her actions as well as her comments. My concern is that the government is setting up a flawed system that will lead not only to legal cost blow-outs, but that in an attempt to curtail the blow-outs the government will intervene in legal costs recoverable by legal practitioners to obtain some form of cheaper justice. We all know that at the end of the day cheap justice leads to shoddy justice, and bad justice will be the inevitable outcome. Legal costs will blow out and poor representation will result from the government's allowing legal fees to be discounted.

Clause agreed to; clauses 20 and 21 agreed to.

Clause 22

Hon. C. A. FURLETTI (Templestowe) — I ask the minister to clarify the term 'expiration of 3 years after the incapacity is known' at the end of proposed section 135AC(b). How does that relate to the general six-year limitation period under the Limitation of Actions Act?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised it could reduce it as it does in proposed paragraph (a).

Clause agreed to; clause 23 agreed to.

Clause 24

Hon. C. A. FURLETTI (Templestowe) — As I said in my contribution to the debate on the bill, this clause introduces a novel system of settlement and compensation in the state. I am referring to structured settlements. What advice did the government receive on the preparation of the clause?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that the clause was based around what happens in New South Wales. The government took advice from the stakeholders, including the Australian Medical Association, the Insurance Council of Australia and the Law Council of Australia. There has been a general view federally that this sort of clause structure should be put in place. The clause was introduced after receiving that advice.

Hon. C. A. FURLETTI (Templestowe) — The structured settlements arrangements exist in New South Wales and in a number of states in the United States. Without going into detail, those provisions are generally contained within legislation. The New South Wales Workers Compensation Act 1987 provides a number of statutory requirements for the investment and treatment of funds put aside in structured settlements that provide payments, as is referred to here, in some cases in the form of an annuity. It concerns me that proposed section 135D(3) provides that the arrangements under the structured settlements provision:

> (b) must provide for any matters as may be prescribed; and
>
> (c) is subject to such conditions and limitations as may be prescribed.

In other words, the bill gives the minister the power of regulation to control the application and power and circumstances in which the funds which are agreed to on a structured settlement will be handled, notwithstanding that the court gives the consent to the structured settlement. Why is the ministerial role so strong and why is it not embedded in legislation as it is under the New South Wales act?

Hon. M. M. GOULD (Minister for Industrial Relations) — My advice is that it was deemed appropriate that such a detailed level, if required, would be more appropriate in regulations rather than in the legislation.

Clause agreed to.

Clause 25

Hon. P. A. KATSAMBANIS (Monash) — Clause 25 is a blatant attempt by the government to shift a series of costs from the Victorian Workcover Authority scheme to the Traffic Accident Commission (TAC) scheme. I seek from the minister a statement as to the actual costs that will be transferred across to the TAC scheme by the provision. I seek an actuarial calculation of the costs that are likely to be transferred across.

Hon. M. M. GOULD (Minister for Industrial Relations) — I am advised that the money transferred from the VWA to the TAC is approximately $20 million. Honourable members in the other place have been advised that the exact figure is not available at the moment but that it is approximately $20 million.

Clause agreed to.

Clauses 26 to 29

Hon. P. A. KATSAMBANIS (Monash) — I foreshadow at this stage that the discussion on clause 26 can be effectively deemed to be discussion on clauses 26 to 29, because they are interrelated clauses. They were discussed in some detail at the beginning of the committee stage.

Earlier during consideration of clause 2 the committee engaged in discussion about the effect of the commencement date on clauses 27 and 28. I do not propose to cover all that again, except to reiterate that the operation of those clauses in effect retrospectively removes insurance cover under the Workcover regime from any claims made against employers for injury suffered in a workplace where the awards for damages are made not under the Accident Compensation Act but the Sentencing Act.

I reiterate that it appears we have a fairly live issue about whether a decision made in *Bentley v. Furlan* relating to the operation of TAC and not Workcover has any application in the Workcover jurisdiction, and furthermore whether, even if it did have any application based on the interpretation that those damages were criminal in nature, the decision in *Shoebridge v. The Pasta Master Pty Ltd* that the nature of such damages was civil damages again obliterated any arguments that *Bentley v. Furlan* had any application to the accident compensation scheme.

Irrespective of all that, it appears as though the government, as highlighted by the minister in the discussion on clause 2, has made a clear policy decision that regardless of whether there is coverage at the moment, it wants to retrospectively remove coverage from employers and backdate it to 1 June 1997 for all

claims made against them for injuries suffered in the workplace where those claims are brought under the Sentencing Act. That applies to claims made between November 1997 and October 1999, but it is backdated to 1 July 1997.

I seek a number of assurances and clarifications from the minister as to the operation of those provisions. Firstly, I seek from the minister any estimate or any actuarial costing as to the potential and contingent liability of employers under that section, especially given that their insurance protection has been removed.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised the government does not accept that there was insurance protection, so there has been no actuarial assessment.

Hon. P. A. KATSAMBANIS (Monash) — So the minister is contending that the government did not obtain any costing on the likely impact on employers of that provision the government has put in this bill? Is that correct?

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised the answer is yes.

Hon. P. A. KATSAMBANIS (Monash) — It is clear that the liability placed on employers is onerous and is essentially uncapped, because it relates not only to prosecutions involving serious injury but also to prosecutions involving any injuries. In the booklet entitled 'Restoring common-law rights' the government talks about the use of the intensive case review process, to which I have referred previously both in the house and in committee.

