The PRESIDENT (Hon. B. A. Chamberlain) took the chair at 2.34 p.m. and read the prayer.

GAMING MACHINE CONTROL (GENERAL AMENDMENT) BILL

Introduction and first reading

Read first time for Hon. W. R. BAXTER (Minister for Roads and Ports) on motion of Hon. R. I. Knowles.

NURSES BILL

Introduction and first reading

Read first time on motion of Hon. R. I. KNOWLES (Minister for Housing).

PUBLIC SECTOR SUPERANNUATION (ADMINISTRATION) BILL

Introduction and first reading

Read first time on motion of Hon. R. M. HALLAM (Minister for Regional Development).

ABSENCE OF MINISTER

Hon. M. A. BIRRELL (Minister for Conservation and Environment) — I wish to advise the House that the Minister for Roads and Ports is attending a conference until 4 p.m. and will not be present during question time today. I believe the opposition has been advised. This is an unusual occurrence, and if there are any questions for the Minister I shall be pleased to answer on his behalf in the normal manner.

QUESTIONS WITHOUT NOTICE

COODE ISLAND CHEMICAL STORAGE FACILITY

Hon. D. R. WHITE (Doutta Galla) — Given that it is the policy of the government to implement the unanimous recommendation of the Coode Island review panel that the bulk liquid hazardous chemical facility be relocated to west Point Wilson, and given that the Leader of the Government publicly boasted that he was the first person to argue for the relocation of Coode Island, will the Minister for Conservation and Environment, who also boasted that he was a man of his word, inform the House of the proposed starting date for the transfer of the bulk liquid hazardous chemical facility from Coode Island to west Point Wilson, as well as the proposed completion date?
Hon. M. A. Birrell (Minister for Conservation and Environment) — Mr White knows that prior to the last State election this matter was not the responsibility of the Minister for Conservation and Environment, who at the time was Mr Pullen. Following the State election it is still not the responsibility of the Minister for Conservation and Environment, but I will certainly refer it to the responsible Minister, who is the Minister for Industry Services in another place, Mr Roger Pescott.

ADI Clothing Plant

Hon. R. A. Best (North Western) — It was reported in the country media last week that the major expansion of the Australian Defence Industries clothing factory at Bendigo will result in the creation of between 30 and 50 jobs. Will the Minister for Regional Development advise the House of the government’s involvement in the project?

Hon. R. M. Hallam (Minister for Regional Development) — I am pleased to advise the House of another important investment that has been assisted by the incentives provided under the government’s regional development program. Australian Defence Industries, better known as ADI, has maintained a heavy engineering plant in Bendigo for almost 50 years, but approximately two years ago established a clothing manufacturing division that currently employs 110 people. In that two years ADI has changed the mode of that operation and has gone from manufacturing a restricted range of uniforms and protective garments for government services to becoming an important supplier of quality clothing to major outlets in the fashion industry, including among others the Coles Myer Ltd and Country Road Clothing Pty Ltd chains.

This development has been achieved by raising the standards of manufacture at Bendigo, and I am pleased to place on record that the operation at Bendigo now boasts world’s best practice. Under the leadership of the general manager, Mr James Kelaher, whom I was pleased to meet last week, production has been arranged in such a way that customers are able to hold small stock levels and meet variable demands as they arrive.

The development consists of an investment of approximately $1 million in Bendigo, and I am pleased to advise the House that the expansion program will result in 30 to 50 new jobs in Bendigo, which demonstrates the confidence of that company in the product and in the location of the plant. I pay tribute to the company, its chief executive and the enthusiastic staff who have been responsible for the development, and I also pay tribute to the Bendigo Regional Development Board for the role it has played in encouraging development.

I also place on record the valuable role played by my colleague Mr Best in preparing what is a positive outcome for both the company and the community.

WorkCover

Hon. T. C. Theophanous (Jika Jika) — I again refer the Minister responsible for WorkCover to his cautious estimate that 6500 workers classified as partly incapacitated will be removed from WorkCover in the latest purge by 1 December 1993. Will the Minister confirm that the 6500 workers are in addition to the 4500 workers removed from WorkCover earlier in the year, and does this mean that more than 11,000 workers will have been dumped from weekly payments under WorkCover by 1 December?

Hon. R. M. Hallam (Minister for Local Government) — I thank the honourable member for his question, which is similar to others he has posed in the past. I will not be drawn on the issue that he keeps coming back to, but I again make the point that, on current indications, it is estimated that 3500 long-term claimants will qualify either as seriously injured or totally and permanently incapacitated and therefore will be entitled to compensation beyond 1 December this year.

The honourable member is entitled to do the sums that he has done, but I counsel him against the sort of conclusion he keeps drawing. The long-term WorkCare queue consisted of approximately 16,000 Victorians, which is a very sad legacy, and of those it is estimated that at the end of June this year 10,000 were in receipt of weekly benefits. Therefore, we are talking about a queue of something like 10,000. From that number one needs to deduct those who have accepted settlement offers, and I do not accept that that constitutes a dumping because —

Hon. B. E. Davidson — They have no choice but to accept it!

Hon. R. M. Hallam — You can say that, but no-one else would believe you because the settlements were offered and accepted in individual circumstances. It does Mr Theophanous no credit to reflect upon those who accept the offers in those circumstances. There are currently estimated to be
7000 long-term claimants under review in respect of changes to apply from 1 December. Current indications are exactly as I outlined in the House last week — it is expected that approximately 3500 workers will qualify for continuing weekly entitlements to compensation.

Hon. T. C. Theophanous — You said 6500?

Hon. R. M. HALLAM — I said, “Current indications are”, and I remind you again that this is a process of review and that many of those caught up in it have until 1 December to determine the options open to them.

I am not being coy in the way I answer the question Mr Theophanous keeps putting — that is, it depends on individuals and the choices they take at an individual level. My view is that an extremely difficult charter is being handled as sensitively as possible.

ENTERPRISE MIGRANT HOSTEL

Hon. S. de C. WILDING (Chelsea) — The Minister for Tertiary Education and Training would be aware of the controversy which surrounded the Federal government’s decision earlier this year to close the Enterprise Migrant Hostel in Springvale and the problems that caused for hundreds of adult students undertaking studies in English as a second language.

Will the Minister inform the House of the steps taken to ensure that suitable permanent accommodation is available for adult migrant education classes in the Springvale area?

Hon. HADDON STOREY (Minister for Tertiary Education and Training) — I thank Mrs Wilding for her question and her concern for students who have been badly disadvantaged by the decision of the Commonwealth Minister to shut the migrant hostels, particularly the Enterprise Migrant Hostel, at the end of 1992. More than 400 students were serviced by the courses delivered at the Enterprise hostel, and they have had to put up with unsuitable temporary accommodation over the past 12 months.

Last year I made representations to the Federal Minister for Immigration and Ethnic Affairs to postpone the shutting of that hostel, but the Minister went ahead and closed it. It is important that the clients from more than 70 countries who attend the various adult migrant education courses in Victoria have training in English. I am amazed at the comments of members of the opposition in this House when the Commonwealth has responsibility for migrants and should have consulted — —

Honourable members interjecting.

The PRESIDENT — Order! Question time has officially expired and whether I allow the balance of the agreed number of questions to be asked will depend on whether the House is able to hear the one being answered. I ask honourable members to settle down, and I ask the Minister to conclude his answer.

Hon. HADDON STOREY — During the past 12 months the Victorian Minister for Education has made available temporary premises for the classes to be conducted. I am pleased that there is now permanent accommodation for the classes at 126A Springvale Road, Springvale, which is located close to the railway station and other public transport. It is within a commercial complex comprising furniture outlets and light automotive industry. It is an appropriate place for the students to obtain their English language skills and to do so in an environment where they can be immediately available. I am confident that the new accommodation will provide a permanent solution to the problem in Springvale, and I congratulate all those involved in achieving it.

MUNICIPAL RESTRUCTURING

Hon. LICIA KOKOCINSKI (Melbourne West) — Will the Minister for Local Government confirm that he has given or intends to give the Local Government Board a reference to investigate municipal restructuring in a number of inner-metropolitan councils including Kew, Footscray, Hawthorn and Camberwell, and will he advise the House what other areas are involved?

Hon. R. M. HALLAM (Minister for Local Government) — I thank Ms Kokocinski for her question, and I can answer the first part in the negative. I have not given the Local Government Board a reference to investigate municipal restructuring in a number of inner-metropolitan councils including Kew, Footscray, Hawthorn and Camberwell, and will he advise the House what other areas are involved?
The three winners act as role models for others, and the government is pleased that there were so many participants in the inaugural Clean Water Awards that it found three eminent winners.

MELBOURNE CITY COUNCIL

Hon. D. T. WALPOLE (Melbourne) — Will the Minister for Local Government advise the House what financial remuneration has been agreed to for the newly appointed Melbourne City Council commissioners?

Hon. R. M. HALLAM (Minister for Local Government) — As has been widely reported in the press, the stipend for the chairman of the commission is $60 000 and other members of the commission will receive $25 000.

AGED CARE

Hon. BILL FORWOOD (Templestowe) — Will the Minister for Aged Care inform the House what the aged care program is doing to recognise the special needs of Koori elders in 1993, the United Nations Year of the World’s Indigenous People?

Hon. R. I. KNOWLES (Minister for Aged Care) — As honourable members are aware, this is the United Nations Year of the World’s Indigenous People and it is important that the government recognises the particular needs of Koori Victorians. That is true for aged care in the administration of the home and community care program (HACC). Historically, Koori people have not had as ready access to HACC programs as other older Victorians, and it is important that the government tries to increase that access.

As a result the Department of Health and Community Services has funded three needs studies for Koori communities in Warmambool, Geelong and Westermost to examine ways of ensuring better access to HACC services for Koori elders. Capital grants have been made available in the Grampians, Gippsland, north-eastern and north central regions and the government has provided funding for a special home maintenance program run by the Morwell City Council.

Finally, the department’s aged care division is developing strategies to reach isolated Koori communities. It has received a record number of applications, which are currently being examined, and an announcement of the results of those applications will be made in the near future. I look...
forward to some of the additional funds the government has made available for the home and community care program being allocated to services designed to meet the needs of Koori elders in Victoria.

**FLOOD RELIEF**

Hon. PAT POWER (Jika Jika) — In respect of his commitment to regional Victoria I ask the Minister for Regional Development whether he is aware of a Victorian Farmers Federation news release of 11 November that states in part:

State government should expand the support shown to flood victims ...

and:

government assistance offered as concessional loans at a 4 per cent interest rate ... has been insignificant.

I ask the Minister whether he has made any detailed submission urging the reduction of that interest rate level and what the outcome of his efforts in that regard was.

Hon. R. M. HALLAM (Minister for Regional Development) — The answer is no; I have not made a detailed submission on the interest rate. This issue is primarily the responsibility of two of my colleagues, the Treasurer in the first instance —

Hon. Pat Power — It's not one of the issues he said he would be involved in. It is not big enough!

Hon. R. M. HALLAM — It is a shared responsibility between the Treasurer and the Minister for Agriculture. I can tell the House and Mr Power that it has been a matter of intensive and extensive discussion.

**LATROBE REGIONAL COMMISSION**

Hon. P. R. DAVIS (Gippsland) — I ask the Minister for Regional Development to outline the government's plan for the future of the Latrobe Regional Commission.

Hon. R. M. HALLAM (Minister for Regional Development) — I thank Mr Davis for his question, which is timely, given the formal requests I have received from 2 of the 10 constituent councils of the Latrobe Regional Commission to withdraw their memberships of the commission. As Mr Davis would know, the councils concerned are those of the City of Sale and the Shire of Rosedale. Both have expressed an intention to forge closer links with the municipalities in central Gippsland as distinct from those in the Latrobe Valley. There have been press reports about a similar review taking place in respect of the shires of Alberton and Narracan, which also may make formal applications to withdraw.

It goes without saying that any change in the composition of the commission would require a legislative change, so before making any decision about the applications I have received from the City of Sale and the Shire of Rosedale I directed my officers to contact all the member councils of the Latrobe Regional Commission to obtain their views on the future of the commission. I asked my officers to canvass particularly the councils' views of how economic development in the Latrobe region should be handled in the future and what form of support, if any, should be provided by the State government to assist in the promotion of that economic development. The councils' views on the long-term future of the Latrobe Regional Commission, its present role and whether it should continue and if so in what form are also being sought.

As Minister for Local Government I have another interest in regional corporation, particularly with the Local Government Board now being operational. Given that it has been widely canvassed that a review of the Latrobe Valley situation will take place, it is opportune for the review of the Latrobe Regional Commission to be undertaken and also for the views of the councils that are most directly involved to be sought. I look forward to the results of that consultation.

**DEPUTY OMBUDSMAN (POLICE COMPLAINTS)**

**Operation Iceberg**


Laid on table.

**BEAVE LTD**

Hon. R. M. HALLAM (Minister for Regional Development) presented copy of financial statements of Beave Ltd (in voluntary liquidation)

Laid on table.

**SCRUTINY OF ACTS AND REGULATIONS COMMITTEE**

**World Conference on Human Rights**


Laid on table.

**Australasian and Pacific Conference on Delegated Legislation and Scrutiny of Bills**


Laid on table.

**Alert Digest No. 18**

Hon. B. A. E. SKEGGS (Templestowe) presented *Alert Digest No. 18*, together with appendix.

Laid on table.

Ordered to be printed.

**Alert Digest No. 19**

Hon. B. A. E. SKEGGS (Templestowe) presented *Alert Digest No. 19*, together with appendix and minutes of evidence.

Laid on table.

Ordered that report and appendix be printed.

**Interpretation of Legislation Act**

Hon. B. A. E. SKEGGS (Templestowe) presented second report on operation of section 32 of Interpretation of Legislation Act 1984, together with appendices.

Laid on table.

Ordered to be printed.

**PAPERS**

Laid on table by Clerk:

- Alexandra District Hospital — Report, 1992-93 (two papers).
- Anne Caudle Centre — Report, 1992-93 (two papers).
- Apollo Bay and District Memorial Hospital — Report, 1992-93.
- Ararat and District Hospital — Report, 1992-93.
- Austin Hospital — Report, 1992-93 (three papers).
- Bacchus Marsh and Melton Memorial Hospital — Report, 1992-93.
- Bairnsdale Regional Health Service — Report, 1992-93.
- Ballarat Base Hospital — Report, 1992-93 (three papers).
- Beeac and District Hospital — Report, 1992-93.
- Benalla and District Memorial Hospital — Report, 1992-93.
- Bethlehem Hospital Inc. — Report, 1992-93 (two papers).
- Birregurra and District Community Hospital — Report, 1992-93.
- Box Hill Hospital — Report, 1992-93.
- Bright District Hospital — Report, 1992-93.
Bundoora Extended Care Centre — Report, 1992-93.
Burwood and District Community Hospital — Report, 1992-93.
Camperdown District Hospital — Report, 1992-93.
Casterton Memorial Hospital — Report, 1992-93.
Clunes District Hospital — Report, 1992-93.
Cobram District Hospital — Report, 1992-93.
Cohuna District Hospital — Report, 1992-93.
Colac District Hospital — Report, 1992-93.
Coleraine and District Hospital — Report, 1992-93.
Conservation and Natural Resources Department — Report, 1992-93.
Corryong District Hospital — Report, 1992-93.
Creswick District Hospital — Report, 1992-93 (two papers).
Daylesford District Hospital — Report, 1992-93.
Donald District Hospital — Report, 1992-93.
Dunmunkle Health Services — Report, 1992-93.
Dunolly District Hospital — Report, 1992-93.
Edenhope and District Memorial Hospital — Report, 1992-93.
Eildon and District Community Hospital — Report, 1992-93.
Fairfield Hospital — Report, 1992-93 (two papers).
Geelong Hospital — Report, 1992-93.
Gippsland Base Hospital — Report, 1992-93.
Gippsland Southern Health Service — Report, 1992-93 (four papers).
Glenview Community Care Inc. — Report, 1992-93.
Goulburn Valley Base Hospital — Report, 1992-93 (two papers).
Hamilton Base Hospital — Report, 1992-93 (two papers).
Hampton Rehabilitation Hospital — Report, 1992-93 (two papers).
Healesville and District Hospital — Report, 1992-93.
Health and Community Services Department — Report, 1992-93.
Heathcote District Hospital — Report, 1992-93.
Heywood and District Memorial Hospital — Report, 1992-93.
Hospitals Superannuation Board — Report, 1992-93.
Hospitals Superannuation Fund — Actuarial investigation as at 30 June 1993.
Kerang and District Hospital — Report, 1992-93.
Kilmore and District Hospital — Report, 1992-93.
Koroit and District Memorial Hospital — Report, 1992-93.
Kyabram and District Memorial Community Hospital — Report, 1992-93.
Kyneton District Hospital — Report, 1992-93.
Latrobe Regional Hospital — Report, 1992-93 (two papers).
Lismore and District Hospital — Report, 1992-93.
Local Authorities Superannuation Board — Report, 1992-93.
Lorne Community Hospital — Report, 1992-93.
Macarthur and District Memorial Hospital — Report, 1992-93.
Manangatang and District Hospital — Report, 1992-93.
Mansfield District Hospital — Report, 1992-93.
Maroondah Hospital — Report, 1992-93 (two papers).
Maryborough District Health Service — Report, 1992-93 (three papers).
Monash Medical Centre — Report, 1992-93.
Mordialloc-Cheltenham Community Hospital — Report, 1992-93 (two papers).
Mortlake District Hospital — Report, 1992-93.
Mount Eliza Centre — Report, 1992-93 (two papers).
Myrtleford District War Memorial Hospital — Report, 1992-93.
Nathalia District Hospital — Report, 1992-93 (two papers).
North West Hospital — Report, 1992-93 (two papers).
Numurkah and District War Memorial Hospital — Report, 1992-93.
O'Connell Family Centre (Grey Sisters) Inc. — Report, 1992-93.
Omeo District Hospital — Report, 1992-93.
Orbost and District Hospital — Report, 1992-93.
Ouyen and District Hospital — Report, 1992-93.
Penshurst and District Memorial Hospital — Report, 1992-93.
Peter MacCallum Cancer Institute — Report, 1992-93 (two papers).
Planning and Environment Act 1987 — Notices of Approval of the following amendments to planning schemes:
Alberton Planning Scheme — Amendment L16.
Bass Planning Scheme — Amendment L27.
Beechworth Planning Scheme — Amendment L22.
Berwick Planning Scheme — Amendments L64 and L65.
Caulfield Planning Scheme — Amendment L23.
Coburg Planning Scheme — Amendment L33.
Diamond Valley Planning Scheme — Amendment L45.
Footscray Planning Scheme — Amendment L36.
Kilmore Planning Scheme — Amendment L65.
Korumburra Planning Scheme — Amendment L49.
Melbourne Planning Scheme — Amendments L110 and L112.
Mildura (Shire) Planning Scheme — Amendment L32.
Nunawading Planning Scheme — Amendment L65.
Rodney Planning Scheme — Amendment L54.
Shepparton (City) Planning Scheme — Amendment L50.
Springvale Planning Scheme — Amendment L51.
Sunshine Planning Scheme — Amendments L46 and L47.
Westernport Region Planning Scheme — Amendment R12.
Port Fairy Hospital — Report, 1992-93.
Portland and District Hospital — Report, 1992-93 (two papers).
Preston and Northcote Community Hospital — Report, 1992-93 (two papers).
Queen Elizabeth Centre — Report, 1992-93.
Queen Elizabeth Centre, Ballarat — Report, 1992-93 (two papers).
Rochester and District War Memorial Hospital — Report, 1992-93.
Royal Children's Hospital — Report, 1992-93.
Royal Dental Hospital of Melbourne — Report, 1992-93 (two papers).
Royal Victorian Eye and Ear Hospital — Report, 1992-93 (two papers).
Royal Women’s Hospital — Report, 1992-93 (two papers).
Sandringham and District Memorial Hospital — Report, 1992-93.
Seymour District Memorial Hospital — Report, 1992-93 (two papers).
Skipton and District Memorial Hospital — Report, 1992-93.
South Gippsland Hospital — Report, 1992-93.
St Arnaud District Hospital — Report, 1992-93.
St George’s Hospital and Inner Eastern Geriatric Service — Report, 1992-93.
St Vincent’s Hospital (Melbourne) Ltd. — Report, 1992-93 (two papers).
Statutory Rules under the following Acts of Parliament:
  County Court Act 1958 — No. 212.
  Credit (Administration) Act 1984 — No. 209.
  Local Government Act 1989 — No. 213.
Stawell District Hospital — Report, 1992-93.
Tallangatta Hospital — Report, 1992-93.
Terang and District Community Hospital — Report, 1992-93.
Timboon and District Hospital — Report, 1992-93.
Tweddle Child and Family Health Service — Report, 1992-93 (two papers).
UNIVERSITY OF BALLARAT

Second reading

Hon. HADDON STOREY (Minister for Tertiary Education and Training) — I move:

That this Bill be now read a second time.

The purpose of the Bill is to establish a new university to be called University of Ballarat and to incorporate within that university the existing Ballarat University College. The decision to establish the university follows an application by Ballarat University College for full university status, and a review of that proposal by an expert panel appointed by the government.

Ballarat University College has a long history in Ballarat and close and continuing relationships with both the School of Mines and Industries, Ballarat and the University of Melbourne. The college and the School of Mines and Industries have common origins dating back to 1870 when the Ballarat School of Mines was first established to provide scientific and technical education. The school was affiliated with the University of Melbourne from 1887-1894 with the name, the Ballarat School of Mines, Industries and Science, in The University of Melbourne.

During the 1920s first-year University of Melbourne classes in science and arts were offered at the school. A second tertiary institution was established in Ballarat in 1926, the Ballarat Teachers College. In 1976 the teachers college and the tertiary division of the School of Mines merged to form Ballarat College of Advanced Education, leaving the TAFE division of the school as the School of Mines and Industries. There have been continuing close relationships between the two institutions and a formal affiliation agreement was entered into earlier this year.

In 1990 Ballarat College of Advanced Education entered an affiliation agreement with the University of Melbourne and its name was changed to Ballarat University College. In its proposal to the government for full university status, Ballarat University College argued that it had reached a stage of development and academic maturity which made university recognition appropriate and indicated that its status as a college rather than a university placed it at a competitive disadvantage in relation to other universities in Australia.
In its tertiary education and training policy statement, Education for Life, the government has indicated that it would determine university status on the basis of educational outcomes and viability, not size; that it would encourage multi-sector institutions and links between all universities and TAFE colleges; and that it would be prepared to consider requests for university status from institutions which met appropriate criteria. Those policies were elaborated on during the last session in the second-reading speech on the Tertiary Education Act. They indicated that the increased diversity of universities in the Australian higher education system had not altered the commitment to the pursuit and transmission of knowledge through integration of research and teaching, and that the enviable reputation of Victorian universities should be maintained and strengthened.

Those statements indicated that the government would work closely with the Australian Vice-Chancellors Committee in determining university status and would give consideration to criteria relating to research activity, involvement in higher degree studies, staff qualifications and quality of facilities and resources.

In keeping with those statements, the proposal by Ballarat University College for university recognition was considered by an expert panel chaired by the President of the Australian Vice-Chancellors Committee, Professor Robert Smith, and comprising three prominent vice-chancellors and two senior officers from State and Commonwealth departments of education. The panel provided an avenue for consultation between Commonwealth and State governments on the matter, and that consultation has continued at subsequent stages of the development.

After an intensive examination of the college’s proposal the panel recommended that a new university be established incorporating Ballarat University College under sponsorship by the University of Melbourne over a five-year period to assist in its development to a point where it fully met criteria for the designation.

The panel also noted the very strong support for the college in the Ballarat community and its positive relationships with the University of Melbourne. However, the panel indicated that there were a number of other matters which required attention in a move to university status, particularly relating to the development of research, success in seeking competitive research funds, and recognition of academic research outputs in recognised communication systems.

The panel noted a major effort being made in strengthening academic staff qualifications and saw the sponsorship arrangement with the University of Melbourne as being particularly important in assisting development of a significantly strengthened research profile appropriate for a autonomous university.

The panel recommended that before termination of the sponsorship agreement there should be a further review against university criteria and it is the intention of the government that this will occur.

The panel indicated a preferred option to incorporate both Ballarat University College and the School of Mines and Industries as higher education and TAFE divisions respectively within a university of technology comparable to other major multi-sector universities in Victoria.

The panel indicated that this proposal had not been discussed with the School of Mines and Industries and proposed that this be done prior to a government decision on the matter. The government accepted the desirability of that approach. However, the council of the School of Mines and Industries argued against the proposal and indicated that a number of matters would need to be addressed. Accordingly, the government has decided to proceed initially with establishment of the University of Ballarat incorporating only the existing university college but that discussions about subsequent incorporation of the School of Mines and Industries as a TAFE division of the university should continue in the future.

The government is grateful for the expert advice and assistance provided by Professor Smith and the other members of the review panel. Their contribution has been vital to the success of the proposal. The government also wishes to thank the University of Melbourne and its Vice-Chancellor, Professor David Penington, for their willingness to take on the role of sponsor for the new university. This is a most important role.
The Bill follows normal practice in establishing the university under a council with responsibility for the direction and superintendence of the university, and for a number of administrative, accountability and operational matters in keeping with normal arrangements. Special provision is made in the transition provisions for the establishment of a new council as proposed by the review panel and for the sponsorship by the University of Melbourne.

A planning advisory committee has been appointed, following a recommendation by the review panel on mechanisms for establishment of the university. The committee is chaired by Professor Barry Sheehan, Deputy Vice-Chancellor of the University of Melbourne, pending the identification of a person to be appointed as chancellor. Other members are Dr Bill Pryor, President of the Ballarat University College council, Professor John Sharpham, director of the college, Mrs Janet Torney, a solicitor and prominent resident of Ballarat, Dr Ian Allen from the Department of Education, and my colleague the Honourable Rob Knowles, Minister for Housing and a member for Ballarat Province.

The committee has already met on a number of occasions to provide advice on the establishment of the university and on the provisions of the Bill. I express my appreciation for the major contribution the committee is making to this development.

The first chancellor of the university will be appointed by the Governor in Council following advice provided by the planning advisory committee, which will also propose names of individuals who might be appointed to the first council by the Governor in Council. It will also recommend names of other persons to be appointed to the first council in the categories of persons appointed by the council, and of elected staff and students. In the case of staff and student categories this provides an administrative mechanism to enable appropriate people to be identified in time to take up positions when the council first meets at the beginning of next year. It is intended that elections will be conducted within the college to identify staff to be nominated in these categories and that there will be consultation with the student organisations at the college to identify persons for appointment on the basis of elections already conducted.

The Bill makes provision for a sponsorship agreement initially between the college and the University of Melbourne with the new council becoming a party to that agreement when the University of Ballarat is established. An additional position is provided on the council of the new university for a person nominated by the University of Melbourne as part of the sponsorship arrangement.

Completion of the sponsorship agreement is of vital importance in setting up arrangements for the establishment of the university. It is intended that this agreement will be completed before the end of 1993 and that the proclamation of the clauses of the Bill establishing the university will occur by 1 January 1994.

MAJOR PROVISIONS OF THE BILL

Part 1 of the Bill sets out its purpose, provides for commencement and includes definitions. Part 2 establishes the university and sets out its objects and the structure and major operating procedures of the council.

Part 3 provides for the establishment and operations of the academic board. Part 4 provides powers to make statutes and regulations to govern the operations of the university.

Part 5 provides for the management of property and financial matters and the provision of reports. Part 6 provides for general matters including the office of the visitor, elections, and payment of fines and compensation.

Part 7 makes transitional provisions for the appointment of the first chancellor, establishment of the first council, the sponsorship agreement and transfer of students to the university.

Part 8 provides for the merger of the college with the university under provisions through which the university becomes the successor in law of the college, staff transfer to university employment, certain land is granted to the university and other matters are dealt with as required to complete the merger arrangements.


CONCLUSION

The Bill provides for the establishment of the University of Ballarat as an important regional university with a particular emphasis on quality undergraduate programs. During the process of consideration of the Ballarat University College for
full university status and the subsequent decision of the government to establish the University of Ballarat, it was manifestly clear that the proposals had the full support of the people of Ballarat and its wider community. This support provides a very important ingredient for the establishment of a fine university serving the needs of its local community. The university will have a significant impact on this area of regional Victoria as well as creating a new institution with the capacity to make a major contribution to higher education teaching and research throughout Australia and in the international community.

I commend the Bill to the House.

Debate adjourned on motion of Hon. B. T. PULLEN (Melbourne).

Debate adjourned until later this day.

JURIES (AMENDMENT) BILL
Second reading

Hon. HADDON STOREY (Minister for Tertiary Education and Training) — I move:

That this Bill be now read a second time.

The Bill makes a number of important amendments to the Juries Act 1967 which will promote greater fairness and greater efficiency in the conduct of proceedings in the County and Supreme courts.

The Bill gives effect to the government’s commitment to allow certain criminal prosecutions to be determined by majority verdict. The government believes that the requirement of a unanimous verdict is a potential source of expense and unfairness where a single, determined juror holds out doggedly and for peculiar or improper reasons against the common view of the remaining 11. A hung jury will lead either to a retrial or, on rare occasions, to a decision by the Director of Public Prosecutions to discontinue the prosecution. The first outcome is an unjustifiable waste of public money, especially where the trial has been long and expensive. Many may see a decision to discontinue a prosecution in these circumstances as unjust. Majority verdicts, which have been introduced in the United Kingdom and several other Australian States, do not eliminate the chances of this happening but significantly reduce them. They strike an appropriate balance between the principle that guilt should be determined beyond reasonable doubt and the need to manage courts efficiently and fairly.

The remaining amendments introduce a number of reforms which will produce significant savings in the administration of the jury system. In particular, clause 6 reduces the number of peremptory challenges which may be exercised by an accused in a criminal trial. Eight challenges are presently allowed, but under the amendment, in a trial where there is a single accused, he or she will have six challenges; where there are two accused, each will have five challenges; and where there are three or more accused, each will have four challenges. The change will reduce the total number of jurors required to be summoned and thereby reduce the cost of assembling a jury pool. In addition, the legislation limits the Crown’s right to stand aside a juror, which is presently unlimited, to the same number of challenges as are available to the accused. This addresses a concern that any reduction in the number of challenges available to the defence is unfair unless the prosecution’s right is similarly restricted.

I would like to say that the question of peremptory challenges does not simply reflect a desire to generate cost savings. Rather, it goes to the fundamental notion of the jury as a body which represents and reflects the broad spectrum of community attitudes and perspectives. It has been suggested that the use of the challenge can, particularly in multi-header trials where a number of accused can aggregate their challenges, lead to distortions in the representative nature of the jury. The present amendments go some way to addressing this problem.

However, the issue of just how representative modern juries are requires closer examination. In particular, the schedules to the Act which set out broad categories of persons who are ineligible for, exempt from or able to be readily excused from jury service, deserve close scrutiny. This issue has been raised by a number of organisations in the course of the consultation on this Bill, who suggested that the range of people who end up sitting on juries is so narrow that many juries are a long way from being a representative cross-section of the community. I therefore intend to review these schedules at the earliest opportunity.

Clause 9 inserts a new section which will allow courts in appropriate circumstances to allow jurors to return home overnight during the jury’s deliberation. While the legislation leaves the
decision to separate to the discretion of the court, I understand that the experience following a similar change in New South Wales has been that there have been no instances of attempted interference with a jury, a fear of which has underpinned the traditional practice of the jury lockup. The government therefore would expect that the courts will be prepared to allow juries to separate unless there is a real reason not to do so. A reduction in the number of occasions on which juries are required to be accommodated overnight will yield substantial savings to the cost of administering the jury system and at the same time will reduce the level of disruption to the lives and routines of jurors involved in lengthy deliberations.

Other amendments are designed to promote flexibility in the system of determining applications from persons wishing to be excused from jury service. They will lead to administrative efficiencies and at the same time reduce inconvenience to persons called up for jury service.

These amendments will have a positive impact on the administration of the justice system in general and the jury system in particular.

I commend the Bill to the House.

Debate adjourned on motion of Hon. B. T. PULLEN (Melbourne).

Debate adjourned until later this day.

TRANSPORT (AMENDMENT) BILL (No. 2)

Second reading

Hon. W. R. BAXTER (Minister for Roads and Ports) — I move:

That this Bill be now read a second time.

The Bill paves the way for reform in the licensed commercial vehicle industry by removing unnecessary regulation and reducing costs to the industry. The Road Transport Licensing Tribunal will be abolished and the role of determining commercial passenger vehicle licences will be given to the Roads Corporation, commonly known as VIC ROADS.

No longer will people have to wait lengthy periods and pay expensive legal costs simply to set up small passenger vehicle businesses. The powers of the tribunal to discipline licensed vehicle testers will be replaced by a more efficient and effective penalty demerit system similar to the driver licence points demerit scheme.

A new category of restricted hire vehicles licences will be created to allow people to set up restricted hire vehicle businesses. Vehicles in this category will include veteran, vintage and classic vehicles and other special body types and classes which are not catered for by other hire cars. Apart from licence fees to cover costs and police “fit and proper person checks”, all other barriers to getting these licences will be removed. These licences will be freely available and will lapse when no longer required by the holders. There will be no need to provide transfer capabilities and the costly trading of this type of licence, as is inherent with other passenger vehicle licences, will not exist.

The Bill also narrows the definition of a commercial passenger vehicle so that a licence is required only if a vehicle is used to carry passengers for hire or reward. This will further reduce regulation and costs for those businesses that are currently required to have licences simply because they transport customers or staff as an adjunct to their principal businesses.

Licence fees will be rationalised so that the costs to the Roads Corporation of administering the new arrangements will be recovered. However, the underlying factor is that the new arrangements will represent a major cost reduction to commercial passenger vehicle businesses from the former costly Road Transport Licensing Tribunal system. There is a general need to increase penalties to provide a greater deterrent to those who operate illegally and to protect businesses that operate legitimate commercial passenger vehicles. It is proposed therefore to make the maximum penalty for an offence involving an illegal commercial passenger vehicle operation 10 penalty units. This will also mean that on-the-spot fines can be increased accordingly, thereby providing additional enforcement and deterrent effects.

Because not all States and Territories register motor driving instructors and tow-truck drivers, in line with the recommendations of the Vocational Education, Employment and Training Advisory Committee, known as VEETAC, and its review of partially registered occupations, these occupations will no longer have to be registered in Victoria. This will facilitate the movement of such occupations between different States and Territories. Finally,
licensing of commercial goods vehicles will be removed. The system has become obsolete and duplicates the vehicle registration system.

Overall, the Bill introduces much-needed reform to the commercial vehicle industry by removing unnecessary regulations and reducing costs.

I turn to the automated fare collection system. The Bill also facilitates the introduction of the new automated fare collection system, known as AFC, which will be phased in throughout the metropolitan train, tram and bus network commencing around mid-1994. The House will recall that this proposal was spelt out in the coalition's policy on public transport well before the last State election. Automated ticketing is a major government initiative and an exciting reform. Its development and implementation must be contrasted with the ineffectual ticketing proposals of the previous government, which, as honourable members will be aware, were simply unworkable.

The government has recognised that the existing metropolitan transport ticketing system has many weaknesses. It is open to fare evasion, it contributes to slow customer service, and it results in excessive costs due to its labour-intensive nature. It has an inability to provide much-needed market and management information and as well restricts ticket types and inhibits pricing policy flexibility. The new system will overcome most of these problems.

As AFC comes into operation customers will be assisted by a mobile force of around 330 specially trained customer services employees who will form an extremely visible and high profile team, which will help change the focus of front-line staff from primarily a backroom ticket selling role to a much more focused approach.

Consultation has been an important part of the government's development of AFC. Consultation has already occurred with the Accessible Transport Consultative Council and customers with disabilities, the Public Transport Forum, the Bus Proprietors Association and unions.

Overall, the AFC system will ensure that customers benefit by being able to use world-class ticket technology. The Public Transport Corporation and the State will also benefit from the efficiencies and cost savings that the system will promote.

The Bill also makes a variety of miscellaneous amendments to the Transport Act. These include:

- increasing various penalties, a number of which have not been raised since the Act commenced in 1983;
- confirming the power of police officers and authorised Public Transport Corporation (PTC) officers to request a person's name and address. This power will apply where an officer reasonably believes a person has committed or is about to commit an offence against the Act or the regulations. Power to request a person's name and address already exists in regulations under the Act but is more properly contained in primary legislation. The new provision works both ways in the sense that not only must a person provide a correct name and address to an officer but the officer must also, on request, inform the person of the officer's name and place of duty and provide their authority;
- providing that tourist railways are not required to fence the railway or contribute to fencing costs or be liable for failure to fence. Tourist railways are concerned that existing requirements are inconsistent and inequitable and could potentially be so costly that some railways could be forced to close. This amendment will give them the same protection as currently applies to the PTC;
- providing a power to enable regulations to be made as to the safe operation of non-PTC railway and tramway services. This is primarily a reserve power that is not expected to be exercised as safety regulation on, for example, private rail operations which have recently commenced, which are governed by contract; and
- making further provision for the proper operation of the Public Transport Corporation board by setting out matters relating to vacancies, duties of board members and so on.

The Limitation of Actions Act 1958 is also amended by the Bill to ensure that the PTC is not subject to adverse possession actions in respect of its land.

Finally, government policy is to provide the means to combat serious crime. In keeping with that policy, the Bill amends the Road Safety Act 1986 and the Crimes Act 1958 so that records or documents created for the purposes of the former Act may be used in the investigation and prosecution of serious offences. Access will be subject to strict arrangements in order to ensure necessary protection for privacy reasons. VIC ROADS will be
required to keep appropriate records relating to the details of any access allowed.

I wish to make statements under section 85(5) of the Constitution Act 1975 of the reasons for altering or varying that section by both the Transport Act 1983 and the Limitation of Actions Act 1958 as proposed to be amended by this Bill.

Clause 73 inserts a new section 255 in the Transport Act 1983 that is intended to alter or vary section 85 of the Constitution Act 1975 to the extent necessary to prevent the Supreme Court from entertaining actions relating to damage caused by reason of a tourist railway operated by a person under an order made under section 247(1) of the Transport Act not being fenced in or fenced off.

The reasons for preventing such actions from being entertained as a result of the new section are:

(a) to ensure that the protection against actions due to the absence of fencing which is currently extended to the Public Transport Corporation under existing section 249 of the Transport Act, is continued on the branch or other lines on which the Corporation ceased to operate services and which are now occupied by persons for tourist railway purposes; and

(b) to assist persons who operate tourist railways to remain financially viable and thus to continue operating those railways for the public good.

Clause 78 inserts a new section 37 in the Limitation of Actions Act 1958 that is intended to alter or vary section 85 of the Constitution Act 1975 to the extent necessary to prevent the Supreme Court from entertaining an action brought in respect of any land by any person in possession of that land adverse to the Public Transport Corporation established under the Transport Act 1983.

The reasons for preventing such actions from being entertained as a result of the new section are:

(a) to ensure that the Public Transport Corporation enjoys the same protection from adverse possession claims as the Crown having regard to the similarity of the nature of the land held by both the Crown and the corporation. Both hold large areas of unfenced land which people can easily encroach upon and not be detected to be doing so or only be detected at significant cost; and

(b) to ensure that the value of land held by the Public Transport Corporation is not diminished by adverse possession claims and disputes over ownership at time of sale which ultimately may lead to less revenue being obtained which is contrary to the public interest.

I commend the Bill to the House.

Debate adjourned for Hon. B. E. DAVIDSON (Chelsea) on motion of Hon. C. J. Hogg.

Debate adjourned until next day.

GAMING MACHINE CONTROL (GENERAL AMENDMENT) BILL

Second reading

For Hon. HADDON STOREY (Minister for Gaming), Hon. R. I. Knowles (Minister for Housing) — I move:

That this Bill be now read a second time.

The Gaming Machine Control Act 1991 was passed in October 1991 and was fully in operation as of 21 January 1992. Amendments to the Act were made in the autumn sitting of Parliament by the Gaming Machine Control (Amendment) Act 1993 and the Casino Control (Amendment) Act 1993.

The purpose of the Bill is to further refine the Act to address a number of issues which have arisen in relation to the administration of the Act. The most significant of the proposed amendments relate to the collection of fees to recover actual or substantial costs, the enforcement of the Act and offences, the conduct and regulation of gaming on Commonwealth land and applying the remaining elements of the Act to the Tabarets. Some of the amendments relating to enforcement have been made in response to requests from the Victoria Police.

The Bill also proposes several small administrative and statute law revision changes.

It is proposed that, with two exceptions, the amendments will take effect on the day on which the Act receives Royal assent. Section 8, dealing with gaming venues at airports, will come into effect on the day on which necessary complementary amendments to the Federal Airports Corporation by-laws take effect. Section 31 comes into effect on 1 July 1998. This is because of an agreement that the taxation
arrangements presently applying under the Racing Act to the three Tabarets will continue until that date.

A key element in the amendments proposed is to empower the Victorian Gaming Commission to recover investigation costs from applicants for venue operators licences or for listing on the roll of manufacturers and suppliers of gaming machines. This is in response to a significant number of applications to date that have been received from large multinational corporations. The complexity of the probity and financial checks in these instances have attracted high costs which greatly exceed the fees charged at present. Cost recovery is common in the gaming industry and many jurisdictions both interstate and abroad work on this basis — for example, the Nevada Gaming Control Board, the recognised leader in the industry.

The fees are set in the gaming machine control regulations, but an amendment to the Act is required to empower the regulations for recovery of actual or substantial costs of processing and determining venue and listing applications. The imposition of these fees is made according to the principle that those applicants generating costs above the usual should be levied accordingly. Moreover, reduction of demand on the Gaming Commission's resources will provide for a greater pool of resources being available for distribution through the Community Support Fund.

It is proposed that the Act will be further amended to confirm that the gaming operators — Tattersalls and the TAB — bear the reasonable costs of testing their monitoring systems. This testing is essential to ensure compliance with the Act and the regulations. The fee scheme proposed here will be subject to Ministerial control through the Executive Council, as well as external scrutiny under the Subordinate Legislation Act and from the Auditor-General.

The Bill also deals with matters relating to offences and prosecution. The intention is to strengthen those sections of the Act which deal with enforcement. Unauthorised use or accessing of gaming equipment is an offence under the Act, but previously prosecution was dependent on actual observance of an offender. Now it is proposed that prima facie liability should accrue to the venue operator, gaming operator or listed manufacturer or supplier on whose premises the equipment was located at the time the offence was detected and who cannot show that he or she has taken due care.

In response to a request from the Victoria Police, a number of amendments are proposed to enhance enforcement of the Act in relation to illegal gaming activities. The chief modification here is to provide for an aggravated offence, which will attract a higher penalty and will be an indictable rather than a summary offence.

Amendments to the Racing Act 1958 in the autumn session of Parliament allowed Tabarets to be brought under the Gaming Machine Control Act. The first stage of the amendments, if not proclaimed earlier, will commence on 31 December 1993. However, further changes appear necessary to ensure, in particular, the effective application of enforcement and inspection provisions.

An important addition proposed for the Act is the amendment which would regulate the conduct of gaming on Commonwealth land. Henceforth it is proposed to accept a Commonwealth liquor licence in a Commonwealth place as the ground for eligibility to be licensed as a venue operator. This amendment is limited in its application solely to bona fide clubs located within airports controlled by the Federal Airports Corporation. As previously mentioned, this provision will come into effect once necessary complementary action is taken by the Federal Airports Corporation to amend its by-laws.

It is also proposed to clarify that only those venues which conform to the spirit of the Act are able to operate gaming machines. To this end it is planned to include a power to determine that, notwithstanding that certain classes of venues, to be specified in regulations, hold relevant liquor licences, they are ineligible to make application for a gaming machine venue licence.

The last area to be dealt with in the Bill relates to a number of administrative changes. These involve licensing and listing procedures, publication of the commission rules, audit of the gaming operators, refund of fees, destruction of fingerprints and evidentiary provisions.

I commend the Bill to the House.

Debate adjourned for Hon. D. R. WHITE (Doutta Galla) on motion of Hon. C. J. Hogg.

Debate adjourned until later this day.
EQUAL OPPORTUNITY (AMENDMENT) BILL

COUNCIL

Tuesday, 23 November 1993

SECOND READING

For Hon. HADDON STOREY (Minister for Tertiary Education and Training), Hon. R. I. Knowles (Minister for Housing) — I move:

That this Bill be now read a second time.

The purpose of the Bill is to address the unacceptable delays and inefficiencies in the system established under the Equal Opportunity Act. To achieve this, the Bill allows for the expedited processing of a certain class of urgent cases and for the filtering out of inappropriate cases before they reach the final stage of a board hearing.

The Bill also creates a new Equal Opportunity Commission. The commission will comprise representatives from the various constituencies of potential users of the equal opportunity procedure. This will be far more representative and accountable than having only one person responsible for all the functions undertaken by the commissioner, as is currently the case.

The government is most fortunate in that its decision to address the urgent problem of delays coincides with the tabling of the interim report on the Act by the Scrutiny of Acts and Regulations Committee, a number of whose recommendations are included in the Bill.

THE EQUAL OPPORTUNITY COMMISSION

The new Equal Opportunity Commission will comprise five people appointed by the Governor in Council. The representative nature of the new body will allow for the appointment of individuals with, for example, special knowledge of issues relating to race, nationality, ethnic or national origin; of matters affecting people with physical or intellectual impairment; or of matters affecting women.

It is proposed that the existing functions of the commissioner be undertaken by the commission. Primarily, these include: implementing programs for the education of the public with respect to the elimination of discrimination; identifying provisions in legislation that may discriminate; undertaking research in relation to the Act; and conducting conciliation or referring a matter to the board for determination.

THE CHIEF CONCILIATOR

The Bill addresses the inadequate accountability safeguards regarding the commissioner's position. Currently, the only accountability measure is the production of an annual report. Apart from that, the commissioner reports to no-one.

The position of Commissioner for Equal Opportunity will be abolished. As well as the new commission there will also be a chief conciliator of the commission, who will be appointed by the Governor in Council and who will be a member of the commission.

The commission will give policy and general directions to the chief conciliator with regard to achieving the objectives of the commission. The chief conciliator will be responsible for the day-to-day management of the operations of the commission as directed and will be accountable to the commission.

The Bill also introduces a complaints procedure so that a party to a conciliation, either during or after the completion of conciliation, may make a written complaint to the commission about any aspect of the conduct of the conciliator. The commission may investigate the complaint and, if it sees fit, issue a directive to the conciliator.

EXPEDITED CASES

The Bill recognises a specific class of cases which warrant a fast-tracking procedure because they involve more than mere monetary compensation. This class of cases, which may or may not involve the government as a party, can be classified as cases where the complaint relates to a policy decision of the respondent, the implementation of which is alleged to be discriminatory.

This is a very small class of cases. Most equal opportunity complaints are lodged after the event — for instance, a complainant alleges she was sacked because she is female or black. The narrow class of cases involves the implementation of a policy or program, and could include therefore, a government department with a closure policy in relation to a government agency, or a private company in relation to a redundancy policy.

TIME LIMITATIONS

Currently, there are no time limitations included in the Act. The Bill provides that a complainant must be informed within 60 days of lodging a complaint.
whether the commission intends to entertain it or not. Similarly, there is no limit on the time that may be taken to conciliate a matter before it is referred to the board. A 30-day period for conciliation will apply to the expedited cases defined above.

The Bill also allows the respondent, in a case of this class, to apply to have the matter determined immediately by the board without going through the conciliation process at all.

The second stage of delay addressed by the Bill is that which occurs when conciliation has not been successful and a case must proceed to the board for determination. Currently, the backlog of cases before the board means that a delay of many months may be experienced before a hearing. Again, a 30-day period within which the hearing must begin will apply to expedited cases.

COMPOSITION OF BOARD

At present, the Act insists that the president sit on all board hearings. This is a major cause of delays. Amendments to be made to address this include: flexibility in the composition of the board for hearing matters and the introduction of deputy presidents. To ensure that the current high standard is maintained the Bill includes a requirement that the president and deputy presidents have the same qualifications as those required of a judge.

MINISTER'S REFERRAL POWER

The Bill also allows the Minister administering the Act to refer a matter directly to the board in cases of implementation of government policy requiring urgent resolution.

INTERIM DETERMINATIONS

Criteria will be included in the Act that must be taken into account by the board in deciding whether or not to grant to obtain interim relief. A case which involves the granting of interim relief will also have its path through conciliation expedited.

STRIKING OUT OF MATTERS BEFORE HEARING

The Bill before the House amends the Act to allow a party to apply, once a matter has been referred to the board, to have it struck out on the grounds that it is frivolous, vexatious, misconceived or lacking in substance.

COSTS

The costs provision is to be strengthened to ensure that an award of costs will be made in favour of the successful party where appropriate.

SEPARATION OF FUNCTIONS

The Scrutiny of Acts and Regulations Committee identified criticism of the mixing of the investigative and conciliation roles within the Act. In future, officers of the commission will not be involved in more than one of the separate legal, investigative and conciliation roles of the commission.

DUPLICATED COMPLAINTS

At present, it is a poor use of the Office of the Commissioner's time and resources for it to deal with a matter that could be more appropriately dealt with in another forum. For instance, a case of unfair dismissal could be heard by the Industrial Relations Commission whilst a complaint is also lodged with the commissioner.

The Bill addresses this by empowering the commission to decline to entertain a complaint which may, more appropriately, be dealt with in another court or tribunal.

THE COMPLAINT

The court held in Nestle's case that if the original complaint could be shown to be defective in any way, the defect could not be remedied and the board would be unable to hear the matter. The unfairness of this approach is evident in the fact that the complaint may merely be a letter from a complainant, who could be a person with poor literacy skills. The Bill addresses this by providing that the commission has a duty to assist a complainant in formulating his or her complaint and by allowing technical defects in the complaint to be remedied by the board.

SECTION 85 STATEMENT

Amendments to section 61A made by the Bill are intended to alter or vary section 85 of the Constitution Act 1975. I therefore make the following statement under section 85(5) of the Constitution Act for the reasons of altering or varying that section.

The intention of section 61A is to provide protection from liability to persons in relation to acts done or
omitted to be done in good faith in the performance of their duties under the Act. For sound reasons of public policy, it is essential that the members of the commission and of the board and their staff be able to undertake their duties without fear that, for instance, a disgruntled party unhappy with the result of a matter, might attempt to take legal action against them. The Bill extends the protection already in the Act to the newly formed positions of members of the commission.

This Bill addresses a number of criticisms that have been identified after thorough review of the Act. The measures proposed will improve access to justice by a reduction in procedural delays which is of benefit to all parties. It is anticipated that this is the first step in improving the system and that further important, but less urgent matters, will be dealt with in a Bill following the release of the Scrutiny of Acts and Regulations Committee’s final report.

I commend the Bill to the House.

Debate adjourned on motion of Hon. B. T. PULLEN (Melbourne).

Debate adjourned until next day.

UNIVERSITY OF BALLARAT BILL

Second reading

Debate resumed from earlier this day; motion of Hon. HADDON STOREY (Minister for Tertiary Education and Training).

Hon. B. T. PULLEN (Melbourne) — The purpose of the Bill is to establish the new University of Ballarat, incorporated within which will be the existing Ballarat University College (BUC). The opposition does not oppose the Bill. We see that it is welcomed by the community of Ballarat. In reaching and being comfortable with that position, I believe the process followed by the government, in contrast to its dealings with other legislation, has been reasonable and good.

I am pleased and satisfied about the application by Ballarat University College for full university status and with the review of that proposal. The review panel included people with appropriate expertise and backgrounds with both State and Commonwealth, such as Dr Ian Allen, with whom, as Minister, I had the opportunity of working, and many others who have a high degree of credibility and integrity. The report the review panel gave the Minister would have been fair and reasonable and would have indicated support for the creation of a university.

However, some hurdles and questions are yet to be examined and dealt with. First, the University of Ballarat will be a small institution by Australian standards. The latest figures, which are for 1992, show that 4051 students attended BUC in basically six faculties, arts-humanities, business studies, education, engineering, science, and health. The health faculty was basically involved with nursing.

Although the panel reported favourably on the quality of the teaching and facilities and welfare of the students at the Ballarat University College, it raised some questions about the institution’s ability to achieve a reasonable research effort and to attract the interest and research funds that go with a university that takes a leading role in a number of areas. That reservation of the panel raises a question mark about the proposed university.

The panel also raised the issue of the strong support in the community for the creation of the university. It is not surprising that there should be support in the community because practically all communities in Victoria would support the establishment of a university in their midst. Universities carry status and bring economic benefits to the communities in which they are situated.

Without diverting the attention of the House too greatly, I point out that in the 16th century the town of Leiden in the Netherlands was highly regarded for its endeavours in surviving a terrible siege by the invading Spanish army with great loss of life and was offered a choice of rewards. The good burghers of the town asked that a university be established in the town. They knew that at that time in Europe a university in their town would be a great asset and would result in increased trade, commerce and other activities. They had good judgment — that university still exists.

Although I say good luck to the people of Ballarat, the issue of community support has to be taken with a grain of salt because all communities would like to have a university in their midst. Community support, however, is an important asset for a university and it is hoped that the community will get behind and assist the endeavours of the university.

I am pleased that although the affiliation relationship between the Ballarat University College
and the University of Melbourne will go, a sponsorship relationship will remain for at least five years, with a review at the end of the five-year period. The government has agreed to the recommendation for that prudent and sensible measure.

The review will examine developments during the period and whether the university has met the criteria set for it and achieved its goals. Although it will be an overall review, it will focus particularly on whether the university has developed its research capacity to the extent considered appropriate. Research capacity is often overrated. Many of the finest universities in the world, including Yale and Oxford, place much emphasis on the ordinary teaching effort.

Some universities do themselves a disservice by founding their reputations on research capacity and neglecting the basic teaching issues, such as the quality of lecturers in basic courses, back-up for tutorials and staff ratios. Many who have attended universities recently or whose children attend universities are appalled at the differences in tutorials today as compared with those they experienced in earlier years. Today tutorials are three to four times larger than in earlier times and consequently there is less contact between tutors and students.

Quality teaching cannot be maintained simply through expanded research effort and these issues can create tensions in small institutions. A small institution attempting to be counted among established universities may, in trying to obtain status too quickly through research effort, divert resources from basic teaching efforts, which are really the foundation of good teaching institutions. The university will need assistance. I support the five-year sponsorship and subsequent review.

I wish the University of Ballarat every success. I do not know the campus particularly well, although on the several occasions on which I have visited I have been favourably impressed with the facilities, the people and the general atmosphere at the institution. I am, therefore, not surprised at the panel's recommendation.

The opposition supports the initiative. The Minister stated in the second-reading speech that a planning advisory committee will assist in the establishment and development of the university and outlined the functions to be performed by the committee. I am sure the members of the committee will make a significant contribution.

The Minister for Housing is to be a member of the committee. I do not wish in any way to detract from the contribution he may make to the university, but it is unusual for a Minister of the Crown to be a member of a body of this kind and there is potential for a conflict of interest. If the body made recommendations to Cabinet, Cabinet may take a different view; or other members of the body may feel restricted in making decisions or pronouncements by having a Minister of the Crown involved. Although I support local members having full involvement in matters of this kind, I have some concerns about that involvement when the local member is at the same time holding office as a Minister of the Crown. I do not know of any other instance in which that has occurred. I hope the Minister will take care in the way he handles the situation.

I make those comments only in passing; the significant thing is that the university is to be established. The opposition does not in any way wish to frustrate the university and wishes it every success.

Hon. R. I. KNOWLES (Minister for Housing) — I support the Bill and thank Mr Pullen for his support. I will address later the issue he raised about my membership of the body.

This is an important piece of legislation. The concept of developing a university in Ballarat has captured the imagination and wholehearted support of the broader Ballarat community. The existing Ballarat University College has been, until now, the last chapter in a long history of tertiary education in the Ballarat area dating back to the 1870s, when the Ballarat School of Mines and Industries was established. I believe that institution was the third tertiary institution to be established in Australia, following only the universities of Melbourne and Sydney.

From the mid-1920s the Ballarat Teachers College served the larger area of Ballarat. In 1967 the tertiary education role was separated from the School of Mines and Industries and became the Ballarat Institute of Advanced Education. In 1976 it was merged with the teachers college to form the Ballarat College of Advanced Education. In the late 1980s and early 1990s the Federal government embarked on a program of establishing tertiary education through a university system. Honourable members
who have been in this place for some time will remember the vigorous debates that took place on legislation which changed the structure of universities and university education and led to amalgamations and the establishment of a number of institutions.

In 1990 the Ballarat University College affiliated with the University of Melbourne. It was a significant period in the college's development. Students' first preferences for placement at that college resulted in 1155 commencements in 1990. By 1993 commencements had increased to 1765, a 53 per cent increase compared with a 30 per cent increase for the State as a whole. That reflects the significant increase in popularity in the college's courses. Apart from being a significant educational institution, the college is prominent in Ballarat's economic and social life; it injects about $40 million a year directly into the Ballarat economy. Over the past five or six years significant changes have occurred in the broader community's understanding of the value and importance of the institution.

The college has been well led. In more recent times Dr Bill Pryor has served as President of the Ballarat University College council and Professor John Sharpam has been an able director. The college has integrated with the broader Ballarat community; it participates in a range of activities that have had a significant impact on the cultural and economic life of the city.

The government's decision to accept the review panel's recommendations to establish the university has been welcomed and celebrated by the college and the broader community. As the Minister for Education and Mr Pullen have said, the review showed that, although the teaching was of a high standard, a number of areas needed to be addressed before the college could attain full university status. The college and the Ballarat community acknowledge the recommendations; they are committed to meet the rigorous standards laid down for the college to become a university of high standard. It is not in the interest of either the college or the Ballarat community that the university should become second grade.

The government is keen for the university to attain the standard of excellence and best practice expected across the spectrum of universities. The university's sponsorship with the University of Melbourne will work as effectively as the other affiliation has worked since 1990. The Ballarat institution and the University of Melbourne go back a long way.

Earlier this century the University of Melbourne was involved in the establishment of courses in Ballarat. The councils of both bodies have close relationships; there is interplay also between the vice-chancellor, the director and the staff of the college. Some have commented that the Ballarat college is a relatively small institution within the Australian context. That is true, but it reflects the paranoia of the current Federal government: unless an institution is big it cannot become a university. A number of countries have universities of high standing with a comparable number of students — for example, in the United Kingdom, the universities of Aston, Essex, Brunel and Bath; in North America, the universities of Bishops, Brandon and St Francis Xavier; and in New Zealand, the university of Lincoln. Those universities are held in high regard.

Even when it was in opposition the government argued that the Federal government's fixation about size was not based on sound criteria. In recent weeks the Federal Minister for Employment, Education and Training, Kim Beazley, has made comments about moving university places from Victoria to other parts of Australia, including Western Australia and Queensland. The Victorian government rigorously opposes any suggestion of a reduction in university places. The Federal Minister suggested that the establishment of the university in Ballarat was not appropriate at this time and spoke about the need to transfer additional places to make it work.

If the Federal Minister does not fully support the university he should be clearly warned that he will have a fight on his hands. The people of Ballarat will not accept second-rate treatment of the university by the Federal government, and I am pleased to receive the acknowledged support of Mr Power in that regard. The government wants its fair share of the resources the Federal government makes available for tertiary education — that is all it asks. The Federal Minister is not as encouraging as he might be. In the past he has said that the Federal government would not support a new university unless the college and the School of Mines and Industries amalgamated.

As the Minister said, at this stage the School of Mines and Industries has declined to join the new university. The government decided, rightly, that the university would not work if a merger were forced. The legislation is framed in such a way that the School of Mines and Industries can join the university at a later date. The government hopes that at some stage that will come to pass. When that happens the central highlands, northern and
western parts of the State will receive much more comprehensive delivery of post-secondary education.

Mr Pullen expressed apprehension about a conflict of interest arising in respect of membership of the advisory council. I place it clearly on the record that no conflict of interest will arise. The advisory council advised the Minister on a range of possible candidates for chancellor. It supplied for the Minister’s consideration a list of possible appointments to the first university council. The role of the advisory committee is almost complete. Once the council is announced — particularly once the chancellor is appointed — the council will have sole influence over the new institution.

The position of chancellor will be advertised worldwide. The advisory committee’s role was only to place the advertisement and ensure that the material required is available for possible applicants. Once the university has been established the new council will appoint the chancellor. It was with some pride that I accepted the invitation to join the advisory committee. I have been involved with the college — and prior to that the Ballarat College of Advanced Education — for many years. I have long recognised its significant contribution. Although it may well have been my personal wish, it is neither feasible nor practical for me — in part because of the concern Mr Pullen expressed — as a Minister of the Crown to consider being a member of the council after the university’s establishment. A more practical consideration is the lack of time I would have to fulfil that role.

The establishment of the university represents a significant development for the area I have the privilege to represent. Ballarat will become the only city outside the metropolitan area to have two university campuses: the Catholic University also has a campus in Ballarat. Ballarat will be one of only a small number of cities to have a university named after it.

The establishment of the university will close one chapter and open another in the Ballarat’s tertiary education history. I commend the college council president, Dr Pryor, the director, Professor Sharpham, and the staff and students. Perhaps more importantly I commend almost every community leader in the Ballarat area who has argued long and hard for the establishment of a university in that city. The university will represent only the beginning; much is yet to be done. Because of the vision and commitment of those involved in its establishment through an amalgamation with the existing university college, I have no doubt that the university will be successful. I commend the Bill to the House.

Hon. D. A. NARDELLA (Melbourne North) — I support the Bill; it is important for Ballarat and its surrounding areas that the university be established. It is certainly a proud day for the region. In the past students have been forced to travel to the city to gain university educations. However, the establishment of universities such as Deakin at Geelong helped to break down the travel barrier.

In the past the need for students to live in Melbourne caused considerable dislocation. Many families experienced financial problems maintaining their children while they studied. The university will assist the young people of Ballarat to gain a quality education locally. Much has been said about the University of Melbourne being the mentor for the new Ballarat University. The status and, more importantly, the guidance which the University of Melbourne has shown in the past and which it will certainly demonstrate in the next five years is an important foundation upon which to build the best institution to serve future Ballarat communities.

It is important that Parliament encourages as many young people as possible — especially those in rural areas — to gain tertiary qualifications so that society can deal with the challenges of the future. In the past country families endured unfair burdens because of the additional costs of accommodating students in the city, but the Bill eliminates the tyranny of distance. I am sure all honourable members acknowledge that Australia must become “the clever country”. In that way we can increase life’s chances and improve the quality of life of all Victorians regardless of where they live. It is particularly important that this occurs in rural areas.

The new university will be important for women in the Ballarat region. In many instances they had neither the access nor the funds to attend university. A number of mechanisms such as television and distance learning have provided the means by which many women can benefit from tertiary education. However, those facilities often do not compensate for the classroom lectures and the one-to-one tutoring for which universities are renowned and from which many students benefit. Although that may not always be the case — distance learning may be a more suitable means of education for some — it is important that in Ballarat and other provincial areas women have access to tertiary education.
Ballarat is now in the box seat in that regard. It is a proud day for Ballarat, and I wish the university and its students the best for the future.

Hon. R. S. de FELEGY (Ballarat) — It gives me great pleasure to support the Bill, because it is an historic and important day for the people of Ballarat and western Victoria. Parliament may not be debating the Bill today if it were not for the work of several people. Professor John Sharpham, the Director of the Ballarat University College, has been the driving force behind the application to have a new university for Ballarat. Professor Sharpham had a vision for the institution. He had faith that the college had the credentials to become a university in its own right.

I am proud that this is happening under the auspices of the Kennett Liberal government, because the people of Ballarat have been striving for almost 123 years, since the School of Mines and Industries was established in that city, to have a university in Ballarat.

Over the years the people of Ballarat have retained their faith and the desire to have a university. They resisted a number of attempts to amalgamate the tertiary institution with other campuses. During the 1970s it was proposed to merge it with other campuses to form what has now become Deakin University. In the 1980s pressure was applied by the then Federal Minister for Employment, Education and Training, Mr Dawkins, to merge the Ballarat University College with Deakin University. At that time considerable lobbying took place, particularly by the Minister for Housing, and if it had not been for the work he did at that time, his discussions with the then Minister for Education, the Honourable Evan Walker, and with Professor Penington, the Vice-Chancellor of the University of Melbourne, the Federal government would have forced Ballarat University College to merge with Deakin University. The association with the University of Melbourne has given the students of the college more opportunities during the past few years, and the relationship is fully supported by the people of Ballarat.

The application for full university status was supported by the council of the School of Mines and Industries. I mention in particular the chairman of the council, Mr Bill Gribble, with whom we had many discussions about the application.

The assessment panel headed by Professor Robert Smith suggested that the School of Mines and Industries should amalgamate with Ballarat University College to form a university of technology. This proposal was rejected by the School of Mines and Industries, which has formed an affiliation with the Ballarat University College during the past 18 months. The School of Mines and Industries believed the time was not right for amalgamation.

The new university is an excellent opportunity for Ballarat and will be a wonderful addition to tertiary education in that city. It will give a significant boost to the city and to western Victoria, and the region will benefit educationally, culturally and financially. The university will give an enormous financial boost to Ballarat and will be almost the largest employer in the city.

Two weeks ago a group of Chinese people from the city of Taishan in southern China visited Ararat to sign a memorandum of understanding in the move towards a sister city relationship between the two cities. The dignitaries were very interested in education and asked to visit the Ararat Secondary College. The principal of the college, Mr Frank Kitchen, was born in China, which the delegation was delighted to hear, and although his Chinese was rusty, he and members of the delegation conversed in Chinese. The delegation members said that they would like Chinese students to study at the Ararat Secondary College. They were interested to learn that Ballarat was to get its own university and they believed there would be a flow-on of Chinese students to Ballarat because of the new university. They were interested not just in secondary education, but in tertiary and university education.

One of the visions of Professor Sharpham is to encourage more overseas students to come to Victoria, and to Ballarat in particular, which will help the city financially and culturally.

The proposed establishment of a centre for information technology is currently under discussion. It is hoped that tenders will be called very soon. All the consortia interested in placing expressions of interest for the centre have been impressed with the facilities at the university college and particularly the fact that the college is to become a university. They see considerable benefit in the expansion of technology services and education in joint ventures between the two organisations. Exciting things lie ahead.

The assessment panel led by Professor Robert Smith was complimentary about the college and
commend it on the high standard of its courses, its teaching, its commitment to students, student services, the quality of residential accommodation and management efficiencies apparent in the running of the college.

My colleague Mr Knowles touched on the size of the university — I believe it is approaching 4500 students. I am sure all those who have supported the application for the Ballarat University College to become a university have considered that the quality of education and educational facilities is far more important than size. As I said earlier, my colleague quoted a few universities overseas that are in fact relatively small but provide excellent educational opportunities for their students.

Some of the areas in which the Ballarat University College has excelled are engineering, the sciences and business information management, and, of course, the occupational health and safety courses run there are known and used by students from across Australia. The assessment panel said there was a need to upgrade research to improve the opportunities for bringing in university funds, and I am quite sure the council has already taken note of that. I have no doubt the new council will also consider those matters and provide that additional research.

Professor Sharpim has a vision of Ballarat becoming a university city. Other educators in the area believe Ballarat can be presented as a city providing excellence in education. It is well set up for both State and private schools and it has excellent educational facilities. When they are coupled with the School of Mines and Industries, Ballarat, and what will now become the University of Ballarat, I believe the opportunity to establish Ballarat as a city of excellence in education is very much a reality. The passage of this legislation will bring Ballarat a step closer to doing just that.

I note that my colleagues the Honourable Rob Knowles, and Stephen Elder, Barry Traynor and Paul Jenkins in the other place, all of whom have worked very hard to bring this about, are delighted that Parliament is today debating the final stages of the legislation and that the university will be up and running for 1994.

I wish the university and its council every success for the future. I believe it has been extremely well led and I am sure the calibre of the people who have been put forward for the council and for the position of chancellor will ensure that the university is run most successfully. I welcome the establishment of the University of Ballarat in western Victoria, as I am sure all western Victorians will, and I have much pleasure in commending the Bill to the House.

Hon. R. J. H. WELLS (Eumemmerring) — I have genuine pleasure in making a brief contribution to the debate on this historically important University of Ballarat Bill. It has been pleasing to listen to the comments of members from both sides of the House on a matter that I suggest could not be exceeded in importance.

In democracies, after the securing of personal freedoms, the next most important raft of matters is almost certainly those relating to the contributions of independent universities. It is very important to recall that the charter of a university is one of the most historic and long-lasting things a society and community can undertake. We are not looking at something that we expect to survive for only 5 to 10 years, but more likely 5 to 10 centuries. For this reason, if there are early struggles, they are worth while and must be won.

The proposal to create a university in the important Australian city of Ballarat is a wonderful move. Taking up the point raised by Mr de Fegely, I have no doubt that Ballarat will become known as a university city, as have other university cities such as Cambridge in earlier times — it is unlikely that within 25 years Ballarat will not be known as a university city.

Having said that, I want to say one or two other things. In the eight years I spent in the other place in this Parliament I talked at length on the philosophies and practices of the university movement, its benefits and rewards to society, its protection of democracy and so forth. All those matters are enshrined in this Bill, and I am confident this first Kennett government will find to be true what I said to previous Labor governments: that this sort of Bill will be among the greatest contributions the government makes to the State of Victoria. When many other achievements of the first Kennett government are forgotten, this Act will not be forgotten, because the University of Ballarat and Ballarat university city will go on and on making contributions that cannot be made in any other way.