It appears the government is indicating that it will use that process to facilitate prosecutions and allow claims to be made under the Sentencing Act. I ask the minister whether prosecutions will increase through that process simply because it will enable claims to be made under the Sentencing Act.

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — I am advised that that is not the intention. The intention is to have a responsible prosecution policy that will have regard to the usual factors that a prosecutor will take into account, such as the degree of culpability. The intention is that intensive case review process claimants should be made aware that if there is a prosecution and conviction they may have an entitlement under the Sentencing Act.

Hon. P. A. KATSAMBANIS (Monash) — I thank the minister for her answer. I would like to put on the record that it seems from the representations I have had from union representatives both from the Trades Hall Council and the Australian Workers Union that they have a misconception about the use of ICRP, and I hope the minister communicates to representatives of the trade union movement such as Leigh Hubbard and Bill Shorten, among others, what she has put on the record in the house today. I am not under any misapprehension or misconception about the operation of the provision.

I do not wish to take up any more time of the committee, except to say that the operation of clauses 26 to 29 of the bill must necessarily scare the pants off any employer or prospective employer in this state. The reasons for that have been articulated clearly during this debate.

When the implications of the provisions come home to roost and create immense devastation, not only for employers but also for employees who have a pyrrhic judgment, the government will once more stand condemned for the sham that is the bill.

Clauses agreed to; clauses 30 to 33 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Hon. M. M. GOULD (Minister assisting the Minister for Workcover) — By leave, I move:

That this bill be now read a third time.

I thank all honourable members who have contributed to the debate.

Hon. W. R. BAXTER (North Eastern) — The house has just had a totally unsatisfactory committee stage that ran for over 5 hours. In the 21 years I have been a member of the chamber, I have never seen anything like it before. It bordered on farce.

Of course the committee is always prepared to give ministers some latitude when handling bills for a minister in another house, but according to the *Victorian Parliamentary Handbook* the minister at the table is sworn in as Minister assisting the Minister for Workcover. As well as that, workers compensation is an icon issue for the government. The house has every right and is entitled to expect that the minister would ensure she is properly briefed when legislation such as this is to come before the committee.

I want it placed on record that members of the chamber and staff, in particular Hansard, are here at 2.30 a.m., not because of any intransigence or time wasting by members of the opposition but due to the total lack of preparation by the minister in ensuring she was properly prepared across her brief. I appeal to the Premier, who has made such a play in public places about accountability in government, to assure the house it will not be put through that farce again.

Hon. M. A. BIRRELL (East Yarra) — Hansard will not have been able to properly record debate since approximately 9.00 p.m. because Hansard is not able to record silence. The most common feature of the committee debate was the silence that immediately succeeded questions asked by opposition members. That silence was a constant theme because the minister was not able, as has been the case in all committee debate I have participated in, to provide an answer in quick response to questions asked by members in committee.

Hansard cannot record the silence, but it is important that it be placed on record that the committee has experienced the minister constantly leaving her seat to talk to her advisers. For periods of 3 minutes, 4 minutes or more, she has sat with advisers and literally learnt on the spot about certain parts of the bill. As Mr Baxter correctly pointed out, where the minister is assisting and therefore has direct sworn ministerial responsibility for the legislation, the experience we have had over the past 5 hours is reprehensible and is directly the result of her failings.

As Leader of the Opposition in this place I make it clear that particularly when there was no committee debate in the Legislative Assembly and the Parliament is therefore on the verge of passing the legislation in the absence of a detailed examination of clauses that would be of great importance to judges when interpreting disputes about the legislation, the opposition believes that in many cases it is of benefit to have a committee debate in this chamber. When there is a committee debate in this chamber and the minister involved has the sworn ministerial responsibility for the bill the opposition expects that the minister will have done something more than just walk into the chamber. It expects the minister will do what previous Labor ministers and previous Liberal and National Party ministers have done — that is, be prepared for the debate.

It is extraordinarily uncommon to see five, but at times up to seven, people crowded into the advisers box trying to help an inadequate minister through her task. It does not assist in the smooth operation of the house. I congratulate those honourable members who were involved in the debate for their forbearance and tolerance, and in all the circumstances on the extremely professional and polite manner in which the debate was conducted, but it did not reflect well on the Parliament or on the minister. It will not be in the interests of anyone in the chamber for these circumstances to be repeated.

The PRESIDENT — Order! As there is not an absolute majority of the members of the house present, I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

Motion agreed to by absolute majority.

Read third time.

Remaining stages

Passed remaining stages.

ARTS LEGISLATION (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. M. M. GOULD (Minister for Industrial Relations).

CHILDREN AND YOUNG PERSONS (APPOINTMENT OF PRESIDENT) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. M. R. THOMSON (Minister for Small Business).

LAND (REVOCATION OF RESERVATIONS) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. C. C. BROAD (Minister for Energy and Resources).

ELECTRICITY INDUSTRY ACTS (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. C. C. BROAD (Minister for Energy and Resources).

ADJOURNMENT

Hon. M. M. GOULD (Minister for Industrial Relations) — I move:

That the house do now adjourn.

Motion agreed to.

House adjourned 2.44 a.m. (Thursday).