It has been a great pleasure throughout my lifetime and particularly recently to look at universities in various countries — especially in the developing world in the past 12 months. It is clear that worldwide people given an opportunity in
UNIVERSITY OF BALLARAT BILL

Wednesday, 23 November 1993

First rank universities in the nation, in terms of total research funding, total research output and the capacity of research workers to provide intellectual leadership for undergraduate students, all have medical schools. Universities which do not have medical schools, for example, do not achieve the same level of research funding as those which have medical schools. That is not a judgment of other work done in those universities, it is a recognition of the segmentation of intellectual work into various categories. Medical schools are large institutions that bring much funding with them. So other areas of the university that would have to compete for funding must be considered. That is difficult even for well-established universities; it is doubly difficult for those beginning.

The Victoria University of Technology, a new university, needs, if this can possibly be achieved, more support. Ballarat University will be even more in need of extra support, and that is where I wish to make a suggestion to the government of Victoria. There is no doubt that a university can be created overnight by putting the word "university" in its title. But a great deal more is needed. The first 20 years could be quite difficult for this university; yet it is known that there will be pressure to lift numbers quickly to well above 4000 students. There will be no problem with numerical growth if the money is there to provide the places for the students and the staff needed to assist in the learning process.

I put it to the government of Victoria, of which I have the great pleasure and honour to be a member, that it has to consider what it can do to assist the University of Ballarat to the maximum extent possible through State funding so that it can be established quickly. If the government does not do so, the university could fall into a mire of competitive forces, against which it will struggle to progress. Other universities are much stronger. They have established research workers and track records in research areas which this university does not yet have. Therefore, it will be easier for those universities to get research funding.

Having made a strong point about the need for dollars in this business, let us not beat about the bush. I am talking about the need for money to make things happen intellectually. This cannot come about in a vacuum or from fresh air. Members of Parliament who have been associated with establishing the university are to be strongly commended for their historic contribution to its establishment, but they will find that they still have a job to do at every possible moment in pursuing

democratic societies to say what they want say they want to move towards the benefits of a university culture, not because of snob value but because of real value. They realise this is the cutting edge in education for societies to progress. This is the area that contributes to technology; it contributes to science; it contributes to philosophy; it contributes to democratic protection; and on and on and on, and in countries from China to Australia, and to the city of Ballarat, people want universities established wherever that is possible.

It is my privilege to represent Parliament on the council of the La Trobe University, which has links to some 35 universities in China alone, apart from other nations. As Mr de Fegely mentioned, there is a real hunger among these peoples for the benefits universities can bring, and Ballarat University will share in that in both taking overseas students and making a contribution to the international scene, as well as to the Australian and Victorian scenes.

Naturally, the community of Ballarat is strongly supportive of developing the proposed university, but it requires more than that, and I shall speak on some of those points. In passing, I say that it is a great pleasure to acknowledge what has been the historic contribution of Professor John Sharpam to this development. He has been one leader who has never lost the vision or failed to support it and to provide real leadership for other leaders to join with him to bring the establishment of the university about. What has happened is not that the Ballarat people have obtained a university or that the Victorian government has created one; it is that the Federal government of Australia, the Victorian government and the Ballarat people themselves have, together, taken the decision to create a university. I make that point because Mr Knowles said earlier that what the Ballarat people want is their fair share of resources to sustain this university. That is correct. It is a national and a State responsibility, as well as a local responsibility.

Universities form a very competitive field nationally and the Federal government has a responsibility, having been part of a decision to create a university, to do its best to provide adequate funding. It has responsibility for the major part of the funds required in the early years, certainly, to get the university going and established. That is a competitive process. The University of Ballarat will find, as do other universities much bigger than it, that it is a hard struggle to get the funds needed to expand.

The government of Victoria has commented for their historic contribution to its establishment, but they will find that they still have a job to do at every possible moment in pursuing
funding for the university. There will be a hard row ahead for all small universities over the next few years as they face economic strictures in this country. Let us hope that in the 21st century there will be an economic kick-up and more money will be available for small universities.

Given that money underlies the capacity to create a significant university — not just fine words — the next major need of that institution, or any such institution, is its professoriate. It is absolutely crucial that the University of Ballarat choose its foundation professoriate carefully. The call by the Minister for Housing for a fair share of resources carries with it a responsibility: that the university choose professors of international standing. That is the standard adopted throughout Australia. These people move across the entire Australian academic society on a competitive basis.

I am confident that this will happen, but it is important to lay that down in this place for people who may be reading speeches relating to the university. It is not appropriate just to make nice, sugary speeches about the creation of the university; debate should be about the real need to turn aspirations into reality. The foundation professoriate is of urgent importance in leading the university forward.

Mentioned earlier, again I think by the Minister for Housing, was the need for leading-edge efforts in the university. That need is clear. The University of Ballarat needs to have the financial resources to purchase internationally leaders in whichever areas the university decides upon. Perhaps its current strengths should be built upon so that it can quickly establish a reputation in at least some areas. Leading-edge studies are of the utmost importance to the university.

State governments have limited financial capacity. It is a pleasure to acknowledge what the previous Labor government did and what the current Liberal government is doing in using State funding to try to foster the university movement in Victoria. They pursued objectives that had not been pursued prior to 10 years ago; all was left to the Federal government. The Victorian government should consider what it can do to assist the University of Ballarat in getting its initial research work established and in purchasing internationally competitive academics of the highest standing to get things moving along.

It is no good mincing our words. There has not been a university in Ballarat to this time, partly because there have not been the structures, staff and human commitment to achieve that. People have had other responsibilities. That situation has to change to some degree.

I must say, with respect, that I differ from my learned friend on the other side of the House, Mr Pullen. Perhaps in a mood of generosity, gilding the lily slightly, he said that the size of universities is not so important. That may be the case with some examples, but generally bigger universities have a greater capacity to do things; so size is not easily dismissed.

Mr Pullen also spoke of research as not being so important, saying that the quality of lecturing is important. He raised the issue of the basic quality of teaching. I distinctly disagree with that view. Great university teachers are also great research workers. If it is thought that the University of Ballarat can be established without adequate funding for research, we will live to regret that decision.

Good quality teaching requires enough money to provide the physical resources. It requires quality teachers and research work backing that up. I challenge Parliament to find evidence elsewhere that the case is otherwise. Great universities have great teaching and great research work as well. There is no alternative, because the greatest stimulus to great teaching is not some academic course teaching one how to make a speech but knowing the subject personally, intimately working with it on a day-to-day, genuine base — being aware of the cutting edge around the world from the world’s journals; being at the forefront; and being able to speak with that academic confidence that cannot be achieved other than through research work.

There can be no question: the University of Ballarat will meet its historic responsibilities as a great teaching institution if it also becomes a great research institution. Against that background I have no worries about its size. Whether small, medium or large, I confidently predict that it will grow as big as funds permit it to.

Comments about the Federal government wishing to remove university places from Victoria are saddening in the extreme. This is not the first attack launched semi-privately or privately by the Federal government in the past several years on university places and universities in this State. It must be stated clearly that Victoria at this time does not have per
capita the university capacity of, for example, New South Wales. There is a need to see that we can provide for our young people in this competitive environment.

The Victorian government, and I am sure the opposition, will join in resisting vigorously any move by the Federal government to cut the number of places in Victoria. The decision to establish the University of Ballarat is a Federal decision as well as a State decision. There is no way that the Federal government can later claim otherwise and slide away from its responsibilities.

I mention in passing that the size of the challenge and the problem we face with a new university may be illustrated by looking at the dollars provided to keep existing universities of Australia going.

If one looks at the universities of Melbourne, Monash, New South Wales and Sydney one finds that their annual funding is well in excess of $300 million. I have no figures to back that up, nor do I require them at this time, but I imagine that the University of Ballarat, if it is fortunate, would have a funding level of about $10 million.

There is a great need for money, and we need to do what we can to assist in funding. Governments should look at the establishment of a university in a city such as Ballarat as being one of the most powerful forces there is for decentralisation, and viewing the move in that way may give us some financial capacity to assist in its development.

Nothing else will bring greater stimulus to decentralisation than a university. The United States of America is the best illustration of that point. Scattered from the east coast right across to the west coast of that great nation are universities of all sizes, making a significant contribution to decentralisation.

Australia faces a problem in that regard; we have not yet grappled with the challenge of decentralisation. I hope that the Ballarat School of Mines and Industries will consider its position and do all possible to associate itself with this historic movement in the creation of Ballarat University. It would be to its benefit, and I hope the academics in both institutions will be able to sort out the genuine problems existing in such a case.

La Trobe University expended a lot of effort when working things out with the advanced education college at Bendigo, and it has now been sorted out to everyone's satisfaction. Should the time come in the future when Bendigo academics wish to go their own way, I am sure that La Trobe University will wish them well in their independent status that may follow.

It was my privilege to be a member of the Council of La Trobe University and to be one of the people who strongly supported the concept of La Trobe University sponsoring the Australian Catholic University for a period of five years, which is proceeding well. That type of sponsorship is now to be undertaken by the University of Melbourne for the new Ballarat University. Melbourne University begins with a start in that regard because it already has such a close association with the academics and their work in Ballarat. This is an ideal way for the Ballarat University College to make the shift forward towards full university status, which will not be easy to achieve in practice.

We will all need to help, and I shall repeat the conclusion of the Minister's second-reading speech because it is so important. They are fine words, but they embrace even finer concepts and they are the ideal description of the challenge we face in the creation of the University of Ballarat:

This Bill provides for the establishment of the University of Ballarat as an important regional university with a particular emphasis on quality undergraduate programs. During the process of consideration of the Ballarat University College for full university status and the subsequent decision of the government to establish the University of Ballarat, it was manifestly clear that the proposals had the full support of the people of Ballarat and its wider community. This support provides a very important ingredient for the establishment of a fine university serving the needs of its local community. The university will have a significant impact on this area of regional Victoria as well as creating a new institution with the capacity to make a major contribution to higher education teaching and research throughout Australia and in the international community.

I applaud those words and concepts, and I conclude by saying that they will be achievable only if three things happen: firstly, if the new university has adequate money to do its job in totality; secondly, if it appoints academics of international standing and capacity, as other Australian universities do; and, thirdly, if it bases its intellectual progress and future on the pursuit of knowledge and on research to make its teaching possible.
It is a great pleasure to commend the Bill, and I wish all associated with the University of Ballarat congratulations and the very best future to follow.

Motion agreed to.

Read second time.

Third reading

Hon. HADDON STOREY (Minister for Tertiary Education and Training) — By leave, I move:

That this Bill be now read a third time.

In so doing I thank all honourable members for their contributions. It is clear that all sides of the House agree that the institution has support and will bring great benefits to Ballarat in due course. I wish the university speedy development, and I thank honourable members for their contributions.

Motion agreed to.

Read third time.

JURIES (AMENDMENT) BILL

Second reading

Debate resumed from earlier this day; motion of Hon. HADDON STOREY (Minister for Tertiary Education).

Hon. B. T. PULLEN (Melbourne) — The Bill affects three areas: firstly, it allows certain criminal prosecutions in County and Supreme Court verdicts to be achieved by majority decisions; secondly, through clause 6 it seeks to reduce the number of peremptory challenges to jurors; and, thirdly, through clause 9 it provides for jurors to return home overnight in certain circumstances rather than being locked up.

The opposition opposes the Bill principally because of the movement to majority verdicts. It is suspicious about the motive of the government in making the change, particularly when there is no real evidence as to why it is necessary. The second-reading speech uses less than a page to justify a profound change in the law and a change to the principle of justice that a person should be found guilty beyond reasonable doubt, and it does so without any research or any real investigation as to whether there is a need for the change. For that reason the opposition is sceptical of the government's ability to make a bald decision on the matter.

The decision is challenged by some of the current figures available. From cases in recent years less than 5 per cent — in one speech made in the other place the figure quoted was less than 2 per cent — of cases result in hung juries, yet without any evidence or exposure of a serious problem the government is moving away from the principle that someone being judged by his peers should have the benefit of the doubt.

It is a prima facie case that if a jury reaches only a majority verdict then there was some doubt. Somebody on that jury — at least one and perhaps two people — had sufficient doubt that they were not satisfied that the accused was guilty; so in moving to a majority decision the government is accepting the fact that some guilty verdicts will be given even there is some degree of doubt.

The opposition sees this as part and parcel of a move by the government to take action because too many people get off and it believes most people who go to trial are guilty. The government seems to believe a hung jury is somehow a failure of justice. It is equally possible to argue that it is simply justice in operation.

It does not follow that every situation can be proved beyond reasonable doubt from the evidence that is provided, so any system that is balanced will have a certain number of cases that do not reach finality. Maybe that is disappointing because we would like perfection in all things, but the legal system is not perfect and the representation of that in 4 per cent of cases resulting in hung juries does not justify a departure.

When taken in conjunction with moves by the government to increase penalties, it is extremely important to ensure that a true and just decision is reached. This Bill weakens that. A move to majority verdicts must, by simple mathematics, increase the possibility of more innocent people being found guilty.

The opposition is concerned about the motivation of the government in bringing the Bill forward and it is also concerned about the lack of evidence in the second-reading speech. Those concerns were echoed to some extent by the deliberations of the Scrutiny of Acts and Regulations Committee as reported in Alert Digest No. 16, which makes the point that a majority verdict moves away from finding a person guilty
beyond reasonable doubt because obviously the verdict is not unanimous. Supporters of that position, as reported in the Alert Digest have seen justification for their view in the recent High Court decision in Cheatle v. The Queen in which the judges concluded that the expression used by the Australian Constitution, "trial ... by jury", precluded that majority verdict. The court delivered a joint judgment that it noted:

the common law's insistence upon unanimity reflects a fundamental thesis of our criminal law, namely, that a person accused of a crime should be given the benefit of any reasonable doubt. It is true that there is no logical inconsistency involved in the coexistence in the law of the criminal onus of proof and majority verdicts of guilt. Nevertheless, assuming that all jurors are acting reasonably, a verdict returned by a majority of the jurors, over the dissent of others, objectively suggests the existence of reasonable doubt and carries a greater risk of conviction on the unanimous verdict.

I agree with that finding and, as I have said, the change increases the chance of innocent people being found guilty.

I shall now refer to the reasons for the change, which are listed in the second-reading speech. They point to efficiency and savings, but given the small number of cases that have been alluded to and the lack of any contrary evidence, it seems a major change is being made on the basis of arguments about expense and efficiency rather than fundamental points of law. This change should have been considered by a Parliamentary committee or some expert body so that Parliament could have been presented with some evidence as to why we should depart from the principle of unanimous verdicts.

I shall also refer to the psychology of jurors. It is advantageous for people serving on a jury to be forced to go through the arguments and not simply come to a majority position because everyone must be convinced. It forces all members to go through the evidence extremely carefully.

Some time ago before I was a member of Parliament I had the experience of serving on the jury in a brutal murder trial. All members of the jury were strangers to each other, and I have never met any of those people again. It is an extremely traumatic experience to deliberate on the future of a person. I recall that for the first couple of hours of deliberation we did not satisfactorily examine all the evidence. As the jury considered it more carefully and reached the point of everybody having to come to a unanimous decision — everybody was forced to consider every bit of evidence and work it through — everybody was thoroughly convinced and completely confident that there was no doubt about the result.

The psychology of a group of people having to work through the evidence knowing that everybody has to be prepared to agree to something creates the sort of atmosphere that makes juries such a special feature of the justice system. If a majority verdict is the aim, a different psychology applies.

Parliamentarians are familiar with meetings where one has to get only a certain number of people to agree to achieve a result. That often means that you go for arguments which are not necessarily absolute but which are sufficient for the purpose of achieving the numbers. The situation of a jury is entirely different, and it will be weakened considerably if it is a matter of reaching only a majority verdict. In its defence, the government has said that it is not moving away from unanimous verdicts as far as other jurisdictions have, and that is true. It is saying that the principle of a verdict of 11 to 1 is the same as a unanimous verdict. If you move to 11 to 1, why not move to 9 to 3 or a simple majority? Once you move away from the principle of a unanimous result you are virtually casting aside any principle requiring you to maintain an 11 to 1 verdict or any particular figure.

That is how many decisions are made: without any checks. No real evidence of why this is necessary has been provided and no research into the extent of the problem has been undertaken. It is all part of the general view that tougher punishments will solve the serious problem of crime in society and produce better results. If only it were as simple as that, but it is not. The reasons for crime being committed are not related to how harshly the courts deal with people charged with offences.

In its report in Alert Digest No. 16 the Scrutiny of Acts and Regulations Committee states:

Based upon the unanimous judgment of the High Court of Australia in Cheatle's case, the committee is of the opinion that it may trespass unduly on rights and freedoms.

Hon. Louise Asher — It doesn't say that! Read the footnote!
Hon. B. T. PULLEN — I have read the whole report and it is clear that the committee is troubled — —

Hon. Louise Asher — No, it's not!

Hon. B. T. PULLEN — Clearly it is troubled by this move and recognises that it is a trespass — —

Hon. Louise Asher — That’s a misrepresentation of what the committee says!

Hon. B. T. PULLEN — The report says it may be a trespass against rights and freedoms, and that in the majority judgment of the High Court it is a serious change to a person’s right to be judged guilty beyond reasonable doubt. Why did the Attorney-General say she often took heed of the views of that committee but would not do so in this case?

Hon. Louise Asher — Because it didn’t present a strong view!

Hon. B. T. PULLEN — Why did she say she would not take heed of the committee’s views if the views of the committee were not contrary to hers? Obviously they were contrary to the direction of the legislation; if not, she would not have felt the need to say she was not going to follow the committee’s views in this case. Therefore the argument that the committee has not formed that view falls to the ground. It is obvious that the Attorney-General thinks the committee’s opinion is opposite to hers because she felt it was necessary to tell Parliament that she would not heed the committee’s opinion. The committee couched its view in careful terms, but that is often the case.

We know from the way the report is presented and from the Attorney-General’s position that the committee’s view is contrary to the government’s view. Regardless of that fact, the government has not presented an argument, either in principle or in quantity, that justifies this means, which it says will benefit the operation of justice in Victoria. It is an argument about efficiency and saving money. The government is throwing out the principle that a person should be judged by his or her peers and be found guilty beyond reasonable doubt. The element of doubt is eliminated.

It is a serious change, and no justification for it can be found in the second-reading speech or in any report, review or due process. Earlier today during debate on the University of Ballarat Bill I complimented the government on following due process, but in this case, when the credibility of our justice system is at stake, the House has been provided with less than one page of information on which to make a decision. The jury system has been enshrined in our society for more than 500 years. The principle of a person being tried by his or her peers still stands. We are pressed by the complexity of modern society, the number of cases to be tried and a complicated legal system, but one hopes that when a person is on trial the principle of being judged by his or her peers is there. We must keep within our justice system the essence of a fair hearing beyond reasonable doubt. That is why the opposition opposes the Bill. If the legislation had been presented differently and if more evidence and justification had been provided, the opposition might have had a different view, but for the reasons I have enunciated the opposition can have no other view than the one I have outlined.

The Bill also reduces the number of peremptory challenges from eight to six. If there are two accused, each will have a total of five challenges, and if there are three or more accused, each will have four challenges. It is important for a person to be judged by his or her peers so far as is possible. It is a difficult situation in practice and open to abuse, but if you are going to trial you ought to believe that you will be judged by your peers. You may pick the wrong people because of their dress, sex or age, but it is important that you do not feel you are being judged by people who possibly are superior to you and who probably do not have the same values, circumstances or lifestyle and therefore will not understand why you acted in a certain way. The idea is that you are judged by people who may understand your situation and make a decision without fear or favour about whether you are guilty. For the sake of expediency and saving money the government is changing that principle, and the opposition feels it is not justified or necessary in law.

The opposition is concerned about the provision that will allow jurors to return home while in the middle of deliberations. That is a complicated matter. In some cases jurors are under great pressure because they are kept away from their homes and families for a long time. However, I am more relaxed about this provision than I am about others. In some cases no harm would be done for jurors to return home in the middle of deliberations, but in serious cases a certain psychological focus is needed when trying to reach a judgment, and that would be broken if the jurors were allowed to return home at the end of the day.
In the trial in which I served as a juror, a great deal of forensic and scientific evidence was presented which was critical to the case. Many matters had to be explained to the jurors because, like most people, they were not familiar with that material and needed to consider it carefully so that they could reach a verdict. In such cases, the separation of the jury at the end of the day is not good because it means that people have to pick up the thread again the next day after being subject to outside influences. I am not talking about the direct influences that obstruct justice but simple distractions from the case. The Bill is cognisant of that and provides that that decision is at the discretion of the court, and I hope that provision will be exercised appropriately.

The opposition objects strongly to the Bill, particularly to the three parts to which I have referred. It is extremely concerned about the lack of justification for the movement to majority verdicts. The Bill represents a failure of process. It is important that people have confidence in and support legislation. The government is failing to achieve that by rushing through this complicated and difficult legislation without providing a process in which it can be considered carefully. The opposition opposes the Bill.

Hon. R. H. BOWDEN (South Eastern) — It is with pleasure that I support the Bill. I favour the concept of juries. One of the fine traditions of our society is that those who are to be judged in the community are judged by juries. From time to time, one reads with a degree of horror proposals from so-called learned groups that juries should be dispensed with and abolished in favour of the more totalitarian approach of State juries or tribunals. At no time while I am a member of Parliament will I countenance or support the abolition of juries. I have been, I am now, and I will continue to be a strong supporter of juries because the jury system in Australia has served us well. The jury system has been fair, is fair and will continue to be fair, and it has the complete support of the overwhelming majority of society. Therefore, any change to the jury system is not entered into lightly. Any change to the jury system is important and should be considered in great measure.

After reading the Bill, I am among many who believe that the measures contained in it are not against the concept of juries. The Bill will increase the fairness and efficiency of the operation of the juries in the County and Supreme courts in Victoria where trials are held in those jurisdictions for crimes other than murder, treason and Commonwealth offences. There are some cases in which majority verdicts have not worked. We do not live in a perfect world and that has caused some problems in the existing system. Unless majority verdicts are accepted, the problem of 1 juror out of 12 causing an enormous amount of personal difficulty, emotional hardship and financial expense to individuals and the State will be perpetuated. I am not concerned about the expense, but I am concerned about efficiency and fairness particularly for the individual accused and the operation of the court. The difficulty of one juror hanging out on a decision is immense. The pressure, strain and expense is often totally unreasonable. When one person acts unreasonably it often results in a long trial being abandoned.

As a result of those jury decisions, in recent years the United Kingdom and other Australian States have adopted majority verdicts. That progression has been slow and careful, but the experience of the United Kingdom and other Australian States has proven to be satisfactory. The government believes the continuation of achieving a reasonable judgment and a reasonable decision when weighed against the efficiency of the courts ensures that a balance is maintained. No doubt the majority jury system produces savings in administration, but that is not the driving force of this Bill. The driving force of majority verdicts is to ensure that people receive the justice they deserve and that it is dispensed properly and fairly. It will be a bonus if the move to majority verdicts achieves sensible and affordable administrative and court cost efficiencies.

In his contribution to the debate Mr Pullen expressed concern about the jury system moving away from the current position. I wonder where the honourable member was when justices of the peace were removed from the jurisdiction of the Magistrates Court. When justices of the peace sat as a bench of two or three they were truly representative of the communities in which the majority of criminal offences occurred.

As a former JP who sat on the bench for many years I believe we had the best of all worlds because the community was served by many jurors. I will continue to press for the restoration of justices of the peace to the bench because I believe strongly in the jury system. I am convinced that the former Labor government's removal of justices of the peace from the bench was initiated and executed against the community's interest. The move was reprehensible and the system should be restored.
Hon. B. A. E. Skeggs — And it was a costly step.

Hon. R. H. Bowden — As my colleague suggests, it was costly.

The government's decision to allow the Sheriff and police officers to serve summonses is a good move and will simplify the execution of those summonses. It will justify the efficiencies in the system and make the dispensation of summonses much easier to achieve.

Clause 6 will amend the peremptory challenges, but that will not create an acute problem as suggested by the opposition. At present if there is one accused, that person will have his or her challenge rights reduced from eight to six. If there are two accused, the number of challenges for each accused will be 5, which is a total of 10. If there are three or more accused, each of the accused can have four challenges. In practice that will not limit the ability of an accused to challenge someone who would be entirely inappropriate to the defence. I suggest there are no major difficulties with the changes to the number of challenges that will be allowed by the Bill.

Earlier in my contribution I said that the amendments relate to trials in the Victorian County and Supreme courts jurisdiction but do not apply to charges such as murder, treason or Commonwealth offences. Although there are many offences in the Commonwealth category, fortunately there are fewer in the murder and treason categories. So in cases of serious crimes such as murder, treason and the spread of Commonwealth offences the full protection suggested by the opposition will continue to apply. That is not unreasonable. The view expressed by the opposition is being protected and covered in those areas.

The proposed changes will reduce the total number of jurors who can be summoned and will therefore lower the cost of assembling and operating the jury pool. One difficulty faced by people associated with a jury pool is that many wonder whether their lives should be disrupted so much and whether they will actually be required to participate in a jury. The Bill will sensibly, fairly and logically reduce the requirement of jury pool numbers and will significantly increase the efficiency of the operation of the system.

On reading the Bill I was pleased to discover that the proposed change would be fair to all. Under the proposed legislation the reduction in the number of challenges will be the same for the accused and the Crown. At present a single accused is allowed a maximum of eight challenges whereas the Crown has unlimited ability to challenge jurors and therefore has more chance of satisfying itself as to the composition of the jury. Mr Pullen should be pleased that the Crown will be treated on the same basis as the accused. If the accused has six challenges to potential jurors, so will the Crown. The Crown cannot just sit there and go jury shopping. It will be limited to the same balanced approach that applies to the accused. The defence and the prosecution will be treated the same.

It is important that juries reflect the broad cross-section of community representatives. The Bill will go some way towards addressing the fact that over the years the nature of the composition of the Australian community has undergone significant change. Therefore, the limitation and reduction of the ability of the Crown and the accused to challenge individuals will be a step towards ensuring that the broad spectrum of community representation is achieved. There is much more to be done in that area. In the Minister's second-reading speech I note that the Attorney-General will be considering the current system of jury selection and the exemption list of jurors to ascertain whether the community as it is represented today can be better represented in the courts. I congratulate the Attorney-General on taking that approach. It is extremely important that our juries reflect all members of our society.

I have no problems in supporting the concept of the overnight return of individual jurors to their homes if that is acceptable to the judge or judicial officer presiding over a trial. In some trials it will not be acceptable for the jurors to return home, but that will be at the discretion of the court. I should imagine that in the vast majority of cases jurors will be able to return to their homes at night. If a jury reflects the average community's composition, the general level of competence and performance that we expect in our society will be reflected by those ladies and gentlemen. Therefore, the evidence that they hear during the day at the trial will stay with them on their return the following day. I have no trouble in accepting the fact that overnight there may be some slight diminution of the retention of the subtleties of forensic evidence and so on, but I believe it is good for the smooth operation of the court for jurors to return home. It is good for them; it is good for their families; and I do not think with the transport systems we have today it is likely to cause any great disruption at all. Of course, courts always have the ability to withhold that privilege, and I am
JURIES (AMENDMENT) BILL

sure the courts will not send jurors home if they believe that will detract from the fairness of any trial.

The flexibility the Bill provides in determining applications from persons wishing to be excused from jury service is desirable. It is less bureaucratic; it is simpler; and the facts can be checked easily. The machinery provisions covering the payment of compensation to jurors who lose income is also a good move, because people should be compensated for lost income whether the court sits or not.

The overall package provided by the Bill is a positive and constructive step in the continuing organisation of the jury system. It is made up of a number of matters, but it does not significantly alter the commitment of members of this place to the jury system the community expects. I should be very surprised indeed if most members of the community — the ladies and gentlemen who voted for honourable members on both sides of the House — were upset by the Bill. It protects the jury system and seeks to achieve specific objectives while continuing the fair and time-tested jury system. On that basis, it is with pleasure that I support the Bill.

Hon. JEAN McLEAN (Melbourne West) — The Minister's second-reading speech states that the requirement of a unanimous verdict is a potential source of expense and unfairness. It goes on to explain that it could be a case of a single, determined juror holding out for a peculiar or improper reason. But it does not state that it could equally be possible that the one person who holds out is the only juror who really understands the evidence and its full implications, who by holding out is the only juror who is offering the possibility of fairness. Where in the Minister's second-reading speech are the figures to justify taking away the right of an accused person to a unanimous verdict?

At present our system operates on the fundamental principle that the State should not punish the innocent; that it is better to take the risk of the guilty going free than to imprison the innocent. It is possible for one member of a jury to hold out and be wrong, as was the case in the trial of the former Premier of Queensland, Sir Joh Bjelke-Petersen. I am sure that former Premier would be very pleased that in Queensland jury verdicts have to be unanimous.

The law courts must be about the rights of people charged with criminal offences as well as the rights of the victim. I am aware of and have been involved as a witness in cases where innocent people have been charged with offences. I have actually been there at the time. If majority verdicts are introduced the possibility of wrongful conviction will be greater. Not only will innocent people be more likely to be convicted but guilty people will go free.

Because the Attorney-General gives no other justification for majority verdicts than that she believes unanimous verdicts are a potential source of unfairness and expense, I have had to look further afield for this information. I refer to an article entitled "Hung juries or majority verdicts — the jury on trial" by W. J. Brookbanks, cited in the New Zealand Law Journal in June 1991, which states:

In any event, official data seems to suggest that even to the extent that juror intimidation or bribery does occur, resulting in jury disagreement, the incidence of disagreement is relatively inconsequential. Figures available prior to the introduction of majority verdicts in England indicate that of 436 cases at Assizes and the Central Criminal Court only 10 resulted in disagreement. When the 10 cases in question were retried, there were 6 findings of guilty and 3 acquittals; in the tenth case the jury again disagreed and the defendant was discharged. In fact, juries disagree in only a small percentage of cases, usually less than 4 per cent accepted as the standard proportion in various jurisdictions in Australia, England and the United States ...

Recent US research has found that in more than half of the cases investigated, the minority dissent was more than two. On this basis, verdicts by a majority of 10 to 2 would reduce, but by no means entirely remove, jury disagreement. At the time of the adoption of majority verdicts, the general perception of the English judges was that the incidence of perverse verdicts was negligible ...

This evaluation would now appear to be supported by the general figure of 4 per cent of trials resulting in hung juries.

It seems fairly obvious that this government wants to bring about majority verdicts on evidence just as flimsy evidence as that on which the British government based its decision. Presumably the motivation is cost saving and the desire for as many convictions as possible, whether the accused is guilty or innocent. But if neither, one or both those motivations is or are true, there is nothing to suggest that a majority verdict will not find the accused innocent in more cases than a unanimous verdict. If a person is convicted by a majority judgment he or she might well be able to appeal to the High Court, which could hold this legislation to be invalid.
because it breaches the fundamental common-law rights and principles that underlie our democratic Constitution.

On 27 August 1993 I heard on the radio the news about the unanimous ruling of the High Court in the case of *Cheatle v. The Queen*. The ruling was that section 80 of the Constitution guaranteed that an offence against the law of the Commonwealth tried by a jury had to be proven by the consensus of all the jurors. When I heard the ruling I thought it was good and that the Attorney-General would drop this legislation on juries, even though the judgment referred only to Commonwealth laws.

On reading the ruling and the reasons for it any logical adult would know that a majority verdict could well leave a reasonable doubt, certainly in the mind of the public, about the guilt or otherwise of the convicted person. But the Attorney-General did not reach that decision. I do not know whether she read the judgment; she certainly has not bothered to give any further explanation of why she is persevering with the legislation — there has not been one word from the Attorney-General since the High Court case.

The Attorney-General has taken it for granted, based on nothing other than anecdotal evidence, that there is a serious problem to be addressed. The High Court decision in *Cheatle v. The Queen* states:

> By section 80 of the Constitution the trial on indictment of any offence against any law of the Commonwealth shall be by jury.

It was further held that:

History, principle and authority (English, American and Australian) compel the conclusion that the guarantee in section 80 of trial by jury precludes a verdict of guilty being returned in a trial on indictment of an offence against the law of the Commonwealth otherwise than by agreement or consensus of all the jurors. A State cannot, consistently with section 80, operate to authorise the conviction of a person for such an offence by a majority verdict.

It is, for example, clear that, at the time of the adoption of the constitution, it had long been an essential attribute of the institution of trial by jury that the function of the criminal jury was to determine guilt or innocence on the evidence led at the trial and not on personal pre-knowledge or prejudgment.

One would have thought that would have set the caution bells ringing either in the Attorney-General’s mind or in the minds of her advisers, but apparently it did not do so. Because, again, I could find no other source of evidence, I continued to read the High Court judgment. The High Court also considered the judgment of Mr Justice Evatt in *Newell v. The King*, saying:

> In the course of his judgment, Evatt, J, referred to an argument which had been advanced on behalf of the Crown to the effect that, in criminal issues, unanimity, as opposed to majority decision, is a mere matter of procedure and said:

> but this argument is answered by the fact that in Tasmania, as elsewhere in common law countries, trial by jury has been universally regarded as a fundamental right of the subject, and unanimity in criminal issues has been regarded as an essential and inseparable part of that right, not a subordinate or merely procedural aspect of it.

In its deliberations the High Court looked at historical precedents and mentioned Sir James Steven, who in 1883 pointed out:

> The justification of the rule, now that the character of the jury has changed from that of witnesses to that of judges of fact, seems to me to be that it is a direct consequence of the principle that no-one is to be convicted of a crime unless his guilt is proven beyond all reasonable doubt. How can it be alleged that the condition has been fulfilled so long as some of the judges by whom the matter is to be determined do in fact doubt?

The Scrutiny of Acts and Regulations Committee considered the High Court decision and reached this conclusion:

> Based upon the unanimous judgment of the High Court of Australia in Cheatle’s case, the committee is of the opinion that it may trespass unduly on rights and freedoms.

Even so on 1 November the Attorney-General said in the second paragraph of a letter to the Chairman of the Scrutiny of Acts and Regulations Committee:

> The government holds the view that the introduction of majority verdicts is in no way inconsistent with whether the decision of the High Court in Cheatle or the principle of guilty beyond reasonable doubt.

In the absence of any other comments by the Attorney-General, it is difficult to fathom why she
JURIES (AMENDMENT) BILL

COUNCIL

Tuesday, 23 November 1993

has come to that view. I have looked deeply into that judgment and into other areas — and nothing in her second-reading speech gives us a clue. In the fourth paragraph of her letter of 1 November she defies logic by saying:

As regards guilt beyond reasonable doubt, it is difficult to see how the presence of one dissenting juror out of 12 may be regarded as a prime facie proof of such a doubt, when the number of 12 jurors is entirely arbitrary and itself represents a reduction from the original 24 of the old grand jury.

I have thought a lot about that but still have not worked out the basis of those numbers. Either it is a unanimous verdict or a majority verdict; whether there are 10, 12 or 20 jurors seems irrelevant. As the Attorney-General has not come up with any arguments against unanimity, I have had to seek them out. In The Jury in a Criminal Trial, the 1986 report of the New South Wales Law Reform Commission, I found an interesting judgment. The arguments advanced against unanimity were:

that jury disagreements are inherently unsatisfactory because they require a retrial, the cost of which is an unwarranted burden on the State and the accused person;

that it forces jurors which are unable to agree to reach verdicts which are compromises;

that it leaves open the possibility of the corruption of a juror, through bribery or intimidation;

that the rule is undemocratic because it allows a small minority to frustrate the decision of the majority; and

that the rate of acquittals is too high, and that the unanimity rule is a cause of this.

Maybe the last point is the section the Attorney-General read and decided that, on its own, it proved her point. Nevertheless, the report goes on to say that it results in acquittals in cases where there would be a conviction if majority verdicts were allowed.

The report recommended that the requirement that any verdict reached by a jury in a criminal trial should be the unanimous decision of its members should continue. That was the decision the New South Wales Law Reform Commission reached after a great deal of consideration. The Attorney-General and her advisers would have done themselves a lot of a good if they had read those deliberations. I have looked everywhere and have been unable to find any opinion to back the Attorney-General’s decision.

The Attorney-General has said one of the major reasons for the government’s move to majority verdicts is its concern for the victims of crime and the difficulties they experience in twice going through the process of cross-examination. I utterly sympathise with the victims; but nothing in the literature I have quoted suggests that majority verdicts will alleviate that problem.

That statement by Justices Phillips, Marks and Hampel as reported in the Age a few days ago shows that the courts are moving towards a more stringent view of rape:

There had been increased awareness in the community about the prevalence of rape and the depth of suffering and personal damage caused to victims. Such awareness had extended to the courts.

The legal process has taken into account the present community attitudes and I believe it is taking the correct course. This is a great advance on the prevailing attitudes on rape. Jurors no less than judges will be affected by these attitudes. It was not long ago that most males would snigger at the mention of a rape trial. I remember hearing many times the saying, “If rape is inevitable, lie back and enjoy it”. We have moved a long way from that view. The courts are now aware of the level of upset in the community and they are moving to redress the situation by handing down heavier sentences. But that will not be assisted by majority juries.

Majority juries will not and cannot address that problem, although that was suggested by the Attorney-General. Many cases other than rape are dealt with by courts. To remove the principle of beyond reasonable doubt because, as the Attorney-General puts it, judges — unnamed of course — have said that in their perception occasionally there is a juror in a rape trial who has a particular view, is to act on the basis of a weak and
Tuesday, 23 November 1993

JURIES (AMENDMENT) BILL

COUNCIL 1157

unsubstantiated position. The Bill removes an important civil right.

The Attorney-General also said that she believes the jury system should be examined because virtually anybody who wants to can claim exemption. I agree it is a good idea to examine the situation, but that has absolutely nothing to do with a unanimous verdict. It is a completely different issue. I do not believe it should be muddied, but that is what the Bill is doing.

The government is trying to enhance its image by rushing through Parliament a terrifying list of law and order legislation. Honourable members will be seeing a lot of this during the next few days. This Bill is supposed to address the real concerns our community has about crime. The government is doing nothing to address the causes of crime, which are unemployment and homelessness, especially among young people, which inevitably lead to disaffection and crime. Many crimes are committed because of young people’s perceived need for money. These are the things that need to be addressed. A genuine education and employment program should be put in place by the government rather than giving police more powers with less accountability. But the government is closing down schools and reducing funding to social organisations which can assist in these problems and which make it possible for the community at large to cope with the reality.

Most people when charged plead guilty; 82 per cent of people charged are found guilty. It is incumbent upon the government to protect all its citizens — the victims and the accused alike. The Bill diminishes that responsibility. In the Australian Law Journal of May 1992 Alex Castles pointed out that those seeking to change the jury system have failed to produce evidence of its necessity. I agree absolutely with him. Nothing has been offered to justify the Bill. The common law since the 14th century has consistently and unequivocally insisted upon the requirement of unanimity. Victorian criminal law should ensure the same protection. The High Court judgment included the comment that a majority verdict was analogous to an electoral process. Honourable members can understand that analogy. I am sure that jurors cast their votes relying on their individual convictions. Unanimity ensures that everyone’s opinions will be heard and discussed, and that reduces the danger of hasty and unjust verdicts.

I shall not address the other issues covered by the Bill because my colleagues will do so, but I make it clear that I oppose the Bill. I am sad that it is being proceeded with when absolutely no justification for it has been put forward.

Hon. D. A. NARDELLA (Melbourne North) — I oppose the Bill. Our justice system is based on three important principles: firstly, one is innocent until proved guilty; secondly, if one is found guilty it is beyond reasonable doubt; and thirdly, when a person is accused of wrongdoing that person is judged by his peers through the jury system. In a real sense that goes to the heart of the Bill. Those rights and safeguards are already in place but they will be reduced.

The Bill is another step down the track by a government that is removing the community’s rights and safeguards. We have seen it time and again. Over the past 13 months the government has consistently taken that course. It has consistently taken that course on matters such as WorkCover, employee relations and police powers. These rights and safeguards have also been alluded to and talked about in this House by members of the Scrutiny of Acts and Regulations Committee. The Bill highlights these matters, as did Mrs McLean in her address.

Over the centuries juries have developed through custom and practice to embody checks and balances, and those checks and balances have been incorporated into Victoria’s jury system. The jury system in Victoria has for a long period operated on the principle I spoke about earlier, that there must be a unanimous decision that the prosecution has proved beyond reasonable doubt that a person is guilty. Under the test of proof beyond reasonable doubt the requirement for unanimous verdicts provides checks and balances for accused persons. In the second-reading speech the Minister spoke about striking:

an appropriate balance between the principle that guilt should be determined beyond reasonable doubt and the need to manage courts effectively and fairly.

The Bill does not do that; it does not stand up on the test the government itself has provided. The rights of accused persons and the processes undertaken to judge them have been watered down. The government’s own test of a balance between fairness and the need to manage courts efficiently and fairly is not put into practice. The real issue, as is evident from the second-reading speech, is not the protection of rights but is all about “substantial cost
savings in administering the jury system”. Honourable members have a responsibility to be extremely careful when dealing with the rights of individuals. The Bill attempts to take away those rights in order to achieve significant savings in the administration of the jury system.

The current jury system has served Victoria well. If the achievement of cost efficiencies in the court system is what the government is on about, it should tackle that issue. The opposition has no problem with tackling inefficiencies in the court system, but believes that can be done through measures such as pretrial conciliation and negotiation processes, thus reducing the time and cost involved in debating points of law. Mediation processes could lead to significant savings in time in many cases that come before Victorian courts. The current and previous governments have taken admirable action in dealing with inefficiencies in the court system. The opposition sees no problem in dealing with that issue and believes many things could be done to reduce costs and delays without taking away the rights of accused persons.

The Bill takes away the rights of accused persons to aggregate jury challenges where there are multiple defendants. Simply reducing in turn the number of challenges allowed to the prosecution will not provide fairness. Part of the argument put by Mr Bowden was that the Bill will reduce the number of prosecution challenges, which are currently unlimited. That is not fair because in the process the current rights of accused persons are reduced. The second-reading speech goes on to say:

It has been suggested that the use of the challenge can, particularly in multi-header trials where a number of accused can aggregate their challenges, lead to distortions in the representative nature of the jury.

That is not true; currently both sides have a right to challenge.

Sitting suspended 6.30 p.m. until 8.3 p.m.

Hon. D. A. NARDELLA — Before the suspension of the sitting I mentioned the aggregation of challenges. Currently both sides have the right to challenge, but the number of challenges does not increase the representative nature of juries. It is important that jurors represent a cross-section of the community. Therefore one should not reduce the number of challenges. The second-reading speech states that by reducing the number of challenges juries will be more representative. People who serve on juries should not be restricted to certain categories. On the one hand, the government is taking away the right to challenge and, on the other hand, the Attorney-General’s second-reading speech says she intends to review those schedules at the earliest opportunity. The Bill is already taking action in that area; it is inconsistent and illogical to use that as an argument in support of reducing challenges.

I am concerned about the implications of clause 9. The United States of America is a prime example — though not the only example — where high levels of organised crime and corruption exist. Large amounts of money are involved in court cases when people are accused of various felonies. I am concerned about juries being sent home; that can result in intimidation and allegations of corruption. The current system has served the State well.

The second-reading speech has not dealt adequately with the sending home of jurors; it is more concerned about costs to the Crown and disruption to jurors. Although those issues are important, as legislators, we must ensure that intimidation or corruption of jurors during the lock-up stage is minimised. The government will be displaying a dereliction of duty if it does not protect jurors. Although clause 9 provides the court with the ability to determine such issues, it will be too late once the juror has been intimidated or subjected to some other act by either the accused or his or her accomplices.

Although New South Wales has not had any problems, that does not mean Victoria will benefit from such legislation. The current system has served society well and should continue. It is an unfortunate fact of life that trials by jury can take weeks or months and disrupt the lives of jurors. That disruption must be expected. Members of the community must accept their responsibility to serve on juries. However, we must ensure that the Victorian system delivers justice; if that means juries must be locked up, so be it. We must ensure that allegations of corruption are not directed at the Victorian jury system. The system has enough problems already with jurors being required to understand legal issues. Extra burdens should not be placed upon them.

I shall briefly comment on Mr Bowden’s contribution. He spoke of the problems of the current jury system where one juror in a panel of 12 can cause personal difficulties. Although Mr Bowden said that one juror may cause difficulties for the accused, the delaying of the jury
JURIES (AMENDMENT) BILL

Tuesday, 23 November 1993
COUNCIL 1159

decision because one person has reasonable doubt about the accusations levelled at the accused is an important concept.

Although I am not a lawyer, during year 10 I undertook legal studies. I understand that reasonable doubt means a juror considers a case not to be proven. A number of honourable members in this Chamber are Queen’s Counsel; they are aware of definitions. Mr Bowden referred to the example of one person holding out and causing difficulties; he said that was justification to warrant the finding of a reasonable doubt. That should not be a problem because the issue at stake is the future of the accused. The juror who holds out in the jury room because of his or her convictions obviously believes the accused is not guilty. It is illogical to suggest that the one out of 12 jurors who does not make the decision unanimous causes personal difficulties.

Like Mr Pullen, I have been a member of a jury that has worked through various issues presented during a trial. A jury must work through the facts presented. It must do so with an understanding of the likely effects for the accused and the victim. Jurors must make assessments of the facts. Because of the importance of the three principles I outlined earlier, the cost of juries is irrelevant. Justice must not only be done, it must be seen to be done. If that means the court must remain in recess for a lengthy period while the jury considers its verdict, so be it. The cost is irrelevant; justice for the accused is of prime importance.

Further issues relate to majority verdicts. In future calls will probably be made for a further watering down of the legislative provisions governing majority jury decisions. The government always uses the argument that the average position should be adopted. Sometimes it says Victoria should change its system because, for example, New South Wales has a different system and Victoria should compare itself with other States or Territories. The Bill represents the thin end of the wedge. At some stage in the future the government will say that the view of 11 out of 12 jurors is not an appropriate majority decision. No doubt it will say that Victoria should adopt, for example, a majority decision of 9 out of 12 jurors, which is the case in the Northern Territory. That provision was instituted for major criminal cases in 1983. And Lindy Chamberlain was convicted because of that system. Subsequent Royal Commissions and inquiries into the Lindy Chamberlain case proved that the legal system does not always work in the best interests of society. The trials affected her life, her liberty, her family and other people around her. The case against her was not proved beyond a reasonable doubt, and the same thing may occur because of the provisions in this Bill.

Mr Bowden referred to justices of the peace being reappointed to Magistrates Courts, but that is irrelevant. Victoria has expert magistrates who are more able than lay people to make decisions that affect the lives of individuals.

It was also said that the legislation may impinge on the rights of people. The government established the Scrutiny of Acts and Regulations Committee to examine Bills before they are introduced into Parliament, yet often it disregards the recommendations of the committee. Government members often scoff at the recommendations of the committee. It is not right to say that the committee did not agree unanimously on certain provisions in the Bill. The considered opinion of the committee was that the legislation may impinge on the rights of individuals, and the House should take note of that view. Ms Asher is a vocal supporter of the rights of individuals, so she should be particularly concerned about the committee’s view of the legislation.

Hon. Louise Asher — You have misunderstood it.

Hon. D. A. NARDELLA — Perhaps the committee should be abolished and we should stop wasting people’s time and not kid ourselves that Parliament is scrutinising Bills to ensure that they do not impinge on the rights of people, as the committee recommends with this Bill.

Hon. Louise Asher — It is not a recommendation.

Hon. D. A. NARDELLA — Ms Asher is correct; it is not, but it is a value judgment of the committee that the provision may impinge on the rights of the individual.

Hon. Louise Asher — Read the footnote.

Hon. D. A. NARDELLA — I read the footnotes. I am concerned because in the committee’s considered view it may impinge on the rights of the individual. The Bill will not assist justice in Victoria and will have the effect of taking away rights of accused persons. I oppose the Bill.

House divided on motion:

Ayes, 28
Asher, Ms
Evans, Mr
Hon. HADDON STOREY (Minister for Tertiary Education and Training) — By leave, I move:

That this Bill be now read a third time.

In doing so I acknowledge the contributions made by honourable members during the second-reading debate. I appreciate the views put by members of the opposition.

There are three parts to the Bill. The first deals with unanimous verdicts and moves to a situation where it is possible to have majority verdicts, but only in the context defined in the Bill. Members of the opposition referred to the Scrutiny of Acts and Regulations Committee Alert Digest No. 16, and I point to some other statements in that digest for the benefit of members of the opposition. The committee noted at page 4 that several other Australian States and the United Kingdom have introduced majority verdicts, and went on to say:

The majority verdict appears not to extinguish the impact of the notion of "guilty beyond reasonable doubt".

That is the committee's acknowledgment that in other jurisdictions this reform has taken place and has not destroyed the notion of beyond reasonable doubt. The committee also went on to say that:

the provisions in other jurisdictions are less cautious than the provision proposed under this Bill.

Victoria is indeed even more cautious than other jurisdictions. Finally, members of the opposition I believe misrepresent — I do not say deliberately — the view of the committee when they state that the committee said the reforms may take away the rights of individuals in these cases. The committee does not say that at all. It says:

that it may trespass unduly on rights and freedoms.

It explains in a footnote to the report that those words are used in accordance with the practice in the Senate — namely, to bring all possible reductions in rights to the attention of Parliament.

The committee is correct in bringing to the attention of Parliament a possible reduction of rights generally; it is a matter for Parliament to take that into account and decide. That is all that has happened here, and it is quite clear from the analysis of what has happened in other jurisdictions and from this report that this form of legislation has not in fact led to the consequences suggested by the opposition.

In response to Mr Pullen, I point out that the jury system has been transformed markedly over the past 400 years. Some years ago the accused could not give evidence; it has been only in the past 100 years or so that the accused has been able to give evidence. Trials are now being conducted in a totally different context from the situation that applied many years ago, and the government believes that is appropriate.

In relation to the other two matters, I point out that despite the reduction in the number of peremptory challenges to which the accused and the prosecution are entitled, other rights and avenues of challenge are still open. I do not believe the reduction introduced in the Bill will in any way affect the rights of people properly to exercise the selection process involved in choosing a jury. There is a respectable line of argument that says there should be no peremptory challenges, that if one is to have a...
NURSES BILL

Tuesday, 23 November 1993

COUNCIL

Hon. R. I. KNOWLES (Minister for Housing) — I move:

That this Bill be now read a second time.

At the outset I apologise to the House for the government not having second-reading notes available, although the Deputy Leader of the Opposition has a copy of the second-reading speech.

Legislation providing for the registration of nurses was first enacted in Victoria in 1923. That legislation was the result of a long and hard-fought campaign by the nursing profession to obtain a means of distinguishing qualified nurses from unqualified persons performing nursing tasks. This remains a key rationale for statutory registration of nurses and, indeed, all registered health professionals today.

The current legislation governing nurses — the Nurses Act 1958 — has not been substantially overhauled since the 1950s. Yet over the past 30 years fundamental changes have occurred within the nursing profession. Today's nurses are recognised as professionals in their own right and as pivotal members of the multidisciplinary health team. In terms of their professional practice, there is ever-increasing scope for nurses to exercise professional judgment and autonomy and further their careers in the clinical, educational or administrative arenas.

There has also been a significant shift in thinking about the nature and purpose of professional registration in recent years. The primary purpose of registration is to protect the public rather than promote the interests of the profession concerned.

Accordingly, this Bill has been developed with the protection of the public in mind.

The Bill is the result of an extensive review of the Nurses Act conducted by the Department of Health and Community Services with the assistance of an expert nursing advisory committee. It will repeal the Nurses Act 1958 and establish a new streamlined Nurses Board that will replace the Victorian Nursing Council. The board will be responsible for the registration of nurses and for holding inquiries into the professional conduct of registered nurses whenever the need arises.

The branches of nursing will be restructured, thereby breaking down artificial barriers that have impeded the mobility and professional development of nurses. Most importantly, in recognition of the changed role, status and educational preparation of the nurse, nurses will now be regulated in a similar manner to other health professionals.

The new Nurses Board will comprise 12 members appointed by the Governor in Council on the nomination of the Minister for Health, being 9 nurses, 2 community members and a lawyer. Unlike the Victorian Nursing Council, the new board will not have elected members. While I acknowledge that the nursing profession would prefer to elect some members to the board, it is considered that elected members could be perceived to be beholden to those who elect them. Any perception of a conflict of interest could have the unfortunate consequence of undermining public confidence in the board.

Nonetheless, the need for a broad range of nursing skills and expertise to be reflected in the board's membership has been recognised and this will be achieved by calling for nominations from the profession or advertising for appropriately qualified nurses. As I have stated, three-quarters of the members of the board will be nurses.

Nurses are currently registered in one or more of seven recognised branches of nursing. These branches are general nursing, midwifery, maternal and child health nursing, psychiatric nursing, mental retardation nursing, State enrolled nursing and mothercraft nursing. To facilitate multiskilling, the removal of restrictive work practices and mutual recognition, the Bill operates to streamline the branches of nursing.

It is a widely held view in the nursing profession that mental retardation nursing has evolved to the point where nursing is no longer its primary focus. Accordingly, the mental retardation register will be
NURSES BILL
COUNCIL Tuesday, 23 November 1993

closed to new entrants after 1995. Given the changing health environment, employers need employees who are multiskilled and flexible. Nurses, like other professionals, need to have a broad basic education upon which specialised expertise can be built. This is especially the case in mental health where the direction of reform is to have clear links between the mental health system and the general health system. Accordingly, psychiatric nursing will become a specialist postgraduate qualification and the register for direct entry psychiatric nurses will be closed to new entrants after 1995. I am pleased to announce that agreement has been reached with the Commonwealth to replace some undergraduate nursing program places with postgraduate places. The agreement includes psychiatric nursing places. This will ensure that future demand for these specialists will be met and will increase the status of psychiatric nursing.

The role of mothercraft nurses has also evolved and only a small proportion are now employed in the hospital setting. Mothercraft nurses have had an excellent record of maintaining a high standard of care. However, given current thinking about the role of professional regulation, it is considered no longer necessary to regulate mothercraft nurses. Of course, the closure of the mothercraft nurse register will not affect the ability of mothercraft nurses to continue working in their chosen field. Closure of this register will not affect employment opportunities or change the educational preparation of mothercraft nurses.

While midwives will no longer be registered in a separate branch of nursing, it is considered important to provide a mechanism whereby the health industry and users of health services can identify persons who possess specialist midwifery qualifications. Accordingly, only nurses who possess a qualification in midwifery recognised by the board will be able to use the title “midwife”. It is also proposed that certificates of registration will state designated specialist qualifications. I wish to emphasise that no person will suffer a disadvantage as a result of the changes to the branches of nursing, as all nurses who are currently registered will have their names included in an appropriate division of the register.

The question of what role the new board should have over nursing education generated considerable debate during the Nurses Act review. The Victorian Nursing Council currently has extensive power to supervise the conduct of nursing courses and determine their content. While these powers were appropriate in an era when nursing education was carried out entirely in hospitals, it is not considered appropriate for the board to dictate how courses in the higher education sector should be run. Accordingly, the Bill simply enables the board to accredit courses conducted by the tertiary sector for registration purposes. However, the new board will retain the capacity to regulate courses conducted in hospitals, such as SEN training courses.

A significant proportion of the Bill deals with inquiries into the health and professional conduct of nurses. Given that the purpose of regulation is to protect the public, this is the core area of the Bill. However, I do not propose to outline these provisions in detail. They are designed to ensure that the board has sufficient power to investigate allegations of misconduct against nurses and that inquiries into professional conduct are conducted fairly. Decisions of the board will be reviewable by the Administrative Appeals Tribunal.

I now wish to make a statement under section 85(5) of the Constitution Act 1975 of the reasons for altering or varying that section by clause 92 of the Bill. It is the intention of clause 92 to alter or vary section 85 of the Constitution Act 1975 to the extent necessary to prevent the bringing before the Supreme Court of actions of the kind referred to in clauses 36, 55 and 76 of the Bill.

Clause 36 of the Bill operates to vary or alter section 85 of the Constitution Act 1975 by providing that a health practitioner in a working or treating relationship with a registered nurse is not subject to any civil liability for reporting to the board that he or she believes the nurse to be incapacitated, if the report is made in good faith. This provision is considered essential to ensure that health professionals are not deterred by the threat of litigation from reporting to the board nurses who may be unfit to practise nursing. It is considered vital given that the primary purpose of the Bill is to protect the public.

Clause 55(3) of the Bill varies or alters section 85 of the Constitution Act 1975 by providing that no action for defamation lies against the board or its members for giving a notice under proposed clause 55(1). That clause requires the board to notify any determination to impose conditions or restrictions on the practice of a nurse, suspend or cancel the registration of a nurse to the nursing registration authorities in the other States, the Australian Nursing Council, the nurse’s employer and, so far as possible, all nurses agents.
The objects of the Bill will not be fulfilled if nurses whose practice has been restricted or who have been deregistered or suspended can continue to practise either in Victoria or elsewhere because notice of the board’s action is not communicated to the relevant authorities. This provision is essential to ensure that the board and its members can communicate vital information to the relevant authorities without the threat of civil action for defamation against them.

Clause 76 of the Bill alters or varies section 85 of the Constitution Act 1975 by providing that a member of the board or the person responsible for keeping the register is not personally liable for anything done or omitted to be done in good faith and without negligence in the exercise of a power or duty under the Bill or in the reasonable belief that the act or omission was in the exercise of a power or duty under the legislation. The provision is considered essential to protect the board and the person responsible for keeping the register from personal liability for carrying out the functions conferred upon that person by statute.

I am confident that the Bill will ensure the continuing provision of high-quality nursing care in Victoria.

I commend the Bill to the House.

Hon. C. J. HOGG (Melbourne North) — I am sure every member of this House wishes to see an excellent health care system in this State. Every one of us knows that the nursing profession is the rock on which a good health care system is built, be it the work of the community nurse or health educator; the district nurse attending to the needs of the house-bound who are mostly elderly patients; the nurse providing specialised care to a distressed patient in a psychiatric hospital; or the critical care nurse in the intensive care ward.

The community also values highly the work of nurses, although most of us fail to realise how complicated and technical it has become in many areas. I wonder if we ever stop to think how much we expect of nurses. The work nurses do has changed enormously over the past few decades. Nurses’ education has obviously changed; it is now college based with frequent hospital placements after the first year. It is a far cry from the hospital-based training of just a decade ago.

For nursing care to be consistently good in decades to come nurses must be appropriately trained to general standards, and many will go beyond that.

The profession must continue to be valued by the community, as has always been the case; by Parliament, which from time to time debates Bills such as this which affect the role and working lives of nurses; and by the government of the day, which has the major role responsibility for the health care system.

The Bill seeks to replace the Nurses Act 1958 with a new statutory framework for the registration of Victorian nurses, which will do a number of things. It will set up a registration board for nurses, provide them with a new registration scheme, establish a process of dealing with nurses whose capacity to practise is in question and create new disciplinary procedures.

For many years there have been arguments that changes should be made to the Nurses Act, and the process of reviewing the Act has gone on for a long time. However, because of the outrage and stress that have accompanied the Bill, one has to wonder whether the government has been listening and responding to what nurses and others have been saying or whether the consultation of the past few months has been meaningless.

If ever a Bill should have been allowed to lie over between Parliamentary sessions, I truly believe this is it. I find it hard to believe the government is pressing on with the passage of the Bill when so many different and significant voices are asking to be heard and are asking for a response — preferably a legislative response — to their concerns.

I shall quote a letter from the President of the Victorian Chapter of the Royal College of Nursing, Australia, Mrs Stevens, addressed to the shadow Minister for Health, Mr Roper:

On behalf of the Royal College of Nursing Australia, Victorian Chapter, I am writing to express the membership’s serious concern in relation to the Nurses Bill 1993. Specifically, these concerns relate to the lack of response to initial consultations with the profession and the inadequacy of the consultative process.

Most evident is the fact that very little change has been made to the Bill despite numerous submissions made by various groups and organisations representing the nursing profession. Clearly the process of consultation has been inadequate and it now appears that the State government is keen to rush the Bill through Parliament.

In its current form the Nurses Bill 1993 is not acceptable to members of the nursing profession. The time
available between the second and third readings of this Bill is insufficient to consult with membership. I therefore request that you seek a deferral of the third reading of the Bill to allow time for meaningful consultation to occur.

The letter is dated 5 November. Although the Bill has been amended in another place, this is certainly the version that is causing Mrs Stevens some concern, and hers is a very significant voice. I shall cite three other letters that I believe should have rung alarm bells with the government. The first is from Dr Sturup, the Secretary of the Public Sector Psychiatrists Association of Victoria. Again, the letter, which is dated 11 November, is addressed to the shadow Minister for Health, and it states:

Re: Nurses Bill

The Public Sector Psychiatrists Association Incorporated has written to the Hon. Marie Tehan expressing our concern about the effects of the Nurses Bill 1993 as we see it.

Despite the rhetoric of the Hon. Marie Tehan's presentation speech it seems that the Bill opens the way for inadequately trained nurses to work with psychiatric patients. This has the potential to put both nurse practitioners and their patients at risk. I know that many generally trained nurses feel uncertain and threatened by this possibility.

The Bill may be a platform, over time, for better general training. However, it is difficult to see how this will be achieved for the large number of nurses which will be included in the division 1 register.

If I were in government that letter would concern me considerably.

The next letter is from the president of that association, I shall quote it because it makes some different points. The letter is dated 8 November and is addressed to the Minister for Health, the Honourable Marie Tehan. The letter states:

The Public Sector Psychiatrists Association Incorporated wishes to express concern in relation to aspects of the proposed Nurses Bill before Parliament.

Of particular concern to the association is the possibility under section 60 for nurses listed under division 1 to be eligible and available to work at all levels as psychiatric nurses without adequate, formal, specialised training in psychiatric care and treatment.

PSPA believes that this could lower the standard of specialised care available for patients in need of psychiatric treatment. Potentially this could lead to both inadequately trained nursing staff and their patients being put at risk, especially where dangerous patients may be involved.

PSPA accepts that multiskilling of individuals which increases their flexibility ought to be encompassed in all professional callings. This should be achieved as a result of adequate training in order to ensure that those professionals are able to carry out their duties with competence, care and safety.

As a professional association representing psychiatrists and medical officers working in public sector psychiatry we are acutely aware of the value of well trained and competent professional nursing care for the treatment and wellbeing of psychiatric patients. Anything short of that level of expertise raises serious concerns as to the potentially dangerous situation that may arise involving the health and safety of both nurses and patients.

PSPA representatives would be pleased to meet with you and/or your departmental advisers ...

The third letter is from Professor Ann Woodruff. It is addressed to the opposition spokesman for health, Mr Roper, and is dated 23 October:

Attached please find a copy of a letter sent to Dr Napthine, the Parliamentary Secretary to the Minister for Health. It expresses an urgent concern regarding provisions of the Act, which we understand is to be debated in Parliament during this week.

We were notified yesterday that there seems to be a misapprehension about the nature of the safe areas of beginning practice of graduates from pre-registration general nursing courses currently conducted in Victoria. As the letter explains, the failure to gain a four-year pre-registration degree caused a necessary limitation to the areas of nursing able to be covered. Therefore, we do not believe that graduates of three-year programs are prepared upon first registration to practise in areas of psychiatric and mental retardation nursing, which would seem to be the consequence of entry to the A register upon graduation.

She adds in brackets:

We have not been able to view the provisions of the tabled Act to this date.
The letter continues:

If our information is correct, the Heads of Schools of Nursing, Victoria, ask that the dangers to both consumers and graduates of inadequately prepared nurses being registered to practise in psychiatric and mental retardation nursing be raised in debate.

Those letters raise significant concerns. The Bill may affect patient and nurse health, patient and nurse safety and patient care. If I, as Minister, had received those letters I would have wanted the Bill to lie over until the next session so more work could be done. I am very disappointed that that is not the case. A number of concerns could have been worked through again and a legislative response could have been incorporated into the Bill. I acknowledge that amendments were moved by the Minister in the other place and that the Bill incorporates those amendments, but I do not believe those amendments address precisely the concerns I am raising.

The concerns raised in the three letters I quoted fall into the category that the Minister says is her chief concern — that is, the protection of the public and of patient care. I want it understood that that is what the opposition will be putting forward and that it has significant concerns that have been sparked by the volume of correspondence that has been received over some weeks and months. The protection of the public is also the concern of the opposition and it must be the focus of this Bill. Those letters raise doubts about that.

I am concerned about the introduction of a structure which has distressed and affronted many nurses, and it is a poor way to conclude the consultation. It is a poor way to demonstrate understanding and respect for a profession carrying out one of the most difficult jobs in the community, a profession that the community certainly respects. In a letter to the honourable member for Doncaster in the other place, Mr Perton, the Chairman of the Scrutiny of Acts Committee, dated 3 November 1993, the Secretary of the ANF writes:

The abolition of an elected nurses board and replacement by a Ministerially appointed board is a denial of the democratic process that has been the right of the profession since its introduction.

Obviously, the opposition has had a lot of correspondence on that point, including letters also from an association it sees as being professional and responsible in its pronouncements. That is something it takes seriously.

Hon. R. I. Knowles — Do you accept that the ANF is a trade union?

Hon. C. J. HOGG — I accept that it as a professional association; it is the union body of nurses and I believe it is an extremely responsible voice. In a letter to the shadow health Minister dated 27 October on the issue of the abolition of the registers, the ANF writes:

The abolition of registers removes the legal requirement arising from the existence of such registers, to ensure that only appropriately qualified nurses are employed in the area of their expertise. To “approximate” nursing qualifications into two single registers will have one result — a decline in patient care standards. The ANF fails to see how it can be argued that this is in the public interest.

The opposition also fails to understand how that can be argued to be in the public interest.

At the start I explained that the Bill seeks to replace the current Victorian Nursing Council with a Ministerially appointed board. The opposition does not take exception to the number of members on the board — that is, 9 nurses, 1 lawyer, and 2 community members. Of the 9 nurses on the board, none will be elected by nurses. That causes the profession considerable difficulty, which is understandable. From the correspondence the opposition has had with nurses it is obvious that that provision is causing a lot of stress, and honourable members should think about that change and ask themselves whether it might be seen as the government not having as much confidence in the ability of the nursing profession to make judgments about the people who represent it on that board as it should. I can see little reason for moving away from a structure in which there is some element of election.

The other feature of the Bill mentioned by many authority figures is clause 60, which spells out that nurses listed under division 1, that is generally registered nurses, are eligible to work at all other levels.

We understand about flexibility and multiskilling, which are euphemisms for generality skills, but I place on record the opposition’s belief that psychiatric nursing, midwifery and maternal child health nursing require specialist training. We are
worried that because of the change to registration there may be circumstances in which the specialist aspect of nursing does not receive the same weight as it has in the past and that over time this may lead to a loss of skills in the system.

The second-reading speech emphasised additional psychiatric nursing and postgraduate places, and while we are pleased about that we are concerned, and we share the concern of the Psychiatrists Association and the Royal College of Nursing, that there could be a general loss of skills because of the way the Bill is constructed and the way the legislation may be applied. With that in mind, I move:

That all the words after "That" be omitted with the view of inserting in place thereof "this Bill be withdrawn and redrafted to provide that —

(a) half the Nurses Board membership be elected nurses; and

(b) patients continue to be protected by ensuring that there is specific provision for nurses practising in areas of specialty such as psychiatry, midwifery, and maternal and child health to have appropriate qualifications and clinical experience."

One does not want to be an alarmist, but examples such as those I have given should have alerted the government to real concerns about the possibility of danger to patients caused inadvertently by nurses who are perhaps not adequately trained in a particular specialty.

A number of letters have caused me alarm, but I should like to quote a letter from Professor Woodruff dated 22 October 1993, which was originally sent to Dr Napthine, the Parliamentary Secretary to the Minister for Health. It states:

It would be desirable that division A of the register be reserved for comprehensively educated nurses, qualified with a four-year degree to be beginning practitioners in all areas of nursing; and for those whose initial registrations at certificate, diploma or three-year degree level have been converted to a comprehensive four-year level by means of an educational program. Division B of the register should be retained with a "sunset" clause, and abolished when those proposed to be registered in this division become qualified to enter division A. There should thus eventually be one division (A) of the register, with endorsement for the register for persons further prepared to practise in particular areas of nursing, e.g., midwifery, maternal and child health, psychiatric, mental retardation nursing, critical care etc.

The present pre-registration nursing courses in Victoria cannot be described nor function as comprehensive programs, as their three-year duration prepares graduates only to begin practice in acute care, extended care and community nursing.

Our failure to obtain a four-year pre-registration program, together with the introduction of direct entry tertiary courses in psychiatric and mental retardation nursing, caused us to limit the teaching hours in these areas. Additionally, due to the introduction of these new tertiary programs it was found to be not possible to obtain sufficient clinical placements to support the psychiatric and mental retardation theoretical content of the proposed four-year curriculum.

We, therefore, do not believe that our present pre-registration general nursing courses adequately prepare graduates to enter beginning practice in these areas, and cannot be described at this time as "comprehensively" educated in the accepted sense as "beginning practitioners in the areas of general, psychiatric and mental retardation nursing".

That letter by Professor Ann Woodruff, Convener of the Heads of Schools of Nursing, Victoria, is thoughtful and detailed, and not the sort of letter somebody responsible for so much of nursing education would pen lightly. It cannot be shrugged off as simply an industrial concern, if one wished to shrug off industrial concerns. There is a real concern about practice and the way jobs are carried out in the hospital setting and the health care system. Because most honourable members do not know the hospital setting on a day-to-day basis, it is important to read the letters that are sent to them or copies of the letters that are sent to other members by people who have an overview of the system. It is easy for the government to say the Australian Nursing Federation represents a vested interest, but that would not be said of similar issues.

These are responsible, significant voices of people who are interested in the day-to-day rivalries and demarcations that might take place and the best sorts of health care and nursing practice that can be provided. Their arguments are impeccable and I take them very seriously indeed. We can only go on stressing those concerns, which go to the heart of every issue to do with patient care, and although we hope we are wrong we think their concerns alert us to the potential of patient health being put at risk.
Parts of this issue are being rushed into, and in my view sensible regulation is a great protection. Unfortunately, it is only after things have gone wrong that the value of regulation begins to be widely understood and appreciated. We all know that lengthy consultation has taken place, but it seems that in the past few weeks the interested groups and individuals have realised that the points they thought people understood and were acting upon are not being incorporated into the legislation. That worries the opposition.

Perhaps the angriest and most bewildered letters the opposition has received are from midwives. I have a letter dated 17 November that was addressed to the shadow Minister for Health from Mrs Priestley, the State President of the Victorian Branch of the Australian College of Midwives. Midwives have wanted to see some change in regulation but have found to their disappointment that the regulations they believed would be changed have been replaced. They share the concern other correspondents have expressed that nurses may be called upon to practise in areas in which they have not had sufficient training. I say “may be called upon”, but it is hard to guarantee that that will not happen. The letter states:

Following on from my comments in the letter of 11 November 1993 regarding the above clause 1, I make these remarks for clarification. There is no such person as a “comprehensive” nurse, i.e., a registered nurse who can practise across all areas of nursing included in division 1. Current undergraduate nursing programs are designed to produce a beginning practitioner in general nursing only. Curricula allow for a maximum of 40 hours of theory in maternity nursing with one to two weeks of clinical experience as observers in a maternity unit, i.e., no “hands on” experience. This does not produce a registered nurse knowledgable enough or sufficiently skilled to work in areas of midwifery or maternal and child health, even under supervision.

I understand some universities are considering dropping maternity nursing from the undergraduate nursing program because of time constraints and difficulty getting appropriate placements in clinical settings even for observation. Victoria University (Altona Campus) does not include maternity nursing in their nursing curriculum.

It is my professional opinion that nursing graduates from current university undergraduate programs are not “comprehensive” nurses, but beginning practitioners in general nursing only. They are not sufficiently knowledgable or skilled to practise in the areas of midwifery or maternal and child health.

Most of the concerns I am putting forward are about patient care. The opposition believes this legislation will not be good for the health system and that, far from protecting people, it will allow for greater risks because those registers will be collapsed. I accept that is not the government’s intention, but it could be a consequence of the legislation.

The opposition is also concerned that the new board will have no elected representatives. That could be read as a statement of no confidence in nurses, which is a pretty unhealthy state of affairs. The opposition also places on record the many concerns of nurses about the lack of representation in the informal hearing process. Although I acknowledge that informal hearings can be useful in establishing whether a case should be heard or whether there has been a misunderstanding about someone’s actions, it is fair and makes good sense to permit representation so that the nurse’s point of view will be properly and adequately covered. Any competent chair of such a hearing should be able to prevent arguments becoming legalistic or technical.

Nurses are concerned that this Bill omits the provisions of section 23C(2) of the Nurses Act, which provides that:

A nurse is not guilty of professional misconduct only on the ground of action taken by that nurse pursuant to an industrial dispute.

There is real anxiety that ordinary industrial action which might be taken by a nurse from time to time could be construed as professional misconduct and that the legislation could be used against nurses in that way. During the Committee stage I will propose an amendment to make it clear that the legislation will not be used in that way. Even though it has been said that that is not the government’s intention, it is only fair that it be made clear on the record.

It is almost impossible to overstate how much this Bill needs further debate and clarification. Each of my colleagues will argue for the reasoned amendment from different points of view. It is well known that consultation on the Bill has been lengthy, but opposition members fear the government has not heard or responded to the responsible concerns that nurses, their organisations and their educators are putting forward. We cannot afford to get the legislation wrong, and the opposition is concerned that that may happen.
The opposition asks the government to think again and delay the Bill until those concerns have been laid to rest and the government considers the arguments of organisations and individuals who have a more detailed and practical understanding of the matter than any honourable member will display in the debate this evening. All honourable members seek to understand as well as they can the way hospitals and the health care system work, but they do not understand it as well as the practitioners, the educators and the individual professionals.

I conclude my remarks by hoping that the reasoned amendment will be agreed to. Each of my colleagues will address different aspects of the Bill and each of them is worried that after such long consultations there is still a great deal of anger, dissent and misunderstanding of the Bill. The Bill should be redrafted so that those concerns can be taken on board and addressed.

Hon. LOUISE ASHER (Monash) — I support the Bill and oppose the reasoned amendment. I will spend some time going through what the Bill does because unfortunately the government’s intentions have been misrepresented during lengthy consultations. Furthermore, the amendments the government will introduce have also been misrepresented. I will also take time to go through the individual clauses of the Bill and outline the government’s reasons for this sensible approach to improve the professional status of nurses.

Firstly, as Mrs Hogg mentioned, the Bill repeals the Nurses Act 1958, which was based on registration, which was introduced in 1923. Times have changed since 1958. I believe Mr Nardella was born in that year, and I was two. I suggest that many things have changed. In particular, the nursing profession has changed substantially. Training of nurses has changed from being hospital based to tertiary training. Even more importantly, nursing has become far more specialised and the type of technology in the hospital system has changed radically. That means the demand for highly specialised operators of that technology has fundamentally altered and irrevocably changed the nursing profession.

In 1958 nurses were not regarded with the same degree of professionalism as they are now. The social and professional context in which nursing is set today has changed remarkably since 1958, and the Bill is the first attempt to address those professional changes, which is one of the government’s objectives in bringing forward the Nurses Bill and repealing the Nurses Act 1958.

I will go through in some detail what the Bill does. Unfortunately, as I said earlier, a substantial scare campaign run by the Australian Nursing Federation (ANF) has been picked up by individual nurses. Other nursing organisations have also fallen victim to the misrepresentation mischievously perpetuated by the ANF.

The first purpose of the Bill is to protect the public by providing for the registration of nurses and the investigation into the professional conduct and fitness to practise of registered nurses. The second is to establish the Nurses Board of Victoria and the Nurses Board Fund of Victoria. The third is to repeal the Nurses Act 1958. The fourth is to provide for other related matters.

The Bill will set up a register of nurses, which will be divided into five divisions. Division 1 will apply to general nurses, midwives and maternal and child health nurses; division 2 to State enrolled nurses; division 3 to psychiatric nurses; division 4 to mental retardation nurses; and division 5 to mothercraft nurses.

The establishment of the register will introduce a substantial change, and it is that matter which is the subject of the opposition’s reasoned amendment.

The Bill will also terminate the operation of the Victorian Nursing Council and establish a Nurses Board, which is outlined in clause 65 of the Bill. The Nurses Board has caused a fair amount of kerfuffle among members of the opposition and the Australian Nursing Federation. According to clause 67 the Nurses Board will be constituted as follows:

1. The Board consists of 12 members nominated by the Minister and appointed by the Governor in Council.

2. Of the persons appointed to the Board —
   a. 9 must be nurses registered under this Act of whom 2 must be registered nurses who are registered in division 2 of the register;
   b. 1 must be a lawyer; and
   c. 2 must be persons who are not nurses.

I presume the last two people will be representative of the general public.

Hon. Jean McLean — They will know all about it!
Hon. LOUISE ASHER — Most professional boards have some public representatives on them, and I support that. The public interest component on professional boards is an integral part of the necessary balance.

Hon. R. I. Knowles — It’s actually Labor Party policy!

Hon. LOUISE ASHER — The fact that Mrs McLean does not agree with Labor Party policy will come as no surprise to any member of the House.

Clause 66 refers to 14 aspects of the powers, functions and consultation requirements of the proposed Nurses Board. I will not read them all, but they are diverse and are in keeping with a board that is responsible for regulating a modern professional health group. The board will also have the power to set up an advisory committee when it believes there is a need for additional expertise. Again that is very much part of a modern, streamlined professional administration.

The Bill also establishes a new disciplinary system, which has been the source of comment by the opposition and the ANF. The Bill provides a new definition of “unprofessional conduct”. I refer the House to the definition in the Bill because it too has been misrepresented by many nursing groups. The definition of “unprofessional conduct” in the Bill is reasonable. It states:

“unprofessional conduct” means all or any of the following —

(a) professional conduct which is of a lesser standard than that which the public might reasonably expect of a registered nurse; or
(b) professional misconduct; or
(c) a finding of guilt of —
   (i) an indictable offence; or
   (ii) an offence which affects the nurse’s ability to continue to practise; or
   (iii) an offence against this Act or the regulations.

The opposition in this House and in the other place has become sidetracked on the issue of industrial action. I am happy to debate industrial relations at any time, but it is probably not appropriate under this Bill. The definition of unprofessional conduct is as contained in the Bill. It says nothing about industrial action. That definition of “unprofessional conduct” is the one that will prevail. This furphy about industrial action has been raised by the opposition to pander to the ANF and to divert attention from the more professional and disciplinary considerations that the government is trying to introduce into the nursing profession.

The new complaints mechanism that the measure will introduce has been the subject of severe misrepresentation by the ANF for most of the year. The matter has been raised not only over the past few weeks, as Mrs Hogg suggested, but for most of the year. The types of complaints lodged against nurses fall into two categories: firstly, those that will be dealt with by the Health Services Commissioner; and secondly, those that will be dealt with by the Nurses Board. Once a complaint gets to the board a number of steps which are consistent with natural justice principles will be implemented, according to the Bill. Nurses will have many options under the disciplinary system proposed by the Bill. I am disappointed that the ANF has chosen to argue the issue by simply suggesting that nurses will not have a right to representation at informal hearings when informal hearings constitute only one small component of the disciplinary system that will be established.

Firstly, there is provision under clause 22(2) for a preliminary investigation. It states:

In order to determine whether or not it is necessary to conduct a formal or informal hearing into a complaint, the Board must conduct a preliminary investigation into the complaint.

On the completion of that preliminary investigation under clause 23(1) the board will then determine:

(a) that the investigation into ... the matter should not proceed further; or
(b) that an informal or formal hearing should be held into the matter.

A preliminary process is required to be followed in the first instance before a more serious hearing takes place. The details of the nature of the preliminary investigation are dealt with in clauses 24, 25 and 27 of the Bill. I refer the House particularly to clause 27(1), which provides for notification to a nurse, because it has been the subject of misrepresentation. It states:

If the Board has made a decision to investigate the matter, the Board must give notice of the investigation to the nurse.
It is specified that the nurse shall have that notification in writing, that it be sent by registered post and so on. Once that stage of the preliminary investigation is over, the second level of disciplinary procedure to be followed is that of the informal hearing for what could be called less serious complaints.

The constitution of a panel for informal hearings is outlined in clause 38. I direct the attention of the House to clause 38(1) where, in response to legitimate requests from the nursing profession that panels constituted under an informal hearing should have registered nurses on them, the Minister for Health introduced an amendment to ensure that a panel that is appointed will consist of not more than three members of the board, of whom at least one must be a registered nurse. Mrs Hogg said the government had paid insufficient attention to consultation, but the fact that a registered nurse has been included on the panel for informal and formal hearings by a House amendment in the other place demonstrates that her argument does not hold up. In many instances the government has listened to the requests that nursing groups have put to it. As a result of that legitimate request the government said, "Fair enough" and introduced an amendment. The ANF's allegation that nurses would not be tried by nurses is spurious because it has already been answered by the amendment introduced by the government.

I shall make a few more points on the nature of informal hearings because several comments that have been made about these hearings are inaccurate. During the course of an informal hearing it is the option of the nurse to move to a formal hearing if she or he so chooses. That is an important component of the Bill. Although it is true that under clause 39(d) there is no right to representation at an informal hearing, the nurse is entitled to be present and to make submissions, and at any stage to request that an informal hearing become a formal hearing where the nurse has the right to representation.

For the ANF to argue that the disciplinary system the government is setting up will not allow nurses representation is wrong, because nurses are allowed representation at formal hearings, and if the board decides to take the nurse to an informal hearing it is the option of the nurse to move to a formal hearing at any stage of the informal hearing or, indeed, after the informal hearing has concluded. That complies with the concept of natural justice.

Under clause 40(b) the nurse who is the subject of the hearing is entitled to be present, to make submissions and to be accompanied by another person. The proceedings of the hearing are not open to the public under section 40(c), which obviously gives professional protection to nurses for the less serious matters that will be dealt with at informal hearings.

I refer to clause 41, which deals with the findings and determinations of an informal hearing.

**Hon. B. W. Mier** — Another kangaroo court under the thumb of the Minister!

**Hon. LOUISE ASHER** — I am happy to hear Mr Mier talk of a kangaroo court in the context of an informal hearing — that may be Mr Mier's definition of a kangaroo court but it is not the way the medical profession regards it, and I do not think even the nursing profession has gone so far as to say that this is a kangaroo court. Mr Mier can keep going with his unintelligent comments — they help my argument.

**Hon. B. W. Mier** — You are the unintelligent one.

**Hon. LOUISE ASHER** — That can go on the record!

**Hon. B. W. Mier** — I am proud of it being on the record against you, you fool.

**Hon. LOUISE ASHER** — Why doesn't Mr Mier get up and make a contribution to this debate?

**Hon. B. W. Mier** — Why don't you sit down — you have never made an intelligent comment in your life!

**Hon. LOUISE ASHER** — It is indicative of the type of contribution Mr Mier makes to this place.

**Honourable members interjecting.**

**Hon. D. A. Nardella** — You are really talking rubbish, now.

**Hon. LOUISE ASHER** — It is indicative of the type of contribution Mr Mier makes to this place.

*Honourable members interjecting.*

**Hon. LOUISE ASHER** — To try to claim that informal hearings are kangaroo courts is a load of nonsense. I turn to clause 41, which deals with the
findings and determinations of an informal hearing. If the panel finds a nurse has engaged in unprofessional conduct which is not of a serious nature the panel may make one or more of the following determinations:

(a) that the nurse undergo counselling;
(b) that the nurse be cautioned; and
(c) that the nurse be reprimanded.

I direct to the attention of the House the fact that the nurse’s registration is unaffected by the findings of any informal hearing. As I indicated earlier, under clauses 42 and 43 the nurse has the option to move to a formal hearing at any time during the process of that informal hearing, or afterwards — that is guaranteed by clause 43.

I turn to the third tier — and Mr Mier may think this is a kangaroo court as well — of the new disciplinary structure, which is a formal hearing for a more serious breach or a formal hearing if the nurse asks to have a panel hear the particular type of disciplinary action. Clause 45 refers to the composition of the panel for a formal hearing. The panel should consist of no fewer than three members of the board, of whom one must be a lawyer and one a registered nurse, which is an amendment introduced in the other place by the government in response to legitimate professional concerns of nurses, who want their peers to sit on these panels. The government believes that is fair enough, and has introduced that amendment.

Clause 47 relates to the conduct of a formal hearing, and I specifically direct attention to subclause (b), which provides:

(b) the nurse who is the subject of the hearing is entitled to be present to make submissions and to be represented ...

There is a clear right to legal representation. Clause 48 refers to findings and determinations of a formal hearing into conduct, and there are several options and determinations for the panel to make after a formal hearing. The panel could require the nurse to undertake counselling, it could caution the nurse, it could reprimand the nurse, it could require the nurse to undertake further education, it could impose conditions, limitations or restrictions on the registration of the nurse, it could impose a fine on the nurse, it could suspend the registration of the nurse or it could cancel the registration.

Again, I point out that the fines and impact on registration are confined to formal hearings. The most important component in this disciplinary hearing — and perhaps Mr Mier thinks the Administrative Appeals Tribunal is a kangaroo court as well — is that the decision of the formal hearing is subject to review by the Administrative Appeals Tribunal. Clause 58 refers to review by the AAT.

Hon. B. W. Mier — This comes out of 1935 Nazi Germany.

Hon. LOUISE ASHER — I do not regard the fact that a nurse can appeal to the AAT as reminiscent of Nazi Germany. Mr Mier’s comment is out of place.

Honourable members interjecting.

Hon. LOUISE ASHER — Under clause 58 findings or determinations made at formal hearings can be referred to the AAT. I point out that the government made this amendment to its Bill in the other place. Originally determinations of the formal hearing were subject to review by the AAT, but the government has added that findings and determinations should be subject to that review. It means that nurses’ rights are more than adequately protected by the Bill.

I refer to criticism of the Bill. As I suggested earlier, the ANF conducted an unwarranted scare campaign and levelled unwarranted criticism at the Bill. The Labor Party in the other place in many instances deliberately ignored the amendments the government brought forward. I refer to board composition. The Labor Party argued that a component of the Nurses Board — half — should be elected, whereas the Bill provides for an appointed board, not an elected board. The Victorian Nursing Council consists of 29 members. I am pleased that the opposition does not advocate that 29 members should be retained. I should put this in perspective. The Victorian Nursing Council, which comes under the Victorian Nurses Act 1958, includes 6 elected members — not all 29 are elected; 6 members are elected by the profession. The component of the originally elected members is important.

The provision concerning the appointment and removal of nurses by the Governor in Council is much the same as the provision in the 1958 Act. As has been clearly outlined in the second-reading speech, the rationale both for the Bill and for an appointed rather than an elected board is the public interest. The Minister has given the commitment that she will call for nominations from a range of groups. She said the membership of the board will
be balanced, and I believe her undertaking is significant. In having an appointed rather than an elected board one ensures a balanced membership that has the necessary expertise.

The Minister made her point clearly in a letter published in the Age on 17 November:

The Bill establishes an independent 12-member board to oversee registration. It is not intended to be a forum for the promotion of the nursing profession; other professional bodies exist to do this. As a consequence, board members will be appointed rather than elected and will come from a variety of backgrounds. Nurses will thus move towards a board arrangement that is similar to that used by other health professionals including that set out under the Medical Practitioners Act.

Under the Medical Practitioners Act the medical board is appointed rather than elected; it is significant that the medical board is not elected by its peers.

The aim of the Bill is to ensure that the nursing profession is brought into the modern era and that it is accorded the status it deserves. The appointment of the board has been criticised as meaning that it will be subject to government direction. Nothing could be further from the truth.

I note that in the other place the ALP argued that under the Bill the Minister will play an increased role in the operations of the board, but that is not so. I direct to the attention of the House clause 66, which says the board will have to pay regard to the Minister’s advice — but under the current Act the Minister is all powerful. Section 15 of the Nurses Act 1958 gives the Minister the power to tell the council whatever he or she wants to tell the council. The Labor Minister who toyed with that power most was Mr White.

The Bill represents a significant diminution of the power of the Minister for Health, so any argument that the Minister is seeking to increase her power is completely incorrect. If one looks at the extensive powers given to the Minister under the 1958 Act, one sees that paragraph (a) of the reasoned amendment does not hold up.

Paragraph (b) of the reasoned amendment concerns the ALP’s calling for the protection of the public through the statutory provision for nursing specialties. A series of wild and exaggerated claims has been made that non-trained nurses will be allowed to practise and that nurses trained in one area will be allowed to practise in areas in which they are not qualified. In the other place the honourable member for Coburg went so far as to claim irresponsibly that the Bill would risk lives. Although I expect the honourable member for Coburg to make that sort of comment, I do not expect that sort of claim to come from Mrs Hogg. Although she did not go so far as the honourable member for Coburg, she certainly argued that there was a risk, and that is a nonsense.

I understand the concern of nurse educators about the ability of comprehensively trained nurses to practise unsupervised, and I understand their concerns that undergraduate courses qualify nurses to begin as generalist practitioners. The government is trying to change the way the nursing profession is perceived. I shall again compare nurses with doctors by saying that doctors specialise after undergoing general training, and the same notion underlies the Bill. The claim that non-qualified nurses will be allowed to practise is absolute nonsense. The qualifications for registration and restricted registration are clearly set out.

However, the Bill represents a change in culture; it is a shift away from the notion that the specialties should be included in statute. The government argues that the current situation, where seven separate branches of nursing are referred to in statute, is not necessarily the best way to go. One register with a number of divisions, with division 1 applying across all categories, will bring Victoria into line with other States and, more importantly, will bring nurses into line with other health professionals. There are a substantial number of controls on the employment of nurses that will ensure that nurses who are not sufficiently trained in certain specialised areas will not practise in those areas.

If the opposition is arguing that hospital managers will look only at a register and not at certificates of experience and the like, it has a dim view of those managers because employers have a clear duty of care. Employers have legal responsibilities, which is linked to my earlier point; and insurance policies and so on require employers to employ appropriately qualified people.

I shall give one example of the way employers, hospital managers and hospital administrators have already ensured that that is so. Critical care nursing is one of the most highly skilled and technical areas of nursing. At present there is not a separate register
for critical care nurses. In theory hospital administrators could employ unqualified nurses to work in critical care, but in practice only the most highly qualified nurses are employed. The duty of care of employers will override any concerns, even the ridiculous concerns the ALP may have, that inappropriately qualified nurses will be employed in the system.

I also direct the attention of the House to clause 66(1)(g), which is important because it ensures that one of the functions of the board is to identify and distinguish between the principal functions that may be carried out by nurses registered in each division of the register.

Ms Kokocinski has just held up the Bill and asked where it was. I refer her to clause 66(1)(g) concerning the functions of the board, not the government.

The Bill creates a considerable number of offences. Without wishing to go through them all I direct to the attention of the House clauses 60 to 63, which impose heavy penalties on people claiming to be nurses when they are not, people claiming to be midwives when they are not, and nurses agents and the like who claim that people are registered nurses when they are not.

I shall not read out all the clauses, but I make the point that penalties are created under the Bill for those types of offences.

It has been argued that unqualified nurses will practise or that nurses will practise in the wrong specialty areas. That is inaccurate; it is a furphy. In a letter from the Minister for Health to the Chairman of the Scrutiny of Acts and Regulations Committee, the honourable member for Doncaster in another place, the Minister says:

It is considered that the primary purpose of statutory registration of nurses, and indeed all health professionals, is simply to provide a mechanism by which employers and the public can distinguish nurses with recognised qualifications from unqualified persons performing nursing tasks.

Accordingly, the Bill provides for a gradual shift away from the notion that certain types of employment should be preserved by statute for particular classes of nurses.

I believe those arguments demonstrate why the government rejects the reasoned amendment moved by the opposition.

A number of criticisms have been made about the disciplinary system established by the Bill. The different types of hearings, such as the preliminary investigation, the informal hearing, the formal hearing and the appeals to the Administrative Appeals Tribunal, indicate that the principles of natural justice have been complied with.

Mrs Hogg accused the government of not having consulted sufficiently on the Bill. A review was undertaken by the former Labor government in 1989 and an options paper was prepared in 1990. Extensive consultation was undertaken by the government, the coalition Bills committee, the Parliamentary Secretary to the Minister for Health, the honourable member for Portland and the Minister herself.

Hon. Pat Power — With whom?

Hon. LOUISE ASHER — I shall go through all of that. I am happy to continue the marathon. If the interjections continue, I will. The consultation led to a number of significant changes. Mrs Hogg appears to regard consultation as, “You tell me what the union movement wants and I will incorporate all those requests in the Bill”. That is not consultation. Consultation is about hearing the arguments from various groups. We have done that. But not every argument is necessarily acceptable. I noted that Mrs Hogg said, “If I had received as many complaints as this about a Bill I would have let it lie over”. That is consistent with a certain style, not only of Mrs Hogg but of the former ALP government. I do not believe it is a matter of responding to loud comment by holding the Bill over. If one listens to what people have to say and one acts on what is reasonable, surely, given that we have not had any changes since 1958, deferring the legislation for another period is not necessarily the way to go.

Mr Power asked for details of the consultation.

Hon. Pat Power — Names and dates!

Hon. LOUISE ASHER — A series of preliminary drafting instructions was distributed to all nursing groups in June this year. The accusation that the government consulted only during the last few weeks is nonsense. Drafting instructions were provided to various nursing organisations in June.

Hon. Pat Power — Who were they?

Hon. LOUISE ASHER — I will tell you. Among others the groups who received the drafting instructions were the Health and Community
Services Union, the Australian Nursing Federation, the Royal College of Nursing Australia, the Association of Directors of Nursing, the Victorian Nursing Council, and the Liquor, Hospitality and Miscellaneous Workers Union, which represents mothercraft nurses.

Hon. Pat Power — Is that all?

Hon. Louise Asher — There were others. All the groups I mentioned came before the coalition Bills committee, of which I am a member.

Hon. Pat Power — Which others?

Hon. Louise Asher — If you read the contribution to the debate made by the honourable member for Portland in another place you will get a complete list. I am referring to the groups that came before the coalition Bills committee to present their cases. The members of the committee listened avidly to the arguments put forward.

The ANF was determined to misrepresent the government from the beginning. In a press release from the Minister for Health on 15 July one can see how determined the ANF was to misrepresent the government’s position back in July. The press release states:

“A draft of the proposed new Bill was sent to nursing organisations in early June with an invitation for comment,” the Minister said ...

The final drafting of the Bill has not yet taken place, and the ANF has misrepresented the government’s position by claiming that our position is set in concrete.

The Minister offered to put the government’s position and field questions at today’s meeting of nurses but the union denied her that opportunity.

The ANF was determined to embark on its course of misrepresentation, although it had been given drafting instructions so that it could comment on them. It would not even let the Minister address its meeting. That is how much it wanted to hear what the Minister had to say.

A number of revisions were made as a result of consultation undertaken by the government on the original drafting instructions. I direct the attention of the opposition to a press release from the Minister for Health dated Tuesday, 13 July, which encapsulates a number of the features of the original drafting instructions. Those drafting instructions included a nursing board with 10 members, and that was changed, and a single register and a single roll for all registered nurses, and clearly that was changed. The original drafting instructions also proposed the reporting of psychiatric illness of nurses. The nursing profession took objection to that and the government removed it from the drafting instructions.

A significant number of minor changes were made, such as the change to the name of the Act and the name of the board. A significant number of major changes were also made, including that the number of nurses on the board will be guaranteed and the president and deputy president will be nurses, and it is now obligatory for the panels associated with informal and formal hearings to include registered nurses. Significant changes have been made. The ALP did not examine the drafting instructions. It should read the Minister’s press release, which reveals the number of major changes that were made as a result of consultations held by the government.

As I indicated earlier, the ANF has misrepresented the government’s position from the middle of the year. In a flier put out by the ANF — —

Hon. M. M. Gould — Authorised by whom?

Hon. Louise Asher — The ANF, Belinda Morieson. It invites nursing staff to a mass meeting to be held in the South Melbourne Town Hall. The flier claims the State government is rushing the new Nurses Bill through Parliament. What a load of nonsense! Drafting instructions were released in June. Consultation had been going on since 1989 under the former government.

A number of other allegations made in the flier are wrong. It claims that nurses can be investigated without their knowledge. If a hearing is held, under clause 27(1) a nurse must be advised of the hearing. The pamphlet also claims that a nurse could be forced to have a medical examination by a doctor nominated by the secretary of the health department, but clause 28 clearly provides that the doctor has to be agreed to by the board and the nurse. Only an impasse would require the secretary to step in. The third allegation was that nurses could be subject to far-reaching investigations without representation. That is outright misrepresentation of the government’s position; nurses are entitled to be represented at any formal hearing. Ms Morieson goes on with a whole series of misrepresentations...
ADJOURNMENT

Tuesday, 23 November 1993

COUNCIL

1175

about the Bill, which I covered in the earlier part of my speech.

Mrs Hogg said the Bill had caused outrage and distress. She referred to a range of letters she had received and said, “Gosh, if I have received this many letters there must be some real anxiety out there”. There has been an orchestrated letter-writing campaign by the Australian Nursing Federation. I refer to a document given to nurses that tells them how to run such a campaign. It tells them how to ring Access Age, how to write letters to the editor and how to fax Ministers. It says that they should send multiple faxes often. Mrs Hogg said, “I am really worried about all these genuine letters”. The letters are not genuine; they are part of an orchestrated campaign which says “Send multiple faxes often”.

The government has paid attention to the letter-writing campaign in the sense that the legitimate letters given to the Parliamentary secretary and to the Minister in response to the drafting instructions were looked at. But although this little campaign of “Send multiple faxes often” is legitimate — it is fine for unions to do that — it is not a serious indication of community concern as was claimed by Mrs Hogg. It is not genuine concern by nurses about the Bill; it is simply unions positioning themselves and making a bit of noise.

The letter-writing campaign will be able to obtain recognition of their registration and gain work. That positive feature of the Bill was not recognised during the course of the debate.

The Bill puts the public interest first, a point that has not widely been touched upon during the course of the debate but which represents the government’s overriding objective. No nurse will be disadvantaged by the Bill. All nurses who are currently registered will be retained on the new register. It is most unfortunate that the ANF and the ALP have embarked on a scare campaign.

The Bill raises nursing to the same level as other health professions. Mrs Hogg opened her speech by talking about the respect for nurses in the community. Clearly the government has a great deal of respect for nurses. The government values the nursing profession and the work done by nurses who are qualified in particular specialties. However, things have changed since 1958 and the government wishes to bring nurses into the modern era and put them on the same level as other health professionals. That is what the Bill seeks to do.

Debate adjourned on motion of Hon. LICIA KOKOCINSKI (Melbourne West).

Debate adjourned until next day.

ADJOURNMENT

Hon. R. I. KNOWLES (Minister for Housing) — I move:

That the House do now adjourn.

Speech pathology services in Broadmeadows

Hon. C. J. HOGG (Melbourne North) — I raise a matter for the attention of the Minister for Housing, as the representative in this place of the Minister for Community Services and the Minister for Health, concerning speech pathology services for preschool children in Broadmeadows. Currently a full-time speech pathologist in the Broadmeadows area is funded by the Department of Health and Community Services through Statewide child and family services.

The service is useful and targets mainstream children with transient and usually correctable speech disorders. The service uses an approach of early detection and intervention with the child combined with education and secondary
consultation with a mainstream provider, usually a kindergarten teacher, child-care worker or perhaps a maternal and child health nurse.

It is an effective service placed within a multidisciplinary team at Broadmeadows Community Health Services, which provides facilities and equipment — a fair bit in kind. However, the directions for service development are determined by the regional administration of the Department of Health and Community Services and at the beginning of 1994 the department intends to amalgamate all the early childhood services and Statewide child and family services.

That causes a problem for the speech pathology service as it is expected that the single worker will have to service two additional municipalities despite the fact that the existing resources in other municipalities have not yet been coordinated. At the same time we know that the department is seeking to devolve services to local agencies.

In that context, I ask the Minister to request the Minister for Community Services in the other place to examine the situation and consider the possibility of releasing the speech pathology position to the Broadmeadows community health service to ensure that speech pathology continues to be available and effective in Broadmeadows, which the Minister knows is a deprived area.

Community health services in Dandenong Ranges

Hon. R. S. Ives (Eumemmerring) — I refer to the attention of the Minister for Health, as representative in this place of the Minister for Health, the general issue of community health services in the Dandenong Ranges. As the Minister would be aware, the Dandenong Ranges consists of numerous small communities with a strong sense of local identity and which tend to be centred around local schools, kindergartens and community houses. It is a unique, valuable and satisfying way of life reinforced by the lack of public transport in the hills.

In order to be effective in the hills a community health centre must be able to provide an outservice to outlying towns and areas. In the past the Mountain District Community Health Service at Cockatoo performed a valuable and highly regarded service to areas in the southern Dandenong Ranges irrespective of local government boundaries, including Cockatoo, Gembrook, Emerald and Upper Beaconsfield. The centre, which served people in both Pakenham and Sherbrooke shires and in the Berwick municipality, provided a particularly valuable and essential service when it became a focus for the community following the Ash Wednesday bushfires.

The Mountain District Community Health Centre has been informed that its area of service will now be confined to the Shire of Pakenham, which will in effect mean centring its operations on the township of Pakenham. Because it will no longer serve the townships in the Shire of Sherbrooke the centre has suffered a cut in funding. The centre disputes the instruction.

The Sherbrooke Community Health Centre based at Belgrave has been informed by the Department of Health and Community Services that it is to be a stand-alone centre that will service the whole of the Shire of Sherbrooke. Although the Sherbrooke centre welcomes its new mandate, it is currently not adequately resourced. It requires adequate resourcing, a manager and suitable accommodation to fulfil the mandate. Cessation on 31 December of an arrangement that allowed for employment of an interim manager will mean the Sherbrooke centre will be effectively without any paid management services whatever, and the premises it currently occupies are shortly to be demolished to make way for a new library.

In effect, communities in the Dandenong Ranges will be denied a satisfactory community health service. The Mountain District Community Health Centre will be unable to provide its share of the service because of administrative fiat, and the Sherbrooke centre will be unable to provide services through lack of resources.

I ask the Minister for Health to consult with the local community health centres to ensure that adequate resources and organisational units are provided to ensure the hills as a whole receive an adequate community health service.

Parklands Primary School

Hon. M. M. Gould (Doutta Galla) — I direct to the attention of the Minister for Tertiary Education and Training, who represents the Minister for Education in this place, the merger of Parklands and Niddrie primary schools. The parents of children who attend Parklands Primary School sought a copy
of the independent facilities report on which the Minister for Education made his decision. Although they have received the report they are concerned about decisions on external areas and the lack of access for students. The report was made without an investigation being made of the building.

In a letter dated 11 November 1993 Graham Marshall, Acting General Manager, Quality Programs Division, wrote to the president of the Parklands Primary School council stating that the Director of School Education accepts some of the concerns the parents raised and that a $60,000 grant will be made to improve the drop-off and pick-up areas at the school. Some $30,000 will be made available to alleviate noise problems associated with the proximity to the freeway.

Although the parents have sent numerous letters to the Minister, they have not received a reply. Will the Minister meet a deputation from the Parklands Primary School to enable parents' concerns about the merger with Niddrie Primary School to be discussed? For the site to be made safe, extensive maintenance work must be carried out. I am not in a position to agree or disagree with the parents' concerns about health and safety because the report did not go into the details.

Floods in north-eastern Victoria

Hon. PAT POWER (iKika Jika) — I direct the attention of the Minister for Regional Development to a matter I raised earlier today concerning flood damage in north-eastern Victoria. I remind the Minister that the Hansard of 27 October 1992 reports him as saying at page 41:

As Minister for Regional Development I will play the important role of advocate when big decisions are to be made and will put a proper perspective on matters that relate to rural provincial communities. That is a special role.

It is generally accepted that flood damage in north-eastern Victoria is in the vicinity of $150 million. According to his response this morning, the Minister has not made any detailed submission. Will the Minister advise why damage amounting to $150 million does not, in his opinion, fit into the category of a big decision?

People with whom I have spoken as a consequence of the Minister's response this morning are alarmed. Will the Minister explain why a damage bill of $150 million falls outside his definition of a big decision? Will he give a ball-park figure of what he considers to be a big decision?

Responses

Hon. HADDON STOREY (Minister for Tertiary Education and Training) — Ms Gould again referred to the merger of Parklands and Niddrie primary schools. Although the facilities report she sought has been made available, parents are still dissatisfied and seek a deputation with the Minister for Education to discuss the matter. I will take up her request with the Minister for Education and ask him to respond directly about whether he can meet a deputation of parents.

Hon. R. M. HALLAM (Minister for Regional Development) — Mr Power again referred to flood damage; he invited me to respond about a previous commitment I gave regarding my role as Minister. I will not be drawn on specifics other than to say that I regard the recent floods to be of enormous importance. The matter to which Mr Power referred is much broader than flood damage — it deals with Ministerial responsibility. I remind him that many of my colleagues have been involved not only in responses to flood damage but also flood mitigation.

The Minister for Police and Emergency Services in another place responded immediately, as did the Premier, the Minister for Community Services and the Minister for Agriculture. As Minister for Local Government I was directly involved where appropriate. Cabinet treated the recent disastrous floods as a major issue; it was not seen to be an issue specifically related to regional development.

Hon. Pat Power — But $150 million is not a big decision?

Hon. R. M. HALLAM — That is not what I am saying. I will not have Mr Power draw that imputation because it is inconsistent with the Cabinet response.

The matter was not deemed to be within my specific portfolio of regional development. It was viewed by the entire Cabinet as a grave matter, and a number of Ministers who have direct responsibility responded accordingly. On that basis I do not believe the matter put to me by the honourable member is relevant in the slightest.

Hon. R. I. KNOWLES (Minister for Housing) — Mrs Hogg raised a matter for the attention of the Minister for Community Services or the Minister for
Health in the other place, suggesting that the provision of speech pathology be made a responsibility of Broadmeadows Community Health Services. I shall raise that matter with my colleague and ask that Mrs Hogg be supplied with an answer.

Mr Ives asked that the matter he raised about the provision of community health services in the Dandenong Ranges be directed to the attention of the Minister for Health. He said the area serviced by the Mountain District Community Health Service had been restricted, leading to an area the size of the Shire of Sherbrooke no longer being administered by a shire health service. I shall convey the concern of Mr Ives to the Minister for Health and seek a response from her.

Motion agreed to.

House adjourned 10.32 p.m.
Wednesday, 24 November 1993

The PRESIDENT (Hon. B. A. Chamberlain) took the chair at 10.2 a.m. and read the prayer.

PAPERS

Laid on table by Clerk:

Fair Trading — Report of Secretary to the Department of Justice, 1992-93.
La Trobe University — Report, 1992.
Parliamentary Committees Act 1968 — Minister's response to recommendations in Road Safety Committee's report upon Motorcycle Safety in Victoria.
Royal Botanic Gardens Board —
Minister for Conservation and Environment's report on failure of Board to submit 1992-93 annual report to him within the prescribed period and the reasons therefor.
Swinburne University of Technology — Report, 1992.
Zoological Board — Report, 1992-93 (two papers).

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Performance audit of Auditor-General

Hon. P. R. HALL (Gippsland) presented report of Public Accounts and Estimates Committee upon the performance audit of the Auditor-General, together with appendices and minutes of evidence.

Laid on table.
Ordered that report and appendices be printed.

Private investment in public infrastructure

Hon. P. R. HALL (Gippsland) presented report of Public Accounts and Estimates Committee upon private investment in the provision of public infrastructure, together with appendices and minutes of evidence.

Laid on table.
Ordered that report and appendices be printed.

AUDITOR-GENERAL'S REPORT

Investment management


Laid on table.

BUSINESS OF THE HOUSE

Hon. D. R. WHITE (Doutta Galla) — By leave, I move:

That Notices of Motion, General Business Nos 1 to 3 be postponed until later this day.

The PRESIDENT — Order! Before putting the motion, I point out that the House has adopted a practice of allowing motions of this type to be put, but it includes Notice of Motion No. 2 to be moved by Mr Evans and, strictly speaking, Mr Evans should move that debate on that motion be postponed. We shall continue with the practice because it is convenient to do so, but I indicate that the rights of individual members will be recognised.

Motion agreed to.
WORKCOVER

Hon. T. C. THEOPHANOUS (Jika Jika) — I move:

That this House condemns the government for:

(a) dumping an additional 6500 workers classified as partially incapacitated from WorkCover by 1 December 1993, without any attempt to provide them with suitable employment, ongoing rehabilitation or retraining, and without regard to the impact on Victoria’s unemployment rate or already stretched social services;

(b) its blanket reclassification of injured workers as partially incapacitated which led to only 819 workers being classified as seriously injured or totally and permanently incapacitated by July 1993, and for refusing to backpay 2700 additional workers that have since been reclassified again as seriously injured or totally and permanently incapacitated;

(c) sending thousands of notices of termination or reduction of benefits to injured workers which, according to recent court judgments, are invalid because the workers full appeal rights were not explained, and for refusing to compensate such workers; and

(d) its failure to establish medical panels, and guidelines for referrals to medical panels, which have the confidence of workers, employers and the courts.

The government is not doing the right thing with workers compensation in Victoria, although it has consistently said it is doing the right thing. It is creating untold hardship for families, workers, children and for other people in the community. Its callous approach has led and will lead to marital breakdowns, to people losing their homes, to greater poverty and increased unemployment. It will not assist Victoria’s economic recovery.

The treatment of injured workers has resulted and will continue to result in a social crisis for families, and we are all the poorer for that. I intend to use examples to illustrate the points I shall make and I ask the Minister for Local Government to listen carefully, to consider what I say and to balance the view I am putting and be prepared to reconsider, if necessary, the government’s approach. To admit that one has gone too far is not a weakness. The opposition would applaud the government if it reversed some of the draconian aspects of the legislation which the Minister has said in some respects has gone too far. The Minister ought to have the courage to say that he has gone too far.

Hon. R. M. Hallam — I thought you said I had a moment ago.

Hon. T. C. THEOPHANOUS — The Minister ought to have the courage to say that these changes have gone too far and that he is prepared to do something to reverse the situation.

In stating the principles that are important in this debate I refer to one of the great thinkers of the past couple of centuries: the 19th century philosopher, Immanuel Kant, who took the view that if only people were prepared to reflect on their actions and ask themselves whether they would like to be treated in an unjust way, they would immediately recognise a prior right. His notion of the categorical imperative — according to which we should act on the basis of an action being applied equally to everyone — underpins his philosophy.

Let us apply this principle to WorkCover. If it is believed that a genuinely injured worker should be compensated for the full impact on his life of a work injury, that principle should be acted on and not simply compromised whenever it is convenient or of benefit to us to do so. WorkCover does not pass that test; it does not meet that principle.

The Minister said that about 6500 injured workers receiving benefits for more than two years have either recently accepted lump sum offers to get off WorkCover or will be purged from the system on 1 December.

Hon. R. M. Hallam — That is not what I said. That is a misconstruction of what I said.

Hon. T. C. THEOPHANOUS — I stand by that statement, after having examined the Hansard report of what the Minister said. The Victorian WorkCover Authority said that 3200 people will have their benefits terminated on 1 December and the Minister said that approximately the same number have accepted lump sum payments, which means that about 6500 people will be off the system by 1 December. The 3500 people who have accepted lump sum payments did so — let us be clear about this — under duress. They accepted lump sum payments because of the threat that their benefits would be terminated on 1 December. That was made absolutely clear by the late night telephone calls they received asking them whether they were prepared to accept the offers. The offers were made directly to the recipients, not through their lawyers. People found themselves with little choice but to accept the lump sum offers put to them.
Although it is impossible to estimate how many of the 6500 leaving the system will be eligible for invalid pensions, it is believed many of them will apply, which indicates that they are not fit for work. If only 3000 of the 6500 apply for unemployment benefits and receive them and 500 qualify for invalid pensions, the cost to the Federal social security system will be approximately $35 million.

Hon. K. M. Smith — That is if they apply.

Hon. T. C. THEOPHANOUS — They do not have much choice; otherwise they will have to stay home and receive no income. There is no doubt that people who are eligible for unemployment benefits will apply. The Federal government is concerned about that. The *Herald Sun* of 29 September 1993 states:

> Victoria could lose millions of dollars in Commonwealth grants as punishment for thousands of workers moving from State compensation to Federal social security. A senior Federal Parliamentarian, Mr Con Sciacca, yesterday warned that he would ask the Prime Minister, Mr Paul Keating, and the Treasurer, Mr John Dawkins, to take the cost shifting into account in future dealings with the State.

Not only is the net result of this action that, instead of insurance companies, taxpayers will be paying for injured workers through the Federal social security system, but also the State of Victoria may finish up being penalised in the allocation of Commonwealth grants as a result of the actions of the government — that means the people of Victoria will be meeting an obligation that is correctly a responsibility of insurance companies and employers.

The effect on the State's unemployment rate of people being taken off the system will be marked. If one adds the number of people who were taken off the system earlier in the year to the 6500 who are now being taken off the system, one realises that more than 11 000 people, perhaps as many as 12 500, will have been taken off WorkCover over the 12-month period. If the majority of those people register as unemployed, which is what they are expected to do, Victoria’s unemployment rate could increase by as much as 0.5 per cent.

Victoria cannot afford such an increase in its unemployment rate, which is already higher than those of all the other States except Tasmania. Victoria will be less likely to attract investment and business confidence will be lowered because people will look at Victoria and say, 'This is not the place to invest. It is not the place to stay if you want to be employed'. They will continue to leave the State in droves. And one of the main reasons for that is the draconian benefits structure that has been put in place by the government. It is out of step with the rest of Australia, and the Minister knows that. The *Age* of 22 September 1993 states:

> It is the only scheme that arbitrarily ends benefits in all but the most serious cases two years after an injury. The maximum amount that most injured workers can receive as compensation for lost income is less than anywhere else.

This is why the Federal government is looking at Victoria’s workers compensation system. It knows that if Victoria is out of step with the rest of Australia, the Victorian workers compensation system is not paying its fair share of compensation to injured workers.

The workers who have accepted lump sum payments under WorkCover were not told of the full impact of accepting those payments. Many were not told they would be ineligible for ongoing medical costs. They were not told they would probably be ineligible for social security benefits because the Federal government classifies 50 per cent of lump sums as income. As a consequence, the workers will be ineligible for Commonwealth benefits until they have used up the lump sums calculated as weekly benefits.

Hon. R. M. Hallam — Have you raised that with your Federal colleagues?

Hon. T. C. THEOPHANOUS — It’s the Minister who is dumping people from WorkCover. He should start accepting some of the responsibility rather than pointing the finger at someone else. There is no obligation on employers to offer those 11 000 people jobs of any sort. Only in cases under WorkCover, as opposed to those under WorkCare, are employers required to offer suitable employment.

The fact that 11 000 people are being taken off benefits without any attempts to find them suitable employment makes the advertisements the government has put to air about getting people back to work absolutely laughable. The vast majority of these people will not be able to find employment. Worse than that, they are not being assisted in finding suitable employment. I shall refer to examples of people who have been dumped from the system to illustrate my point.
Mr David Cornley was dumped with no job offer and without being assisted to find employment. He wrote to me saying:

Mr Kennett’s WorkCover advertisements say, “See your employer about lighter duties”. My ex-employer, the Austin Hospital, told me there weren’t any lighter duties for me and I wasn’t fit to resume my duties as a charge nurse so my employment was terminated. The Liberal government say I can work. My doctors, ex-employer and social security doctor says I can’t work. Nobody will employ me at 54 years old with my injury.

This is a real person. He finishes his letter by saying:

I am sorry if my writing is hard to read but I have also lost some of the strength and the use of my arms and hands.

Mary Sinclair was also dumped from the system. The interesting thing about her case is that the WorkCover Authority believes she is totally incapacitated. In a letter to her the authority said:

It is considered that you are totally incapacitated. However, based on the aforementioned medical evidence ... it is considered that this total incapacity is temporary and not permanent.

At one stage the WorkCover Authority considered she was totally incapacitated and could not work. But because the authority considered she would be able to work at some time in the future, it dumped her from the system! She subsequently wrote to the Minister:

As I lay on the floor of my lounge room tonight taking enough pain-killers for me to be able to sleep I listened and watched you talk about the splendid results of the changes to WorkCare.

I was a teacher for 25 years and through no fault of my own I sustained a back injury while teaching a year 12 class. I continued to teach those two year 12 classes from hospital for eight weeks with 28 pounds of traction weights hanging off my hips and a jab of morphine to ease the pain. After a great physical fight with my back I am now unable to continue to do the work I love.

Mary Sinclair — dumped from WorkCare!

Joseph McFadden, who has also been dumped from WorkCover, is an interesting case. In 1988 he wrote to Mr Gude, then the opposition spokesperson, because he was unhappy with the WorkCare system. Mr Gude, who is now the Minister for Industry and Employment, wrote him an interesting response:

I can only say that the information contained in your letter is consistent with the callous, unthinking and incompetent performance generally experienced by many who have the misfortune to be injured in the workplace when, in the ultimate, they have to deal with this government’s Accident Compensation Commission.

Where is Mr Gude now? Having experienced WorkCare, Mr McFadden suddenly came up against a brick wall in the form of WorkCover. As a consequence he contacted Mr Hall, seeking his advice. Being a good member of Parliament, Mr Hall sought to assist Mr McFadden and arranged for him to be offered employment with the State Electricity Commission, where he had worked previously. The SEC wrote to Mr Hall, saying:

Mr McFadden resumed work at Hazelwood power station on 27 July 1993 on modified duties working four hours per day. The duties are those as set out in our formal written job offer dated 24 May 1993. Mr McFadden’s treating doctor, Dr Edwards, inspected the work site and approved the job offer.

That arrangement was worked out with the doctor and the employer, based on the doctor’s belief that Mr McFadden could work a maximum of four hours. Under the old system Mr McFadden would have received some payment to make up for the loss of income; but under WorkCover his working four hours was used against him. He was dumped from the system and his income was reduced by approximately half. He wrote to various people seeking redress. He also wrote to me about Mr Kennett’s comments on the Mabo issue, in which he quotes Mr Kennett as saying that the time had come for the nation to be big enough to treat all people equally before the law. He then added, “Does he mean: unless you are injured at work?”

The examples of hardship and misery are never ending. A 53-year-old woman who suffers from tendonitis was also dumped from the WorkCover system. She had been employed as a secretary at HF & R Associates. She was told she should be able to work. How does a 53-year-old woman suffering from tendonitis find a job? It is yet another example of a person being thrown on the scrap heap.
Perhaps the most tragic example of the callousness of the system and its human cost as a result of the changes introduced by the Minister is the case of Mark Harrison, which was reported in the Herald Sun of 20 September. Mark Harrison had an accident at work and was receiving WorkCover benefits, which allowed him to pay the bills for his young family. He was told by WorkCover that he would be dumped from the system. He tried to find out what that meant. A telephone call he made to discuss rehabilitation with the officer handling his file at NZI Insurance was not at first returned; when eventually it was he was told the gloomy options. Because his wife was employed full time Mr Harrison was ineligible for Commonwealth social security, which means the family would lose almost half its income overnight. At 11.30 a.m. on 26 September Mr Harrison took 200 sleeping pills, drank some red wine and laid down to die. The injury he suffered at work was life threatening. His wife said he died because of WorkCover.

How hard is it to stay on the system and continue to receive benefits? One of the fundamental problems, apart from the arbitrary two-year cut-off point, is the need to understand the definition of "serious injury". That definition adopted by the government is set at a level of 30 per cent impairment on the Australian Medical Association scale. It is 10 per cent higher than the definition used by the Commonwealth Department of Social Security as its benchmark for eligibility for a disability support pension.

The Department of Social Security believes a person classified as having an incapacity level of 20 per cent plus is unable to work and is eligible for a disability pension. However, WorkCover does not believe a person with that level of impairment is unable to work, and it is not prepared to continue to pay benefits to such a person. Only in the most serious cases is a person assessed at 30 per cent impairment, perhaps 2 per cent of the total of people who are incapacitated, which means in the case of a back injury — one of the largest categories of injury — involving serious fractures to three vertebrae, each with a high level of compression, the person would be assessed as suffering only about 25 per cent impairment. But a person suffering from an injury would have no hope of working.

I shall give some examples of how these matters can affect a WorkCover beneficiary. It is also necessary to examine the emotional impact on an injured worker. A quarry worker, Robert Mawson, had his life changed forever as a result of a granite boulder sheering off his right leg below the knee. In an article in the Herald Sun on 21 September it states:

On Friday morning the Mawsons got some breathing space when they were told Mr Mawson would continue to receive WorkCover payments and would continue to have his medical costs covered. His injury had been classified as serious enough to warrant continuing payments, although under the strict new WorkCover guidelines he fell just short of the 30 per cent incapacity required to qualify him for continuing payments after November 30.

That is another example of a person who has suffered severe injury and who, strictly speaking, should not be eligible to receive WorkCover benefits because his level of impairment is not above the 30 per cent test the government has put in place. We applaud the fact that Mr Mawson has been allowed to stay on benefits, but this case illustrates the difficulty of the test and how it affects those receiving WorkCover benefits. Mr Mawson is one of the lucky ones. He went through the trauma of wondering whether he would be able to stay on benefits when he was told his injury was not serious. He did not know whether WorkCover would pay for the cost of his artificial leg, which is in the vicinity of $3000, and which is inclined to break. He went through all that trauma before WorkCover was prepared to say, “Yes, in this instance we will accept that you ought to be covered”.

The same newspaper also reported the case of Ms Young. For Ms Young, the day her back was damaged marked the start of a downward spiral that cost her health, her marriage and her self-esteem. She was put through rigorous examinations to test the extent of her back injury. After one doctor confirmed the extent of her injury, she was sent to another. She said, “I felt like a criminal”. Today she has a metal plate in her lower back after two discs were fused. She was officially classified at 30 per cent incapacity of the lower back, 20 per cent in her neck and 10 per cent in her right leg. But that is not serious enough to make up the 30 per cent whole of body disability required to keep her on WorkCover after 30 November. What a disgrace! It is shameful!

As I said earlier, the offers were made under threat and duress. Dozens of people were harassed with late-night phone calls. One woman was given a deadline for acceptance of an offer she had been made and was told that the offer would be reduced by $300 for every day on which she refused to accept
the offer. That is the kind of harassment that has been reported to me.

People have not been told of their rights under section 98, about the loss of medical benefits or about the affect on their social security payments of accepting a lump sum. It has been reported that claims officers have threatened people. I refer to a case involving GIO Australia in which the claims officer admitted he had threatened a Ms Harris about not accepting the offer to terminate her payments.

The system does not bring people back to work. In a number of cases people are being forced to go back to work, with serious consequences for them personally and for the employers involved. I have previously informed the House of the example of an individual who suffered a severe cut to the hand that required stitching. The claims agent attempted to get the man back to work in a matter of days on the basis of him lying on a couch with his arm raised and answering the phone using his non-dominant arm. In that case the employer complained about having to employ a person who was clearly non-productive.

I also cite as an example the case reported in the Herald Sun of 18 October of a train driver who was involved in an horrendous accident in which five people were killed. The WorkCover Authority insisted that he go back to driving trains notwithstanding psychiatric evidence that he should never drive a train again. The article states in part:

They were prepared to put him back in charge of fast passenger trains at 115 kilometres an hour contrary to other medical evidence.

That decision was based on a 30-minute session with an insurance company's psychiatrist. What a disgrace!

Hon. Pat Power — They will have to read the Hansard, they are certainly not listening!

Hon. T. C. THEOPHANOUS — Government members are not prepared to be in the Chamber to listen to the debate because they do not want to hear these things; they do not want to know about things that are affecting real people. Government members are not interested in the pain and suffering they are causing; they are interested only in a cheap political stunt of leaving the Chamber to try to make it appear as though the debate is not important.

The debate is important! If one looks around the Chamber one will realise the debate is important for people who are affected by the government's policy — they care about it! Notwithstanding the rules of the House, it does not take much imagination to realise that that is the case. The government is not even interested in looking after employers. It has said that approximately 1700 government employees and approximately 300 other public sector employees will come off WorkCover by 1 December. An equivalent number of former government employees have probably already been taken off.

Let us be clear about one thing: the public servants being taken off WorkCover are classified by the WorkCover Authority as partially incapacitated, which means that they have at least a partial incapacity to work and must therefore be accommodated in a special way by departments.

The Minister said he would speak with his Cabinet colleagues about taking back injured public servants. What success has he had in getting a total of approximately 3000 public servants back to work in their former employment? The Minister said he had received good responses from some Ministers but that the responses from others had not been so good. The Minister was not prepared to guarantee that any former public servant who wanted one would get a job. Nor was he prepared to guarantee that former public servants would be offered voluntary retirement packages. The Minister's undertaking was simply empty words!

The motion refers to people not being offered rehabilitation and states that rehabilitation is in crisis. The government has not attempted to provide proper rehabilitation; in fact, the rehabilitation area is a disaster. Approximately 70 per cent of professional practitioners in rehabilitation have left the field. How can a proper rehabilitation service be run if 70 per cent of the experts in the field are no longer available?

The government has changed the emphasis in the rehabilitation system from a therapeutic to an evaluative base. In such a system the goal is the evaluation of what a worker is capable of doing rather than the rehabilitation of the worker so that he or she may obtain some kind of employment.

Most of the people who are being dumped were previously dumped as part of the 5000 who were taken off rehabilitation earlier this year. This is the second time they have been mistreated by the
government. Those people face a future with no rehabilitation, no pay and no hope!

The rehabilitation system is not working because it is focused on a requirement for employers to pay $1200 up front before an employee can receive rehabilitation. Companies are not claiming that $1200 payment back from WorkCover because of the affect on their premiums. I know that Electrolux Pty Ltd has a policy of not claiming the payment for that reason.

Another example of the government's lack of commitment to rehabilitation was the sale of WorkCare Rehabilitation Services. Serious questions must be asked about that sale, which is shrouded in mystery. Although a newspaper reported a figure of $6 million, no sale price was disclosed. The Victorian WorkCover Authority contracted a Mr Geoff Vincent to facilitate the sale. Mr Vincent later became the chief executive officer of the company that bought WorkCare Rehabilitation Services, Work Recovery Pty Ltd. Following my questions to the Minister, on 19 November he wrote stating:

I understand that on 1 March 93 Mr Geoff Vincent was engaged on contract as chief executive officer of WRS. His role was to manage WRS and to assist the authority's manager, health and rehabilitation to prepare the network for sale. Mr Vincent completed his contract with the authority on 1 October 1993.

The letter raises more questions than it answers. I am informed that Mr Vincent was closely associated with the sale process. He negotiated with the prospective purchasers and made recommendations about the price and the suitability of purchasers. Clear and obvious evidence for a prime facie case of conflict of interest exists. Why? Mr Vincent was in a position to encourage or discourage prospective buyers. He could provide confidential information to preferred purchasers and thus affect the sale price.

Hon. R. M. Hallam — Not to raise the same imputation if employees stayed on.

Hon. T. C. THEOPHANOUS — The employees were not involved in the sale process; they were not contracted to sell the service; and they did not negotiate with various prospective buyers — that is the difference. The Minister is unable to recognise a potential conflict of interest, but that is par for the course with this government.

The purchaser, Work Recovery Pty Ltd, is substantially owned by Work Recovery Inc. Arizona, a United States of America connection. That is important; it is part of a plan to introduce to Victoria the Ergos work synthesiser machine, colloquially referred to in the industry as the rack. Rather than providing therapeutic assistance, the sole purpose of the machine is to evaluate workers' capacities to work. More than anything it reveals that the rehabilitation focus has moved to one of evaluation — rather than focusing on therapy the machine focuses on return to work.

I believe the machine will eventually be used to calculate the notional earnings component of WorkCover. If the machine theoretically demonstrates that injured workers can perform certain jobs, workers' benefits will be removed. The machine adopts an abstract approach; it does not take into account whether pain is associated with muscle or arm and leg movements and so on. I understand that the machine, which has been widely condemned by rehabilitation workers in the field, has not been independently evaluated by occupational health and safety experts. I believe the chief physiotherapist at the Caulfield General Medical Centre, Ms Patricia Baker, has been refused access to the machine. Her requests to evaluate it have gone unanswered. I also raised with the Minister the $1000 charge that was being made.

Hon. R. M. Hallam — You will slur him anyway, just in case.

Hon. T. C. THEOPHANOUS — Even if he did none of that, he was rewarded by the purchasing company, which appointed him chief executive officer. I have a responsibility to raise the matter in this place and to ask the Minister whether any impropriety occurred. Did the Victorian WorkCover Authority receive the appropriate price for the sale of WorkCare Rehabilitation Services?

Hon. R. M. Hallam — You allege it was being made.

Hon. T. C. THEOPHANOUS — I informed the House it was being made.

Hon. R. M. Hallam — No, you alleged it was being made.

Hon. T. C. THEOPHANOUS — The Minister responded by stating:

To 31 October 1993 there is no record of any payments of $1000 to Work Recovery for an Ergos assessment
from the WorkCover fund. At present, the authority recognises a maximum rate of $93 per hour and this rate would be used to determine the reimbursement for the service.

Hon. R. M. Hallam — You see, you were wrong.

Hon. T. C. THEOPHANOUS — I made inquiries; unlike the Minister I am happy to admit when I am wrong. Although I will not name the person, an official from Work Recovery Pty Ltd contacted me to advise that, in broad terms, it is probably correct to say the price range is between $800 and $1000. I am also aware that New Zealand Insurance has agreed to pay up to $1000 for assessments by that machine.

Hon. R. M. Hallam — Although it will not be compensated?

Hon. T. C. THEOPHANOUS — I do not know what is happening in the authority. The Minister knows that I am simply reporting to him — —

Hon. R. M. Hallam — I responded to you.

Hon. T. C. THEOPHANOUS — The Minister may want to make inquiries again and return to this place and apologise, as he has done on a number of occasions. He should ascertain from Work Recovery the charges made for evaluative sessions and provide an accurate figure to the House. I am prepared to put on the record that Work Recovery is not charging $93 an hour — that would amount to about $370 for a 4-hour session, not $1000. I look forward to the Minister informing me in writing of the amounts charged.

Neither retraining nor rehabilitation is being provided. I cite the example of a 23-year-old security guard, who was shot and seriously injured at work. Although I will not go into the circumstances, the individual concerned showed grit and courage. Because of the obvious traumatic effects the shooting had upon him, the man was assessed as being unable to perform the same job. It was suggested that he undertake vocational rehabilitation to find some other type of work. However, FAI Insurances Ltd rejected rehabilitation for retraining and directed that no further rehabilitation services would be approved. The rehabilitation provider was directed to close the case file — the worker received no rehabilitation, no training and no payments.

I now refer to invalid notices. In two recent cases the Magistrates Court has ruled that notices of termination of payment sent to workers were invalid because the Victorian WorkCover Authority failed to notify the workers of their appeal rights. According to section 123A of the Act, such action renders the notices invalid and the court issued orders for the workers to be reimbursed for all weekly payments. The court ruled that the authority must notify workers in writing of their appeal rights. Some lawyers believe the same applies to workers who have received notices about payments being reduced. According to my information, between December 1992 and December 1993 approximately 5500 notices were issued. It is believed that the majority of notices did not specify appeal rights. I shall quote from an affidavit sworn by a solicitor, Richard Vincent Large, which substantiates my figures:

I am instructed by Mr Max Vickery, a senior manager of the Victorian WorkCover Authority, and verily believe that with few exceptions notices issued to workers seeking to terminate or reduce payments of compensation during the period December 1992 to September 1993 omitted to refer to a review by courts.

Further, on 8 November 1993 I was instructed by Mr Vickery that approximately 2000 termination notices and approximately 3500 reduction notices were posted to recipients of weekly payments of compensation pursuant to the Accident Compensation Act 1985 ... during the period from December 1992 until September 1993, which notices failed to refer to a review by courts.

I am also informed by Mr Vickery and verily believe that should all such notices be found invalid and payments of weekly compensation be reinstated, it would involve additional payments of weekly compensation of approximately $15 million.

That information so moved Mr Large that he swore the affidavit. I challenge the Minister to produce figures on the potential cost of the invalid notices. I also challenge him to pay up, because if WorkCover made a mistake by failing to inform people of their rights under the Act the Minister should be prepared to say, “We made a mistake, as the courts have ruled, and consequently we will repay that amount to the affected workers”.

Hon. Pat Power — Do you think he would have demanded that of a Labor government?

Hon. T. C. THEOPHANOUS — I think the Minister would have demanded even more! Between February and April 1993, thousands of workers received notices informing them they were
no longer classified as partially incapacitated and that their weekly payments were to be reduced to 60 per cent of pre-injury earnings. That action was deemed necessary prior to the removal of workers from the system on 1 December. If workers were classified as partially incapacitated, the two-year rule would come into effect and they would be out of the system on 1 December. That blanket approach meant that by July 1993, only 819 workers of the 16,000 were classified as seriously injured or permanently and totally incapacitated. Since then the Minister has advised that 3500 workers are likely to be classified in that way. Therefore 2700 workers were wrongly classified as being partially incapacitated.

Nothing can be clearer. It is obvious that 2700 workers who were classified as being partially incapacitated only six months ago are now classified as being totally and permanently incapacitated. That fact should be obvious to the Minister. He should be man enough to say, “This is another mistake. Those people are entitled to back pay”. The Minister should take steps to make that happen. The normal progression of events is that injured people slowly begin to recover. However, for some, I admit, their conditions worsen. Perhaps some of the 2700 would fit into that category! It is nonsense for the Minister to tell the House that 2700 people were not totally and permanently incapacitated but that their conditions worsened in the past six months. Because time is against me I cannot detail the examples I have of people’s payments being reduced.

I refer to medical panels, which are experiencing a crisis in confidence. No guidelines have been issued for referrals to medical panels and the courts are refraining from making references to them. In other words, the government has botched it. Between 250 and 300 cases have been referred from the conciliation service but, according to the Minister, only two cases have been referred from the courts. I understand those two cases were referred prior to some landmark decisions by the courts. Why are the courts refraining from referring people to medical panels? The reason is that they know the best way to judge a case is for a court to have all the evidence before it and to make a judgment one way or another about what is right and what is wrong. The courts know that if they refer cases to the medical panels, because of the legislation, they will be compelled to accept the view of the medical panels. The medical panels do not have the confidence of the courts and they certainly do not have the confidence of workers.

Why are the courts not referring matters to the medical panels? The answer is partly for the reason to which I have just referred, but the specific reason given by the courts is illustrated in the case of Francois Marie Casse v. Victorian WorkCover Authority heard on 29 March in which the court ruled that the questions of incapacity or permanency of an injury were not medical questions and refused to allow the application to be referred to a medical panel. In the case of Mihalec v. Victorian WorkCover Authority, Judge Just indicated that the court could make the necessary decision only after hearing evidence and in due course it would be obliged to refer the medical questions it formulated to a medical panel for its opinion. The judgment states:

It is not in the position to formulate the medical questions in the absence of evidence and findings of fact it must make as to the injury or alleged injury.

Significant grounds have been given by the courts for refusing or refraining from referring cases to medical panels. Concerns have also been expressed in the press and elsewhere as to the structure of medical panels and people who constitute them. I refer honourable members to an article in the Age of 18 October which states, in part:

Concerns that members of a panel deciding the fate of injured workers may have a conflict of interest have emerged amid a deadlock between doctors, lawyers and courts involved in the WorkCover scheme ...

Many of the 94 doctors on the panels are regularly paid as private practitioners to examine injured workers for the WorkCover Authority ...

Lawyers who act for injured workers in WorkCover cases were asked by Insight to identify doctors who had worked in the medico-legal field. They named 37 of the 94 and said that some were regarded as insurance company hacks.

The article goes on to say:

Dr William McCubbery confirmed that two-thirds of the doctors on the government schedule were also licensed to carry out medical examinations for the WorkCover Authority.

The results of these examinations can also affect levels of compensation income and can lead to disputes that will eventually be decided by colleagues on the medical panels.
These claims are being made by people working in the field who are reporting in newspapers the perception in the community of medical panels.

No clearer example exists than the fact that the courts are refraining from referring cases to the medical panels because they do not have the confidence that the medical panels will judge the serious question of whether an injured worker is able to resume work.

Hon. R. M. Hallam — Do you accept the position put by the legal fraternity as a valid position?

Hon. T. C. Theophanous — I am making the point. I accept the rights of the courts not to refer matters to the panels. I do not know whether the Minister will introduce more draconian legislation to force the courts to refer cases to the medical panels. That may be only a thought in the Minister’s mind at this stage, but if he proceeds to put that thought into practice he will further erode the independence of the courts and their capacity to make judgments. No one doctor is able to say categorically that he or she has all the wisdom.

Hon. R. M. Hallam — Why did you have medical panels under WorkCare?

Hon. T. C. Theophanous — The system was different, as you well know, because the courts had the final capacity to judge. You have ensured that the courts have no right to decide whether the evidence from the medical panel ought to be upheld. Even if a person has 10 specialists who say something other than what the medical panel has said, the court cannot accept that evidence.

The opposition does not believe everything was rosy with WorkCare. It recognised that it had to be reformed, and the first steps of that reform were taken in 1988. Other steps would have been taken had the Labor government returned to office. The government has reduced the unfunded liabilities further than they were reduced by the 1988 changes. Every commentator and every newspaper in article after article is putting forward examples of cases of misery.

The best way to illustrate this is to quote from the editorial of the Age of 27 September 1993 in which the editor pleads with the Minister to acknowledge that he has gone too far. The editorial states:

The December clean-out by WorkCover of thousands of injured workers demonstrates the need for yet another revision of Victoria’s workers compensation laws. Workers should not have to fear financial disaster if they are hurt at work, and employers should not have to bear an unreasonable cost burden. But as an Age Insight investigation has shown, the present system provides no satisfactory answers either for injured workers or for employers, whose insurance premiums have not been reduced as dramatically as they were promised ...

This means that people who are still handicapped by their injuries — and who are stigmatised because of having been on workers compensation — must find jobs or resort to the social security system. Meanwhile, workers who suffer injury after WorkCare look forward to benefits that are less generous than anywhere else in Australia.

Unfortunately, all this is not enough to move the Minister. He sits like the Pharaoh of biblical times with Moses bringing his people forward trying to move the heart of Pharaoh, but his heart is like stone: it will not move. How much misery does the Minister need to see; how many editorials does he need to read; what will move the Minister? I hope for the sake of workers who have been injured and for those yet to be injured that someone somehow will change the view of the Minister and the government so that they redress a fundamental injustice in our society of which they should be ashamed.

Hon. R. M. HALLAM (Minister for Local Government) — Before going to the specifics of the challenge addressed to me personally and to the government in the motion moved by Mr Theophanous it is important that the House reflect on what the coalition was greeted with when it came to government. I know honourable members will have heard this story before, but it is very important to nail down precisely the dimension of the problem that confronted the coalition government — in other words, to identify yet again the enormity of the inheritance of WorkCare.

The fact is that on coming to government the Kennett administration faced a terrible legacy of workers compensation. As Mr Theophanous himself admits, 16 000 Victorians were caught up in the system; 16 000 who had been on workers compensation for more than 12 months. In my view that in itself is an indication of the enormity of the legacy, but it is not just the numerics that should be of great concern, because that number represented 16 000 people, not just statistics. Worse still, the number revealed a rate of long-term payments in
this State of something like four times that which applied in New South Wales. The facts record that the average duration of claims in New South Wales was eight weeks, and that is not disputed, whereas the coalition government was confronted with an average duration of claims of 28 weeks. That is a further indication of the enormity of the problem.

In addition, Victorian employers were confronted with premiums that on average were 3 per cent of payroll. It is my contention and that of the Victorian WorkCover Authority that the direct cost of workers compensation was closer to 3.3 per cent of payroll, compared again with New South Wales where equivalent employers faced premiums running at the rate of 2 per cent of payroll.

Further, the facts record that WorkCare had more than $2000 million in unfunded liabilities — in other words, Victorian employers were $2000 million behind scratch — when the New South Wales authority had reserves of almost $700 million. Moreover, no-one disputes that under WorkCare there was a multiplicity of agents. In fact, it is in my view a significant indicator that the former Labor government saw the need to have a WorkCare coordination committee. Such was the enormity of the divisions and disputation in the system that a supervisory coordination committee was needed. In addition to that, the system employed almost 1000 staff. It was dominated by cartels and milked by the professions. That is not in dispute.

What Victoria had in essence was a system that was literally out of control. It was not getting injured workers back to work. Premiums had become a barrier to employment opportunities in the State. Quite literally, Victoria was exporting its jobs. Worse still, Victoria was excluding employers from involvement in the system.

Hon. Licia Kokocinski — Mr President, I draw to your attention the state of the House.

Quorum formed.

Hon. R. M. HALLAM — I do not think anybody disputes — not even Mr Theophanous — that the system was out of control. I shall refer to just three of the specific challenges Mr Theophanous has raised. He again said there was a penalty under WorkCover for Victorian taxpayers because there was a shift to taxpayers of a responsibility that he suggested would be more appropriately paid by Victorian employers. In other words, he said that under WorkCover there has been a shift in responsibility and cost, and again he referred to one of his Federal colleagues to support the claim. I shall put that claim to rest. It seems to me to be mischievous to now argue that there is a cross-subsidy and that somehow the Federal government is being penalised by the changes taking place in workers compensation in Victoria.

I shall refer to three specific documents. The authority in the first case is the former Victorian Labor government, which produced a document entitled *Victoria. Workers' compensation reform. Government statement* and dated December 1984.

Hon. Pat Power — This is the definition of a long bow!

Hon. R. M. HALLAM — It may be a long bow, but it goes to Mr Theophanous's challenge.

Hon. T. C. Theophanous — December 1984; that's current!

Hon. R. M. HALLAM — The accusation Mr Theophanous now makes is not a new argument. I remember raising the same argument in 1985 and running it from the opposite direction. The document of the previous Labor administration reads:

Under present arrangements, a shift from lump sum settlements to periodical payments will also increase the taxation take of the Federal government. The overall effect of these measures on Commonwealth outlays and revenues is difficult to quantify precisely, but it is likely to be in excess of $200 million per year and could eventually be as large as $500 million per year.

When WorkCare was introduced, again according to a Labor government document, *WorkCare*, which was produced in 1985, there was a further attempt to identify the shift in expenditure. The document, relating to reforms to WorkCare, reads:

These reforms would improve the Commonwealth's budgetary position by about $180 million in 1986-87 and by some $420 million in 1990-91.

This is your document, Mr Theophanous, suggesting that if there is a shift in the cost it will go in the opposite direction to that which you are now suggesting.

Hon. T. C. Theophanous — Not any more!
WORKCOVER

COUNCIL

Wednesday, 24 November 1993

Hon. R. M. HALLAM — Perhaps so. I refer to a discussion paper prepared in September last year by Daryl Dixon, who, as even Mr Theophanous would acknowledge, is an independent commentator. Mr Dixon suggests that the benefit to the Federal Budget as a result of an increase in annual tax collections and reductions in annual Budget outlays on security and health is $163 million. He says the additional taxation revenue is likely to be $45 million; the social security savings are likely to be $91 million; and the savings in Medicare outlays are likely to be $27 million.

Let us put that one to rest. You cannot claim that somehow the changes being pursued will introduce inequities. If anything, those who have suffered most from the changes in workers compensation over recent years are Victorian employers, who, through the premiums they have paid, have picked up costs that under any other circumstances would be recognised as being the responsibility of Australian taxpayers. I suggest to Mr Theophanous that he is wrong, that the weight of evidence coming from his side of politics refutes his arguments.

Mr Theophanous argued about the toughness of the 30 per cent impairment test. I have heard him put similar arguments on many occasions — and I know he understands differently! He went to great lengths to establish how tough the test is, using a range of comparative criteria to support his case. But I ask Mr Theophanous why he did not refer to the Transport Accident Commission test. It is precisely the same. The 30 per cent impairment test was introduced by the previous Labor administration and is part of the Transport Accident Commission testing processes. Why did he not use that as part of his argument? Why did he not argue that the TAC testing process is tough?

Further, why did he not acknowledge that the 30 per cent impairment test is not a barrier to continuing compensation?

Why does he not refrain from misleading people by suggesting that they have to reach a 30 per cent level of impairment to continue on compensation?

Hon. T. C. Theophanous — They do. What are you talking about?

Hon. R. M. HALLAM — They do not. The point is — you should be in a position to know — that to be entitled to continue on compensation people have to be either seriously injured or totally and permanently incapacitated.

Hon. T. C. Theophanous — I have said that!

Hon. R. M. HALLAM — Then why do you persist in suggesting that their impairment levels have to be 30 per cent or more to enable them to continue on compensation? You have been deliberately obtuse, and some of the community’s confusion has been directly caused by your insistence on trying to read an incorrect interpretation into the law of the land.

The 30 per cent impairment test is relevant in three circumstances — firstly, in deciding whether the person involved is entitled to 90 per cent of his or her pre-injury earnings. The government accepts that, and I am sure the opposition does, too. Secondly, there is a qualification in the table of maims with respect to serious injury. Thirdly, there is the opportunity to pursue common law rights — and the testing process is the same as that applied by the Transport Accident Commission, which was introduced under a Labor government.

I find it difficult to understand why Mr Theophanous persists in arguing that that is such an unfair test when he is obviously prepared to have the same test apply in the case of the Transport Accident Commission. He is arguing from double standards.

Hon. T. C. Theophanous — Explain that to the injured workers after the debate!

Hon. R. M. HALLAM — I do not intend to respond to anecdotal evidence, because in many cases what you have done is unfair.

Hon. T. C. Theophanous — There are 6500 anecdotes out there!

Hon. R. M. HALLAM — I want to talk about the circumstances Mr Theophanous outlined concerning Mr Mawson. He has deliberately suggested there is a question mark hanging over Mr Mawson’s entitlement to continuing compensation because of the 30 per cent impairment test. If that is not the case, I invite Mr Theophanous to correct the record. He has unfairly quoted the circumstances relating to Mr Mawson. I would be delighted to hear more about the particulars of that case.

Hon. T. C. Theophanous — What are the circumstances?

Hon. R. M. HALLAM — I do not know the circumstances of the case, other than those I have
been told about in the past few minutes — and in my view they have been deliberately misconstrued.

**Hon. Pat Power** — How do you know if you don’t know the circumstances?

**Hon. R. M. HALLAM** — I shall refer to some of the ironies in the criticisms made by Mr Theophanous. Many of the problems we are encountering were apparent during his time as a Minister of the Crown. It is a bit rough for him to say now, “We acknowledge there were problems with WorkCare, but we were going to fix them”, when he did not take advantage of the opportunity. Now he makes the claim that everything is extremely tough and that injured workers are being treated arbitrarily.

I will cite one particular instance under the previous administration — the decision to arbitrarily shift payments from 80 per cent to 60 per cent of pre-injury earnings. I suspect that that decision was made on a number of grounds; but I do not think the honourable member would disagree that one of the grounds was the cost of the system. In other words, the Labor Party was prepared to make the arbitrary decision that some people on WorkCare who had been receiving 80 per cent of pre-injury earnings would, the next day, be entitled to no more than 60 per cent.

Mr Theophanous argues that the current system is unfair, despite our saying, up front, on the date of the injury, that benefits will be terminated in two years if the recipient is not able to establish serious injury or total permanent incapacitation. That is eminently fairer than the system he pursued, the cost structure of which meant that some recipients had to be arbitrarily shifted from the 80 per cent earnings classification to the 60 per cent classification. That is a fact, and he cannot walk away from it.

I point out the irony of his raising legal issues. In 1985 the Labor government claimed that a driving feature of the WorkCare changes was the need to get lawyers out of the process. I heard that claim on many occasions. However, the WorkCare system was absolutely milked, as a result of which hundreds of millions of dollars were lost. I doubt that Mr Theophanous will dispute that; if he can quote from the daily media, so can I! I understand why the lawyers are finding it tough. I understand why they are opposing many of the changes; and I understand why they are running the line they are.

It is about market share — and about a market that is being reduced.

In May last year the *Herald Sun* stated:

Four Melbourne law firms have boosted their earnings from Workcare claims by $37 million in the past 20 months.

The earnings are quoted and are listed at:

- $10 617 015 for Maurice Blackburn;
- $10 395 436 for Slater and Gordon;
- $8 257 484 for Holding Redlich; and
- $7 475 294 for Ryan Carlisle.

The market is shrinking dramatically, and I understand why lawyers are resisting that. They can come with their crocodile tears and argue about their representation of workers, but the fact remains that in 1985 part of the changes to workers compensation in this State were designed to get the lawyers out of the system and to remove that cost component. I supported the process to that extent. I understand why lawyers are doing it hard because they see that the market is being reduced.

It is clear that I have taken some tough decisions since gaining office. It is a matter of record and I do not need to dwell on it. One of the tough decisions was to reduce the number of long-term claimants by deciding that after a year of a reform program with its focus on returning to work, long-term claimants receiving weekly payments for two years or more at 1 December 1993 would remain eligible for continuation only if they were assessed as seriously injured or totally and permanently incapacitated. That is a fact of life and I do not walk away from that.

I want to dispute a number of issues raised by Mr Theophanous. I shall deal firstly with the claim that the government has dumped an additional 6500 partially incapacitated workers.

**Opposition members interjecting.**

**Hon. R. M. HALLAM** — They are the words you used. Let us remember, Mr Theophanous, these people are by definition WorkCare claimants, not WorkCover claimants. They are legatees of the previous government’s system and not the one that is currently in place. It was the previous system that dumped them. You come into this House and castigate the current government for the effect and product of the system that was in vogue when you were in charge. You do not get the point, which is
that your system failed those people because it did not get them back to work. That is the bottom line.

Honourable members interjecting.

The PRESIDENT - Order! The Minister cannot possibly contribute to this debate if there are three people shouting at him at once. I invite honourable members to contain themselves and to allow the Minister to respond to Mr Theophanous’s motion before the House.

Hon. R. M. HALLAM - Let the record show that these people were, by definition, products of WorkCare and not WorkCover. Let the record show that the government understands the enormity of the problem and that it introduced a 12-month period of grace for those claimants from 1 December 1992 until 1 December 1993. The opposition may argue that it should have been longer, but at least it was 12 months.

Let the record show that the dumping about which the opposition is complaining is appealable; in other words, a process of appeal applies in each case. Let the record show that while the process of reviewing entitlements is continuing — it will not be completed before 1 December — it is estimated that approximately 3500 claimants will be entitled to receive continuing weekly benefits as a result of their classification of being seriously injured or totally and permanently incapacitated.

Hon. T. C. Theophanous - Are you going to back pay them?

Hon. R. M. HALLAM - I will come to that, and I am delighted to have the chance to put it on the record. It is Mr Theophanous who cites the number of 6500, and the first time he did it I counselled against using that sort of simple mathematics because there may well be — —

Hon. T. C. Theophanous - You gave the number, not me. It is not my number.

Hon. R. M. HALLAM - No, I did not.

Hon. T. C. Theophanous - It is not my number, you put it on the record.

Hon. R. M. HALLAM - You put it on the record. I said there looked to be — —

Hon. T. C. Theophanous - Do you stand by that?

Hon. R. M. HALLAM - Let me go back and say what it was that I put to you at the time.

Hon. T. C. Theophanous - Are you saying that I put it on the record?

Hon. R. M. HALLAM - Let me finish! I said that I acknowledge that there was estimated to be 10 000 long-term claimants in the queue. I said that it was likely, on present indications, that 3500 would be entitled to continue on weekly benefits after 1 December. That is what I said. You drew the deduction that the difference — —

Hon. T. C. Theophanous - You put the 6500 on the record.

Hon. R. M. HALLAM - No, you drew the deduction. Mr Theophanous has failed to recognise the number of those people who will go back to work, and that is leaving aside those who take up the other option of a settlement in the interim. The opposition can use the word dumping and it can use the basic mathematics that it continues to use, but it is not achieving anything like a reasonable figure.

Hon. T. C. Theophanous - But 6500 is your figure.

Hon. R. M. HALLAM - No, it is your figure.

Hon. T. C. Theophanous - Who put in on the record?

Hon. R. M. HALLAM - You put it on the record.

Hon. T. C. Theophanous - I will be pleased to have you withdraw that statement because that is a lie.

The PRESIDENT - Order! I ask Mr Theophanous to withdraw that statement.

Hon. T. C. THEOPHANOUS (jika jika) - The statement is not true.

Hon. R. M. HALLAM (Minister for Local Government) - It is likely that on 1 December approximately 3500 long-term claimants will cease to be eligible for weekly benefits. The indications are that about 7000 are still under review and we expect that 3500 will qualify for continuing entitlements.

The claimants who are likely to cease to be eligible have low levels of incapacity and/or impairment and are assessed to be able to return to suitable
employment. The assessment takes into account a wide range of factors, such as medical conditions, age, education, skills, residence, work experience, rehabilitation and vocational education. It is worth noting that approximately 80 per cent of those claimants inherited from WorkCare had previously undergone or were in rehabilitation but had not gone back to work. The model of rehabilitation under the previous government, which is part of the legacy that this government inherited, had obviously failed, and that was despite the protestations about the efficiency of the Victorian Accident Rehabilitation Council at the time. The facts are that rehabilitation or however else you would describe it had failed these people. They had not gone back to work.

The process of review by the authority and insurers has been undertaken as sensitively and as carefully as possible. Detailed guidelines were provided to insurers in reviewing entitlement of long-term WorkCover recipients.

It is true that the insurers were invited to contact claimants by telephone, and the government has been criticised for that. However, that was done in as sensitive a way as possible as the initial contact. In the majority of cases at least eight weeks notice of the withdrawal of the entitlement has been given, and claimants have been advised about returning to work and other alternatives. Claimants have been advised to contact their employers and they have been invited to consider the opportunity to settle their claims with a lump sum payment. They have also been advised of their appeal rights and they have been offered counselling.

Hon. T. C. Theophanous — Why are there 5500 invalid notices?

Hon. R. M. HALLAM — Well, that is the next issue I will to come to, thank you very much. The conclusion we can come to, which is supported by the evidence Mr Theophanous brought to the House, is that WorkCare failed miserably. Unfortunately, this government is required to manage the enormity of Labor's legacy. Far from being dumped, each claimant has had his or her circumstances dealt with as sensitively as possible by the review process. Circumstances are examined on a case-by-case basis. In contrast to WorkCare, the new authority in its advice to insurers and employers has stressed the importance of endeavouring to find suitable employment for each claimant. Employers now have a direct interest in seeking suitable employment for claimants.

The present review of long-term claimants has been accompanied by a range of return-to-work initiatives. From 1 October 1993, as I hope Mr Theophanous understands, every employer with a payroll of $1 million or more must have a return-to-work plan, which should include appropriate rehabilitation and facilitate the return to work of the worker. It will be triggered where there is a claim of more than 20 days lost. The authority and insurers have extended the WorkCover incentive scheme for employers (WISE) to assist employers and to provide incentives. That is a very welcome innovation in workers compensation in Victoria because under the previous system there was no incentive for employers to offer replacement employment for injured claimants. I do not accept the claim that the government has somehow dumped these people, and I suggest that Mr Theophanous's case does not support that claim.

His claim that there is a blanket classification from partial to serious or total permanent injury — the number cited was 819 workers at the end of June — was an attempt to draw a comparison with my comment that 3500 people would be likely to qualify at the end of November.

Hon. T. C. Theophanous — Is 3500 your figure? Did you put it on the record?

Hon. R. M. HALLAM — I just did. There was no blanket reclassification of partially incapacitated workers. The changes have been reviewed on a case-by-case basis. That is a fact. Mr Theophanous does not understand the various categories of claimants on weekly benefits, so it is important to put them on the record. Those classifications are: partial incapacity, for which the party qualifies for a benefit of 60 per cent of pre-injury average weekly earnings; total incapacity (temporary), which attracts a benefit of 70 per cent of pre-injury earnings; total incapacity (permanent), which also attracts a benefit of 70 per cent of weekly earnings; and seriously injured, which attracts a benefit of 90 per cent of pre-injury earnings and which for the first 26 weeks attracts a benefit of 95 per cent of pre-injury earnings.

Of the changes to the categories that have taken place since the end of June, approximately three-quarters of the cases did not involve a benefit level change. For example, a claimant who was categorised as totally incapacitated and on 70 per cent of pre-injury earnings was reclassified to totally and permanently incapacitated but remained on 70 per cent of pre-injury earnings. In
three-quarters of the cases the question of a shift in entitlement was inapplicable. Of the remaining quarter, back pay would be paid on a case-by-case basis to 1 December 1992, when the legislative changes were introduced, to the date of application for increase or in the event of a change by way of deterioration in condition or complications following surgery. I am happy to put on the record that the entitlement will be backdated when circumstance prompts a change.

I do not have detailed statistics, but from a sample of 215 claimants whose classification changed to seriously injured, I can say that back pay has been paid to 94 of them, and it is expected that back pay will be paid to the remainder of claimants where appropriate.

Hon. T. C. Theophanous — It’s just as well I raised it then, isn’t it?

Hon. R. M. HALLAM — Not at all! This had already taken place. That is the point.

Hon. T. C. Theophanous — Since I raised it before?

Hon. M. A. Birrell — No, we got the statistics out since you asked for it!

Hon. R. M. HALLAM — I want to put on the record that claimants can at any time ask to have their entitlement to benefits reviewed, and if a change is not accepted they may apply for conciliation or proceed to the courts if necessary. That is always an option. Mr Theophanous should understand that. On that issue he has scared people unnecessarily.

Hon. T. C. Theophanous — I’ve scared them?

Hon. R. M. HALLAM — Mr Theophanous should be able to advise people that at any time they are able to apply to have their benefits reviewed and that they have access to conciliation or to the courts in any of those circumstances. The claim that there has been a blanket reclassification is palpably untrue and reinforces the extent to which Mr Theophanous misunderstands the way the process works.

Mr Theophanous’s next claim is that invalid notices of termination or a reduction in benefits were issued. I acknowledge that the courts have determined that a substantial number of formal notices issued by the Victorian WorkCover Authority are invalid, but I am intrigued by Mr Theophanous’s inconsistency. Is he prepared to argue that we should have been tougher in respect of those notices? The WorkCover Authority has acknowledged the court’s ruling in respect of the notices and has gone back to review individual circumstances. That is a fact, Mr Theophanous. I am referring to the judgment of the Magistrates Court in the Riolo case. It is a fact that in October the court ruled that the termination notices were invalid to the extent that they did not advise the claimants of the possibility of an appeal going to the courts. It is a fact that the claimants were advised of their entitlement to refer the issue to conciliation. My concern is that the issue has been argued on its technicality rather than its merit. It is another example of lawyers lining their pockets at the expense of claimants.

As the opposition would know, the intent of the legislation was to allow disputes to be resolved in a non-adversarial way through conciliation, and it is pertinent to repeat what I said at the time the legislation was introduced:

Workers affected by a decision made by the authority may request that a review of the matter be undertaken by a conciliator. Conciliators will quickly and efficiently mediate disputes referred to them, and will have the power to order the commencement or reinstatement of benefits. No legal representation is to be allowed at conciliation without the agreement of all the parties involved in the dispute.

More importantly I made the point that employers were a party to a dispute and would no longer be excluded. I also said that if the dispute was not resolved at the decision stage the matter may be referred to the County Court, the Magistrates Court or the Administrative Appeals Tribunal.

The PRESIDENT — Order! I advise the House that when the matter is next before the Chair the Minister for Local Government will have the call.

Debate interrupted pursuant to Sessional Orders.

NURSES BILL

Second reading

Debate resumed from 23 November; motion of Hon. R. I. KNOWLES (Minister for Housing); and Hon. C. J. HOGG’s amendment:

That all the words after “That” be omitted with the view of inserting in place thereof “this Bill be withdrawn and redrafted to provide that —
(a) half the Nurses Board membership be elected nurses; and

(b) patients continue to be protected by ensuring that there is specific provision for nurses practising in areas of specialty such as psychiatry, midwifery, and maternal and child health to have appropriate qualifications and clinical experience.

Hon. LICIA KOKOCINSKI (Melbourne West) — The Bill is an attempt by the government to rewrite the regulations and legislation relating to the employment of nurses. The opposition cannot support the Bill. It should not be supported by anyone, and public comment on the Bill would support that position. Mrs Hogg, a former Minister for Health, has moved a reasoned amendment calling for the Bill to be withdrawn and redrafted so that half the membership of the Nurses Board can be elected and patients can continue to be protected by ensuring that the nurses who practise in specialty areas, such as psychiatry, midwifery and maternal and child health services, have the appropriate qualifications and clinical experience.

The Bill attempts to remove the various separate registrations for nursing after 1995. The opposition takes a dim view of the removal of the requirement that nurses should be employed in specialist areas only when they have the appropriate qualifications. The opposition believes strongly, contrary to what Ms Asher stated yesterday, that the Bill will not only permit nurses from a variety of experiences and qualifications to practise in fields for which they are not trained but also that the duty of care of nurses will be fought out strenuously in the courts. Although separate registrations will be scrapped by 1995, I contend that the duty of care requirement will be highly contentious. What will a Supreme Court judge say when the issue of duty of care is balanced with clause 61 of the Bill, which refers to the effect of registration? That proposed section states categorically that a nurse registered in division 1, which will be the main register, may do the work actually done by the person registered in any other division of the register without being registered in that division and does not commit an offence under clause 61 because she or he does that work. Clause 61 waters down any duty of care that may be argued in the courts.

I will concentrate all of my remarks on midwifery, as I was involved in a study group that investigated birthing practices in Victoria. The shadow Minister at that time was Marie Tehan, the current Minister for Health, and she dismissed the report that was tabled and made a joke that it was about the parking of ships rather than the birthing of babies. I was disappointed that she treated the report with such disdain.

Hon. R. I. Knowles interjected.

Hon. LICIA KOKOCINSKI — She dismissed the report and the work done by the people in that group, including Dr Judith Lumley, an eminent epidemiologist.

The group covered a number of points about maternity services in Victoria and also agonised over and worked hard on the question of separate registration for midwives. For more than a year the group worked on the issue, yet no-one has drawn the attention of the House to that study. I wonder whether the Ministerial advisers or the bureaucrats are aware that such work has been undertaken.

That study group came up with some interesting statements about a range of possible answers to the vexed question of midwifery registration. Although the Minister has removed the separate registration of nurses, she has not put in place a range of qualifications and codes of practice. The Bill is at odds with the work of that study group because the regulations that will be replaced in 1995 for midwifery practice will still apply inordinate restrictions on the practice of midwifery.

The study group also examined the practice of midwifery all over the world as well as in other States and suggested that such restrictions would be unfair because it placed those practices in a secondary role. The study group strongly suggested that midwives should take a primary role. In a moment I shall refer to an article supported by the Royal Australasian College of Obstetricians and Gynaecologists. Perhaps there has been a change in thought, but RACOG supported an expanded role for midwives.

Unfortunately the Minister has pulled back from that position. In referring to the need for professional qualifications prior to taking on the work of specialised areas in nursing, I contend — and in 1990 the study group also strongly contended this — that qualifications should be a prerequisite for people undertaking specialised work such as midwifery.

I will refer the House to some of the regulations covering midwifery so that government members particularly will understand what is involved when they are handed proposed legislation that contains
important implications such as those associated with this Bill. It is important that they appreciate the roles of specialised people.

Page 140 of the 1990 report of the Ministerial Review of Birthing Services in Victoria entitled Having a Baby in Victoria refers to midwifery regulations which are restrictive and will now remain so.

Regulation 601, which relates to the medical care of a woman during her pregnancy and childbirth, states:

No midwife shall attend a woman or newborn child in the course of midwifery practice unless the woman or newborn child, as the case may be, is under the care of a medical practitioner for the particular pregnancy.

Provided that a midwife who is in case of urgent necessity and without fee or reward delivers any woman or cares for any newborn child shall not be deemed to commit thereby an offence against this regulation.

Essentially, it rules out the independent practice of midwives. The working group said that was not the way to go because we were wasting the enormous education and capacity of midwives to undertake that role. In fact, it flies in the face of what is happening overseas. We had countless submissions from women who had had their babies in England and midwives who had practised in England. They said Victoria is really back in the Stone Age.

Regulation 602, which relates to prenatal supervision and management of labour, states:

A midwife shall not carry out prenatal supervision except with the authority and on the responsibility of a medical practitioner.

Again, it is clear that the training of midwives gives them the capacity to undertake prenatal care.

Regulation 603 states:

A midwife shall not make any vaginal examination unless instructed in a particular case by a medical practitioner to do so.

That placed many women in their care in danger because midwives were not allowed to undertake those kinds of procedures unless they were instructed to do so. Again their training would have allowed them to undertake such procedures.

I am highlighting to honourable members the implications of the Bill. Government members should understand exactly what they are dealing with when they are given legislation of this type. On the one hand, the measure takes away the need for people working in an area to practise what they know they cannot do; on the other hand, it allows any nurse to undertake such procedures.

Regulation 604 states:

A midwife shall not carry out any manipulative procedure unless instructed in a particular case by a medical practitioner to do so except in an emergency as defined by these regulations.

The regulations were designed to limit the work of midwives, which is unfortunate. Had we had the foresight, even in 1985 under the former government, we would not have done it. It was the birthing services review report which highlighted the enormous problems and the demands of women. The birthing services review did not just come out of the blue. It was established after a lot of work, consultation and demand from women. It came from the demands of women because they are the only ones who can have babies. The brave new world of medical technology has not changed that fact. The review also came about because we were training a lot of people, particularly midwives, who were then walking away from the industry. It was important for the government to know why that was occurring. It was discovered that the regulations were restrictive and were designed to be so.

In 1989 a former health Minister, the Honourable Caroline Hogg, to her credit, ordered a review of the Nurses Act. It was in response to the pressure and demand that some changes had to be made in the registration and regulation of nurses. We knew that nurses were well educated. The push for nursing to be recognised as a professional qualification and for nurses to be tertiary educated was intense. It was highly appropriate for the former Minister to order the review of the Nurses Act because it had to be brought up to date; part of that was a review of the Victorian Nursing Council. Although the opposition agrees that some change should be made to the operation of the Nursing Council, it disagrees with the way in which the government has gone about it. My view and the view of the working group at the time was that the Nursing Council was an institution which required change to reflect the medical technology, practice and higher professional standing of nurses in the late 1980s. We would not argue against the reform of the regulatory body.
However, we argue about the manner in which the government has undertaken the review of the Nursing Council and the way that it is appointing rather than electing people to positions on the council.

I am disappointed that only a few government members are in the Chamber because I would like them to develop an understanding of what is involved when the Bill sets out to abolish registration. For the edification of government members I point out that the midwifery category is complicated by the fact that it contains three separate roles for midwives and rarely do they cross over. The study group actually found that midwives tended to stay in their area.

The three major roles of midwives were, firstly, working in an antenatal clinic; secondly, working in labour and delivery wards; and thirdly, working in post-natal wards. Some 96 per cent of midwives were employed in hospitals. Midwives were only ever employed in one of those specialised areas and the areas were also sub-specialties. Sometimes in smaller public hospitals or bush hospitals, they rotated and became multiskilled and worked in all three areas. In all hospitals, midwives are able to manage all risk categories of pregnancy and various risks involving pregnancy and labour.

The study group found that midwives working in private hospitals rarely managed the actual deliveries. However, a few hospitals employ midwives to care for women during the entire pregnancies; that is the case with the community midwifery unit at the Moorabbin Hospital. In 1988, the latest figures available in 1990, about 100 midwives were working in such units, which is not many considering that women would queue as soon as they realised that they were one or two days pregnant. Most women know about those things, but men laugh.

Hon. Pat Power — Not all men!

Hon. LICIA KOKOCINSKI — Doctors cannot believe it either. When a woman recognises that there may be a hint that she is pregnant, she enrols with the unit and is put on the waiting list. Before there is a need to see a doctor, many women put their names on the waiting list for a birthing unit or to be handled and delivered by a midwife. Women have to be on a waiting list or they will not receive assistance. A small number of midwives are in semiprivate practice, but under the regulations midwives have to be tied to a private practitioner because they are not able to operate independent practices. Some women set themselves up as independent practitioners, but they have a working relationship with an obstetrician or a general practitioner. Midwives are now employed by community health centres to deliver postnatal and antenatal care as well as childbirth education. They have striven hard to utilise their undoubted capacity to assist women, although the Minister for Health says it is an easy event! The reality is that pregnancy and childbirth for the vast majority of women is a time fraught with anxiety, but midwives, because of their enormous capacity to assist at the human level, are able to care for these women.

The fourth area in which midwives become involved is maternal and child welfare. The infant welfare nurse, now the maternal and child welfare nurse, has to be trained in midwifery because it is logical that that work is an extension of the work of midwives.

Midwifery is complicated not only because of the work midwives do and the subspecialties but because it is a specialist area. Midwives undergo a 12-month training course, which is extensive. I remind honourable members that the legislation will remove the compulsion to employ only qualified midwives. As I said, a qualified midwife undergoes a 12-month course over and above her nurse training. Midwives undergo 300 to 415 hours of theoretical settings, depending on where they do their training and registration courses. The study group found that the time spent on theoretical training was well above the 200 hours set by the regulations of 1985. By 1990 the theoretical and clinical training time had more than doubled before a person could be employed as a midwife. The Bill does not make it mandatory for midwives to have this training, and I shall read to the House what is learned and taught in a midwifery course that the government will no longer recognise. Regulation 307 states:

The standard of instruction shall be such as to ensure that, at the completion of the training, the midwife has the necessary knowledge:

(a) to care for midwifery patients under medical supervision during pregnancy, labour and the puerperium;
(b) to recognise departures from the normal before they become emergencies;
(c) to deal with emergencies in the absence of medical aid;
(d) to conduct normal deliveries;
(e) to resuscitate the newborn infant; and
(f) to care for the child under medical supervision during the neonatal period, whether it be well or sick, mature or premature.

Not one person has referred to the curriculum content of a midwifery course and the enormous skills midwives possess. Their curriculum covers the major topics of midwifery, anatomy and physiology; normal and abnormal pregnancy, labour and puerperium, operative midwifery; midwifery nursing; neonatal paediatrics and obstetrical anaesthesia and analgesia. Teaching comprises a combination of lectures, practical demonstrations, clinical instruction and tutorials, and teaching staff include both midwifery teachers and medical practitioners. They have hands-on experience in labour wards and various other settings.

I shall quote now from the study group final report entitled *Having a Baby in Victoria* to illustrate what they learn in their basic course. At page 142 the report states:

In addition to theoretical and clinical teaching, students are required to undergo supervised clinical experience involving, for hospital-based courses, a minimum of three weeks in prenatal care, 12 weeks in labour ward, 14 weeks in postnatal care and 12 weeks in neonatal care.

During their time in labour ward, student midwives are required to conduct not less than 20 cases of labour, (including assistance at not more than one breech and one caesarean and three forceps deliveries). They must also perform not less than five vaginal examinations and administer under supervision inhalation analgesia in a minimum of five deliveries.

An overview of the curriculum looks at alternative birthing methods and options for women, birth centre midwifery, home birth midwifery, legal, ethical and psychological issues — which is absolutely critical because attitudes and technology have changed and the problems associated with childbirth are changing as our lifestyle inevitably changes — postnatal care in the home, maternal and child health centre experience and experience in childbirth education. Finally, but more importantly from my point of view because it was an area I pursued with great vigour, the curriculum includes cultural and socioeconomic factors in childbirth.

If the government takes away the requirement to have properly skilled midwives it will deskill midwifery, and midwives who have spent decades upgrading their skills and demanding greater skills should be compensated by being given the status of midwife.

The study group report found when it undertook a consumer survey how women felt about their midwifery care. The research was undertaken not straight after the women gave birth to babies because at that stage they believe everything is fabulous, but several months later to enable women to give a fair and balanced assessment. The study group found that approximately 84 per cent of women out of the 234 who responded to the survey had a high level of satisfaction. The study group received more than 2000 submissions, and it is one of the best research studies carried out in Victoria.

The final report of the birthing services review gives good samples of opinions on the role of the midwife. I have spoken of the intellectual, physical and educational demands placed on midwives, which will disappear with the introduction of the legislation, and I have also spoken of job satisfaction. Contrary to the line that some obstetricians have been pushing to the Minister seeking to maintain the regulations, page 145 of the study group report records what the Royal Australian College of Obstetricians and Gynaecologists (RACOG) said in 1990 about the role of the midwife:

The Royal Australian College of Obstetricians and Gynaecologists ... noted that adequately trained midwives can provide a high standard of care for women during an uncomplicated pregnancy and confinement, however, they believe that such care should be part of an integrated obstetric team.

RACOG cannot move away from its statements, even though it may try to do so for its own professional reasons. I do not know why it calls itself a "royal" college — that reflects the nature of its membership. The royal college stated categorically, as highlighted at page 146 of the report:

It is believed that the role of tomorrow's midwives should and must expand beyond the confines of today and that, given the education, they will be capable of delivering midwifery care in a variety of settings as primary care providers.

That statement means that the college was satisfied that midwives can provide independent, professional, primary care, certainly in conjunction with other providers of care to pregnant women. I digressed a little before I return to the report. On
19 November RACOG had a change of heart, after three years, and has been putting pressure on the Minister not to expand the role of midwives. In 1990 it was more than happy to entertain the idea of expanding the role of midwives. I suggest that a little professional jealousy has influenced the way these professionals have behaved over the past few years. I strongly condemn that attitude. It is going backwards and not forwards. I would have thought that any review of nursing regulations ought to be going forward, taking into account the changes that have occurred, particularly in education and in the technology that is available.

The study group wrote a preliminary report in which it recommended that the separate registration of midwives should be abandoned, and there was a huge protest from the field. Pressure groups lobbied hard against the removal of regulations. The study group found that at that time there were two entrenched views among midwives, two definite camps. On the one hand there was the Victorian Nursing Council, which was unwilling to think ahead about the nature of the nursing profession in the late 1980s. It wanted the regulations to remain as they are. On the other hand there were the midwives who were lobbying to have the regulations covering separate registration removed and replaced by a strict code of practice and professional status.

That is not what is happening through the Bill. It cannot be said that the Bill sets out a code of practice. If the regulations were to be maintained there would be no scope for midwives to act independently. But there is scope in the Bill for people other than midwives to undertake their work, thus completely taking away the professionalism of that role and its expertise.

However, the Nursing Council brought some issues to light. The concern of the Nursing Council about the removal of the regulations relating to separate registration of midwives was that such a removal would lead to cutting corners and lowering standards. Considering what is happening with the Nurses Bill now and the way the Minister is dealing with the regulations, I predict that that is exactly what will happen.

This study group report was balanced. It had to be balanced because it dealt with the different points of view of two entrenched camps. It details at great length the pros and cons of the removal of separate registration. I refer those who are interested to the arguments in the report. The study group originally recommended the removal of separate registration, and the Nursing Council strongly opposed the removal of separate registration. The Nursing Council said, quite correctly, that midwifery is a profession distinct from general nursing but dependent on and interrelated to basic nursing. The opposition has no argument with that.

I turn to what the Victorian branch of the Australian College of Midwives had to say about the removal of separate registration. This issue has been vigorously debated, and some members know a little about the field. At page 148 the report states:

The Australian College of Midwives Incorporated (Victorian branch) identified a number of problems which they believe would be encountered should registration be removed, including: loss of professional standing for midwives, lack of control over employment with the possibility of non-midwives doing midwives' duties, the scope of midwifery practice being restricted and the international definition of the midwife not being adhered to.

Ha, ha, ha! Look at what the House has before it today — a Bill that does exactly that. I will later explain the international definition of midwifery. The Royal Australian College of Obstetricians and Gynaecologists also had something to say about registration, as recorded on page 148 of the birthing services review:

- a system of accreditation or affiliation and delineation of clinical privileges for appropriately trained and independent, practising midwives should be developed by all hospitals providing obstetric services.

The Royal college said to the study group that it supported a system of registration. That last statement suggests that the practitioners of midwifery should be appropriately trained and as a reward have professional standing.

I mentioned the scope of the international definition of midwifery. Australian women are not the first women in the world to have babies! We are light years behind the rest of the world because of the way we prevent our midwives from using their undoubted professional abilities. We should give some verbal support to the internationally accepted definition of midwifery, even if it is not to be enshrined in legislation or regulation:

A midwife is a person who, having been regularly admitted to a midwifery educational program fully recognised in the country in which it is located, has successfully completed the prescribed course of studies.
in midwifery and has acquired the requisite qualifications to be registered and/or legally licensed to practise midwifery.

She must be able to give the necessary supervision, care and advice to women during pregnancy, labour and post-partum period, to conduct deliveries on her own responsibility and to care for the newborn and the infant. This care includes preventative measures, the detection of abnormal conditions in mother and child, the procurement of medical assistance and the execution of emergency measures in the absence of medical help. She has an important task in health counselling and education not only for the patients but also within the family and the community. The work should involve antenatal education and preparation for parenthood and extends to certain areas of gynaecology, family planning and child care. She may practise in hospitals, clinics, health units, domiciliary conditions or in any other service.

That reference comes from the 1972 International Confederation of Midwives and the 1973 International Federation of Gynaecologists, as amended by the World Health Organisation in 1976. It is not something that has been dreamed up by some Labor Party loony or some rabid midwives who support home births in caves. It is a definition of the role of midwifery that is internationally accepted. Yet in Victoria few midwives are able to practise independently and so fulfil the roles inherent in that definition. They either cannot, or find it extraordinarily difficult, to give primary care. Again I quote from the report:

The study group believes that the time is ripe for midwives to be given the opportunity to practise as primary care givers according to the accepted international definition and for a corroborative approach to obstetric care to be forged between the medical and midwifery professions.

I am sorry there are not more members present in the House. I hope someone on the government side will direct my remarks to the attention of the Minister for Health. If she would like to read the report, I would be prepared to pay for a copy of the report that contains the definition. The report continues:

Midwives can and should be able to manage normal pregnancy, labour and delivery on their own responsibility and in cooperation and interdependence with general practitioners and obstetricians. Regulations in other States, for example, New South Wales and Western Australia, already permit this to happen.

That is contrary to the comments in the newspaper article in which the Minister is reported as refusing to loosen the regulations in this field. The study group came to the conclusion that the code of midwifery practice should not be subject to State regulation. I was part of that decision-making process so I cannot walk away from the conclusion. However, midwifery should be defined in a professional code of practice that meets community expectations. The study group felt strongly that the removal of legal restrictions would assist in the expansion of the role of midwives as primary care givers. However, the study group recommended that that role be expanded within a cooperative network of health professionals, including medical practitioners. The report states:

The study group does not believe, however, that midwives should be required to work under the direct supervision of medical practitioners when engaged in the role of primary care giver to the normal pregnancy.

The study group supported the removal of a separate register but said that several things had to be done to replace it. Although the Minister has removed the separate register the second recommendation of the study group has not been acted on. The group recommended that a defined code of professional practice should be established in place of the register, together with definitions of the eligibility criteria for employment as a midwife. We felt strongly that a person needed to have those qualifications before she could practice as a midwife. The Bill takes away that compulsion.

We supported the identifying of midwifery as a profession separate from nursing, and we also supported the development of a voice to advance the role of midwives as primary care givers — but that is not happening. Midwifery in Victoria will remain light years behind what is happening in the rest of the world. We must recognise that, despite its inherent dangers, childbirth is a normal occurrence for the majority of women. The study group also supported the enhancement of the role of the Australian College of Midwives, which was incorporated to formally accredit independent practising midwives. The group believed midwives should be granted extended hospital visiting rights, or what was described as bed rights, to enable them to care for women in labour, as already happens in New South Wales. The study group drew on the report of the New South Wales Ministerial task
force, which said the appointment of visiting midwives may require the revision of some policies, especially those relevant to the conduct of deliveries in labour wards, to ensure that midwives' skills were appropriately utilised and the roles and professional responsibilities of hospital staff were clear.

The Bill will ensure that Victoria goes backwards. Although the Minister has said it will be illegal for people to call themselves specialist nurses when they are not, under the Bill general nurses will still be employed as midwives, even if they never call themselves midwives. Yesterday I received a fax from Ms Robyn Carroll, a midwife and a university lecturer, urging that the Bill be withdrawn. In her fax she explains what is happening, at the same time as the Minister is backing away from loosening the regulations applying to midwives. Ms Carroll says:

Obstetricians, due to their high intervention rate, have reduced satisfaction of birthing experience for women. In order for midwives to respond to the wishes of women in Victoria — highlighted in the birthing services review — it is imperative that this surprise and shocking amendment — not be taken up.

I strongly support that view. I shall now refer to a couple of articles on the position of midwives. Obviously some professionals knew there would be a backlash from midwives when the Minister refused to loosen the regulations. On 19 November an article in the Age, to which I have already referred, had the heading "Midwives set back in bid for autonomy". On 21 December Professor Beischer, head of the Department of Obstetrics and Gynaecology at the University of Melbourne, said in a reported speech on the increase in the mortality rate of mothers that more women were dying in childbirth in Australia. I am not sure whether he was trying to hinder or help a change to the regulations.

Obstetricians, gynaecologists and general practitioners have a monopoly on the birthing area. They use an inordinate amount of technology to care for women. Why, then, are we in this situation? I shall ask Professor Beischer to tell me why, with all this technology and interference, more mothers are dying in childbirth.

Why did the Ministerial Review of Birthing Services in Victoria find that with all the technology the number of babies born with chronic conditions had not been reduced? It found that intervention was not reducing birth defects and that technology still does not have the ability to predict the satisfactory conclusion to pregnancy and consequently, as was put to the review by a number of obstetricians, it is only when the baby is delivered safely that it is known that it is a healthy birth. They said that birth is not a normal event because things can go wrong. One interpretation could be that it is an event that almost "invited women to die". Professor Beischer did not help his own cause when he said:

Quite simply, this means a lot more women than most people realise have a brush with death ...

He was referring to pregnancy and the loss of blood. If this does not frighten women, nothing will. When he spoke about pregnancy being a brush with death he was attempting to put birth totally under the care of professionals. But many of the professionals to whom the review spoke need to be re-educated about reality and not confine themselves to the ivory towers of universities.

In my speech I wanted to highlight the work that has been done in the midwifery area and deal with the vexed issue of separate registration. The birthing services review has not been referred to by government members nor by members on the opposition side of the House. The government has not acknowledged the existence of the work on separate registration done by the study group and which, from my point of view, reached a satisfactory compromise. I advise honourable members to obtain a copy of the report and talk to Dr Lumley or the women who are working in the field of obstetrics and pre and post-natal care and who are lobbying to get a fair deal for pregnant women. The government should have another look at this Bill, because it is on the wrong track.

Sitting suspended 12.55 p.m. until 2.2 p.m.

Hon. M. M. GOULD (Doutta Galla) — I support the reasoned amendment and oppose the Bill. The Bill is a backward step for patients and for the nursing profession because it takes away protection for patients by removing their right to be cared for by highly qualified, highly skilled and competent nurses.

The Bill provides for a register of nurses with separate divisions for different streams of nursing to
be administered by a proposed nurses board. Nurses in the various streams provided in the Nurses Act 1958 will come within various divisions of the register to be kept under the proposed legislation. The general nurse will be a person registered under division 1 of the register, a midwife will be a person registered under division 1, psychiatric nurse will be a person registered under division 3, a mental retardation nurse will be a person registered under division 4, a mothercraft nurse will be a person registered under division 5, a State enrolled nurse will be a person registered under division 2 and a maternal and child health nurse will be a person registered under division 1. Those administrative arrangements are nothing more than a farce; they are an attempt to hide the fact that the government is trying to deskill, devalue and downgrade the nursing profession.

To be registered as a general nurse currently a person must complete a three-year course at a college, including placements in hospitals. A person wishing to enter the psychiatric stream of nursing must undergo a separate three-year course and undertake an additional year of comprehensive post-graduate training. The courses for the two types of nurses are completely different because the skills required in the two areas are different. The Bill removes the distinctions between different nursing streams. Those distinctions have been recognised in awards of the Australian Industrial Relations Commission as constituting different career paths for different types of nurses.

Clause 61(a) of the Bill states that a nurse registered in division 1 of the register:

may do the work usually done by persons registered in any other division of the register without being registered in that division.

Allowing a division 1 nurse to work in any other area clearly makes a farce of the distinction between different divisions of the register. A good analogy would be a person who is licensed to drive a normal motor car and who is permitted to drive a semi-trailer or motor bike but does not have the appropriate skills to do so. To work in specialist areas of nursing, nurses require skills that are additional to basic nursing skills, yet the Bill will allow general nurses to work in areas for which they are not properly qualified or trained.

The recent Burdekin report on the intellectually handicapped stated that there was a demonstrable need for adequately and appropriately qualified and trained staff in the psychiatric-care area. It is of concern that by taking away specialist nursing streams the government will allow generally trained nurses to work in areas for which they are not appropriately qualified or trained.

Clause 62 states:

A registered nurse who has not successfully completed a course in midwifery approved by the board must not ... claim to be a midwife or hold herself or himself out as being a midwife.

It does not, however, say that a person cannot work as a midwife; nurses are simply not permitted to claim to be a midwife. Ms Kokocinski raised concerns about that issue and detailed the training midwives are required to undergo.

The establishment and powers of the proposed nurses board raise grave concerns. The board will not be independent as claimed. Clause 66(3) states that the so-called independent board:

must consult with the Minister and have regard to the Minister's advice in carrying out its functions and exercising its powers.

How can a board appointed by the Minister, which is required to consult with the Minister and have regard to his advice in carrying out and exercising its powers, be independent? That is of major concern.

Clause 67 provides that the board shall consist of 12 members nominated by the Minister and appointed by the Governor in Council. Clause 69(3) provides that the Governor in Council may at any time remove a member of the board from office. I have yet to hear of a Governor in Council removing anyone from a position without doing so on the advice of a Minister.

The opposition is concerned that the board will not be independent. Clause 70(1) provides that the Governor in Council may appoint members of the board who are registered nurses to be president and deputy president and clause 70(4) provides that the Governor in Council may at any time remove them from office.

The opposition is concerned that the board will not be independent. Clause 70(1) provides that the Governor in Council may appoint members of the board who are registered nurses to be president and deputy president and clause 70(4) provides that the Governor in Council may at any time remove them from office.

The board is clearly answerable to the Minister, and it has far-reaching powers. Clause 9(1) of the Bill states:

The Board may, upon the grant or renewal of registration, impose any conditions, limitation or...
restrictions on the registration of a nurse that it considers appropriate.

Those conditions could restrict the hours nurses may work. The restrictions will be imposed by a board set up by the Minister. Clause 14 states:

The Board may refuse to renew the registration of an applicant under this Part —
(b) on any other ground upon which the Board might refuse to grant registration.

The board can prevent nurses from performing their duties at the whim of the Minister. The board is required to take into account the advice of the Minister. The board has the power to refuse to register a nurse for any reason. Clause 88(1), which is one of the most dangerous and concerns the powers of entry, states:

The Board may apply to a magistrate for the issue of a search warrant if the Board believes, on reasonable grounds —
(b) that entry into or onto any premises ...

The board is answerable to the Minister; it is not independent. The board may go directly to the Magistrates Court — not the police — and obtain a search warrant. I am not aware of any other board established under any Act that provides an ability to bypass the police system to obtain a search warrant. Clause 90, which refers to the power of the board to accredit courses, approve education programs and conduct examinations, states:

The Board may —
(a) approve a registered funded agency for the purpose of conducting courses or programs ...

The process has moved control from the hospital system and colleges. Education programs can now be conducted by registered funded agencies approved by the board. It further states:

The Board may —
(b) approve a course or program conducted by a registered funded agency ...
(c) accredit courses which provide qualifications for registration purposes or qualifications in addition to those required for registration purposes.

The board will take the control of nurse training out of the colleges and into registered funded agencies, which can approve and accredit the courses and the agencies. Subclause (4) states:

The Board may set and conduct examinations for persons who have successfully completed courses conducted by registered funded agencies and may require persons who sit examinations set by the Board to pay the fees fixed by the Board for the conduct of those examinations.

When they have completed their training nurses must then pay to sit for the examination to become registered nurses. The Bill deskills the competency and training of nurses. The board can devalue the skills of nurses. Clause 6(1) states:

A person is qualified to be registered in division 1 of the register if that person —
(b) in the opinion of the Board, has a qualification that is substantially equivalent or is based on similar competencies to an accredited course.

Nurses may have substantially equivalent qualifications but when they enter the hospital system and deal with severely ill patients those qualifications may not be considered substantially equivalent to highly skilled nurses. The clauses to which I have referred are of major concern to the opposition.

Clause 3 refers to unprofessional conduct. Under the current Act the taking of industrial action is not deemed to be unprofessional conduct. However, under the Bill, if nurses take industrial action their jobs will be in jeopardy. The Bill not only reduces the standards that have been set by the nursing profession over decades, it also prevents nurses from taking industrial action because of the threat of dismissal by the so-called independent board. We have heard how independent that board is! Through the board, the government will be able to conduct witch-hunts for trade unionists who are genuinely concerned about the wellbeing of patients. It is clearly another attempt by the government to reduce the rights of the trade union movement, trade unionists and workers in general. By reducing nursing standards the Bill puts the community in jeopardy.

The Bill calls on patients to set the standards. I am not sure how patients who may be suffering from serious medical conditions — perhaps in intensive care units — will be able to decide on the nursing standards required. Patients in those circumstances are often unaware of nurses' attempts to keep them alive. In the past nurses worked hard to improve their standards of care, but the Bill calls on patients to set nursing standards. An appropriate analogy
might be to ask the intellectually disabled to set their nursing standards. That is unreasonable.

I raise a number of concerns about the powers of the board, the obtaining of search warrants and the provision that removes the specialised skills of the nursing profession. The government implies that no changes will be made to training requirements, but that is not so because the Bill allows nurses to move from one division of nursing to another. I remind the House that we are talking about highly skilled nurses who have undergone extensive training to become qualified in their profession. The Bill reduces standards beyond recognition. I oppose the Bill and strongly support the reasoned amendment to allow for further consultation with those primarily affected by the Bill — that is, the nurses and the various elements in the nursing profession. I urge the House to support Mrs Hogg’s reasoned amendment.

Hon. D. A. NARDELLA (Melbourne North) — I support the reasoned amendment. The opposition has a sincere concern about the effects the Bill will have on the Victorian nursing profession. I refer firstly to the opposition’s concern about the government’s lack of consultation; participants in the nursing profession need to have ownership of, and be part of, the change. I shall deal with that subject in more detail when I address the comments made by Ms Asher. It is important for governments to conduct proper consultative processes and to implement changes that have been agreed to by those affected. Time and again this government has demonstrated that it is not interested in genuine consultative processes.

Although the Bill aims to protect the public, I am concerned that its changes are not supported by nurses. If the Victorian public is to be protected it needs the best possible health care system. That should be Victoria’s aim. However, this Bill does not achieve that aim; participants in the health care system do not agree with the changes it details. That does not augur well for the further development of the best health care system in the country. Victoria cannot afford to get it wrong; it is too important for those who suffer ill health and rely on highly trained and skilled nurses. We must not get this Bill wrong.

The opposition has heard major objections to the Bill, not from vested interests but from concerned organisations in the health care system. The government got it wrong. As Ms Kokocinski said, the skills required in midwifery, for example, are such that if the government implements this proposed legislation Victorians will face the threat of those skills being lost. Midwives are apprehensive about the changes to the current system.

I appreciated the briefing opposition members received from departmental officers. They pointed out how the Bill will change the registration and classification of psychiatric nurses. We must ensure that that level of expertise is raised. Although support for multiskilling may be strong, the government must ensure that, once in place, the system does not disadvantage the people for whom we care.

Ms Asher spoke of many things; she attacked the Australian Nursing Federation. I will deal with that aspect later. Ms Asher said that since 1958 nursing has become much more specialised. She also said that the opposition to the Bill is based on an ANF campaign.

Mrs Hogg referred to letter after letter from organisations that are not involved with the ANF. Although it is their democratic right, they were not involved in the letter-writing campaign. They put forward genuine concern about the Bill to both the opposition and the government. The letters to which Mrs Hogg referred did not refer to a campaign organised by the ANF; they were independent of ANF activities. Ms Asher tried to make out a case that the whole campaign was orchestrated by the ANF and that organisations like that representing chiropractors are independent of the ANF.

Debate interrupted pursuant to Sessional Orders.

QUESTIONS WITHOUT NOTICE

TAXI LANE FOR TULLAMARINE FREEWAY

Hon. D. R. WHITE (Doutta Galla) — I direct my question to the Minister for Roads and Ports. The Premier said today in addressing taxi drivers at Melbourne Airport that the government would consider setting aside a lane on the Tullamarine Freeway exclusively for taxis. Will the Minister inform the House whether VIC ROADS has considered this proposal and, if so, how it could be feasible when there are only two lanes from Flemington Road to Bell Street, or is this another case of the Premier making policy on the run without consultation with the Minister for Roads and Ports?
Hon. W. R. BAXTER (Minister for Roads and Ports) — The Premier and I, along with our colleague Mr Craige, had a useful visit to Melbourne Airport shortly after 7 o'clock this morning when we spoke to approximately 100 taxi drivers. One of the gratifying features of the visit was the overwhelming support the taxi drivers showed for the Premier and the government of Victoria, not just for what the government proposes for the taxi industry but for the government's activities in general. Taxi drivers overwhelmingly support the direction the government is taking.

The issue of the Tullamarine Freeway was addressed in the Budget when an announcement was made under the Better Roads program that an additional lane would be installed in both directions from Bell Street to Flemington Road. It is true there were discussions this morning between the Premier, myself, taxi drivers and representatives of the Federal Airports Corporation about whether a lane ought to be designated in peak hours on the Tullamarine Freeway for the use of public transport, including taxis and buses, in the same way as transit lanes operate on other freeways, including the Eastern Freeway.

Fortunately, in the planning of the Tullamarine Freeway during the days of the Bolte government the then Melbourne and Metropolitan Board of Works had the responsibility for metropolitan freeways, and its planners were clever enough and had sufficient foresight to build the overpass bridges across the Tullamarine Freeway wide enough to allow additional lanes to be built along the freeway when demand so dictated. Consideration is being given to the matter, in combination with the announcement previously made in the Budget, and an exclusive public transport lane may well be part of an extension of the freeway.

PALLIATIVE CARE HOSPICE

Hon. ROSEMARY VARTY (Silvan) — Will the Minister for Aged Care, who is responsible for palliative care, state the government’s response to the request for funding to establish a hospice for families with terminally ill children?

Hon. R. I. KNOWLES (Minister for Aged Care) — The provision of a specialist hospice for terminally ill children and their families has received some publicity recently. It is a very important issue, as all honourable members would understand only too well, because it places enormous stress and creates emotional turmoil in families when a child succumbs to a terminal illness.

A community-based organisation called Very Special Kids has been designated to help and support those families. It currently receives approximately $123 000 each year from the Budget to enable it to carry out its work, but it has developed a project for a specialist hospice service which would seek to meet the needs at any given point of 8 to 10 children and their families. The proposal has a recurrent cost of $1.6 million on top of the capital budget of $3.4 million. The government said it is prepared to examine the proposal, but it has to be in the content of the broader palliative care program.

Honourable members will be aware that the Commonwealth government has committed additional funding for palliative care, and discussions are proceeding as to how those funds are to be utilised. Additionally, I have previously informed the House that the government has established a task force, which will meet for the first time next Wednesday, to examine a range of issues in an appropriate mix of specialist facilities as opposed to the development of palliative care programs in other institutions, whether acute hospitals, extended care centres or other appropriate organisations.

One issue that has to be canvassed is whether it would be better, rather than developing a specialist hospice which involves considerable travel for those seeking to use the service, to develop an appropriate palliative care service in existing institutions spread around the State, which would be more appropriate for families living some distance from where the specialist hospice might be established.

It is important to recognise that palliative care for children has special requirements, and whichever approach is adopted it is important that they be addressed. It is not appropriate to see the provision of palliative care for children as being part of a general palliative care service because there are different requirements that need to be addressed.

The government is concerned to ensure that it better addresses the needs of children with terminal illnesses and their families, recognising the significant distress and trauma that such an occasion causes them.
FIRE PROTECTION IN NATIONAL PARKS

Hon. B. T. PULLEN (Melbourne) — I direct my question to the Minister for Conservation and Environment. It is clear that the Minister, by shedding most of his conservation functions, is more interested in the title of conservation than the responsibilities that go with it. Notwithstanding that, does he accept responsibility for the adequacy of fire protection within Victoria's national parks under his care and, if so, is he satisfied that the firefighting resources are adequate to protect national parks this summer?

Hon. M. A. BIRRELL (Minister for Conservation and Environment) — It appears from the gratuitous preamble of Mr Pullen that it has just dawned on him that there have been changes in the responsibilities of the Minister for Natural Resources and the Minister for Conservation and Environment. It is a sad commentary on the shadow Minister that this action, which took place during the last sessional period ---

Hon. W. R. Baxter — Six months ago?

Hon. M. A. BIRRELL — Yes, and which was "hidden away" in commentaries in such secret places as the front page of the Victorian National Parks Association newsletter, has only just come to the attention of Mr Pullen, who seeks to be regarded as a credible alternative Minister!

The preamble to the question exposes the opposition spokesman for his hollowness and inability to undertake basic research like reading publications of pressure groups that should be in his hands, let alone the many departmental bulletins.

Honourable members interjecting.

Hon. M. A. BIRRELL — The only requirement on my behalf is to be tolerant of the idiocy of the opposition.

As to the second matter, as the former Minister would know and as most members of the House would be fully aware, even during the time in office of Mr Pullen and his predecessors, the issue of fire was managed not on its own but as part of a whole-of-department strategy. It is a critically important issue, because Victoria is one of the world's three most fire-prone areas, and it is an issue that, of course, Victorian authorities take very seriously.

There was no specific question in the shadow Minister's comment. I am happy to respond to any specific question. If he wants to air any specific question or concern, I would welcome that, because even though this matter is dealt with by my colleague the Minister for Natural Resources, who has responsibility for management of fire issues, I regard it as fundamentally important.

If Mr Pullen wants to be regarded as having any credibility at all he will bring forward any doubts he has and raise a specific issue. As the honourable member ought to know, the Minister for Natural Resources is responsible for the whole-of-portfolio issue of fire management.

Hon. B. T. Pullen — You are not going to answer the question!

Hon. M. A. BIRRELL — I will take Mr Pullen through my answer very slowly. If it is being suggested that the coalition government ought to breach the practice of previous Labor governments and that management roles for fire control should be separated --- I am taking this slowly because it takes a while for information to drip in to the honourable member --- or that the department's fire responsibility should be separated into different divisions or parts of the department and so on, that is a manifest absurdity that would bring about a breakdown in good, integrated public land management and would not ensure the best use of resources. It is also not what was done by the Cain and Kirner governments, because it is an irresponsible way of managing anything.

Honourable members interjecting.

The PRESIDENT — Order! I ask Mr White to please desist from interjecting. He has asked the first question. I also ask Mr Pullen to cease interjecting and let the Minister respond to the question he asked.

Hon. M. A. BIRRELL — I shall take the honourable member through it yet again. If the honourable member wants to raise a substantive issue on fire management, I ask him to do so. If he wants to leave this Chamber with the impression that he has done anything more than reveal his ignorance of Ministerial roles, I suggest he change the tenor of his question.
Maritime Museum of Victoria

Hon. P. R. HALL (Gippsland) — Will the Minister for the Arts inform the House of progress being made towards the establishment of the Maritime Museum of Victoria?

Hon. HADDON STOREY (Minister for the Arts) — I have pleasure in informing the House that last week I launched the Maritime Museum of Victoria aboard the schooner Alma Doepel. This museum is unique. It comprises nine different campuses around Victoria. In the past these campuses operated as independent museums, and they will continue to operate under their present identities, but they have now come together to form one museum, the Maritime Museum of Victoria, so that they can market and offer visitors and Victorians the opportunity to see different aspects of the maritime museum wherever they go. Each, of course, has its own particular collections and its own particular good practices, which will make the Maritime Museum of Victoria a most important offering and facility for the museum world.

The sites include the Alma Doepel, HMAS Castlemaine, Polly Woodside, the steam tug Wattle, Echuca, Port Albert, Flagstaff Hill, Warrnambool and Queenscliff. Each of these campuses will retain its individual characteristics but they will also be greater than simply parts of the whole because of their working together in this unique way.

I congratulate all those involved, because it is a big decision for individual institutions to agree to come together and work in a way that will improve what they offer to the community as a whole. I also thank the Museums Advisory Council of Victoria and Professor Weston Bate, who assisted greatly in the development of the museum. I invite all honourable members to attend any of the museums at any time — I am sure they will have a thoroughly enjoyable experience.

Local Government Board

Hon. W. R. BAXTER (Minister for Roads and Ports) — The government went to the election with a policy across a range of departments that advocated outsourcing, and that is taking place in a number of departments, including the Roads Corporation. Mr Ives, for example, has frequently mentioned the fact that computer technology services are currently being outsourced, and I have recently contracted for the outsourcing of the painting of white lines on roads. Similarly, consideration is being given to outsourcing the prosecutions department. There is no reason to believe its tasks cannot be successfully executed by the private sector at a considerably reduced cost to the taxpayers of Victoria.

At this stage the matter is going through the process to ascertain what is offered by the private sector, at what cost and how it might be managed. In due course a decision will be made on whether it is appropriate to outsource VIC ROADS prosecution services. I will certainly be paying due regard to the issue of civil liberties, and I assure Mr Davidson that if the services are outsourced arrangements will be made to ensure that the issue is carefully controlled.

Vic Roads Prosecution Services

Hon. B. E. DAVIDSON (Chelsea) — Will the Minister for Roads and Ports confirm to Parliament that it is the government’s intention to outsource VIC ROADS prosecution services, and if so will he advise how long he has been proceeding with that intention, what stage the process has reached, who if anybody has been chosen to do the work and, finally, whether he envisages any problems involving civil liberties?

Hon. W. A. N. HARTIGAN (Geelong) — Will the Minister for Local Government advise the House of details of the report of the Local Government Board on the Surf Coast municipalities and his intentions concerning that report?

Hon. R. M. HALLAM (Minister for Local Government) — Before I deal with the report, it is appropriate to outline the processes being followed and to spell out the respective roles of the Local Government Board and the Minister.

In the last session Parliament amended the Local Government Act to establish the Local Government Board, with a specific role of providing the Minister for Local Government with advice on the effectiveness and efficiency of local government in Victoria.

On 17 August I requested that the board review and report on the most appropriate municipal structure for the area comprising the shires of Barabool and Winchelsea and the south-west coastal portion of the City of Greater Geelong. In investigating that issue, the board has conducted a number of discussions with local councils and has also, I understand, received almost 350 submissions from the public. Several of my Parliamentary colleagues and I have received copies of some of the submissions, and a
great deal of correspondence has been generated by the issue.

As the board is conducting a very public review process, I have taken the view that it would be inappropriate for me to comment in any way before the board formally reports to me. However, I make the point that under section 220K of the Act the board is required to submit to me an interim report containing the results of its review and any proposals for restructuring. It must also make this interim report available for public consultation, and a period of 14 days is stipulated. The board will then consider the interim report in the light of a second round of consultation and make any revisions to its recommendations in its final report to me.

The board delivered its interim report to me last Friday and, as Mr White interjected, I understand most members have had a copy delivered to them. Its availability has been publicised quite widely. The recommendations have been well covered in the local media. The issue is a matter of public process, and I maintain my position that it would be inappropriate to go to the issues raised by the report, but I think it quite appropriate that I refer to the central recommendation the board has made: that there be established a new Surf Coast Council, through the amalgamation of the Shire of Winchelsea — excluding the western portion of Barwon Downs — the Shire of Barrabool and the coastal portion of the City of Greater Geelong west of Thompsons Creek, but excluding Breamlea.

I am advised that the proposed municipality would have a population in excess of 16,000, an area in excess of 1600 square kilometres and a total budget in excess of $12.3 million based on current rate levels. The report argues that the municipality would provide an effective focus on some of the most valuable environmental and tourist assets this State can proudly boast, together with the flourishing industries associated with those assets.

As I said, it is not appropriate for me to comment on the report itself, but I welcome the work of the board. It is a valuable contribution, and I look forward to a vigorous public discussion on the recommendations disclosed thus far.

MUNICIPAL BOUNDARIES

Hon. PAT POWER (Jika Jika) — Is the Minister for Local Government aware that the City of Whittlesea resolved on 8 November that it:

Supports the democratic right of ... ratepayers and citizens ... to be given a chance to have a say in deciding their future — i.e., the proposed changes to the boundaries of their municipality.

Does the Minister agree that this view is shared by the majority of Victoria's municipalities?

The PRESIDENT — Order! The question calls for an opinion and is therefore not appropriate. Does the honourable member wish to reword the last part of the question?

Hon. PAT POWER — Does the Minister have examples of municipalities that disagree with that view?

Hon. R. M. HALLAM (Minister for Local Government) — I suggest the question still calls for conjecture on my part. The position adopted by the City of Whittlesea has been conveyed to my office — that much is clear — and it may well be that it is a view shared by other municipalities. However, a number of municipalities have approached me either individually or in groups to suggest that this is a good opportunity for a rational debate on local government and a real review of the operations of local government and that the opportunity offered by the Local Government Board should be capitalised upon.

Hon. Pat Power — But are they going to have a say in their boundaries?

Hon. R. M. HALLAM — The honourable member is able to draw the sorts of conclusions he has drawn from the comments made by one municipality. Within the law of the land specific provision exists for a poll to be conducted under the quite public process that is to be followed by the Local Government Board.

Hon. Pat Power — Geelong and Melbourne are good examples of that!

Hon. R. M. HALLAM — No they are not, and you know why not. We have discussed that on previous occasions, but Mr Power will be aware that in the debate that took place when the changes to the local government law were considered there was a great deal of discussion about not only the opportunity for members of the community to request a poll on any of these issues but how that could be achieved. I am not really sure what sort of conclusion Mr Power wishes me to draw other than...
to say that the law of the land clearly provides for a poll on this precise issue.

**BETTER ROADS VICTORIA PROGRAM**

**Hon. G. R. CRAIGE** (Central Highlands) — In announcements made so far under the Better Roads Victoria program there appears to be an emphasis on overtaking lanes. Will the Minister for Roads and Ports advise the House of the rationale for such projects?

**Hon. W. R. BAXTER** (Minister for Roads and Ports) — Mr Craige is obviously a very acute observer — or should I say he has made a correct observation? In the announcements made under the Better Roads Victoria program since it was implemented earlier this year, overtaking lanes have been announced for the Bass Highway, the South Gippsland Highway, the Princes Highway, and indeed the Melba Highway in the province represented by Mr Craige.

The principal rationale behind those projects is safety. The frustration factor is removed from drivers who find themselves following slow vehicles they are unable to pass. It is the next best option to duplication. It costs about $800,000 a kilometre to duplicate a highway compared with $220,000 a kilometre to install overtaking lanes, so obviously much more can be done if overtaking lanes are constructed in appropriate locations.

On top of that, projects can be carried out rapidly, and as I have said to the House on many occasions road construction is a good job generator. The projects have created quite a few jobs in country Victoria and will continue to do so. I propose to announce further passing or overtaking lane projects on various country highways over the next month or so.

It needs to be said that to get the best from overtaking lanes we need to continue with the education of drivers on how the lanes should be handled. It is annoying for a motorist following a slow car if that car does not move to the left when a passing lane is provided.

More attention needs to be given by law enforcement agencies to that aspect. It seems there is also a subconscious reaction, rather than a malicious action, on the part of some drivers to speed up in passing lanes to prevent someone who has been following them for some time to overtake them on a single carriageway. I do not know why that happens, but more work will be done on that aspect in future road safety campaigns.

**MELBOURNE CITY COUNCIL**

**Hon. M. M. GOULD** (Doutta Galla) — In view of the undertaking given last week by the Minister for Local Government that residents in the Melbourne City Council area would not be disadvantaged or unrepresented as a result of the recent restructure, will the Minister give a commitment that the fifth commissioner for the Melbourne City Council will be a person with interests and expertise in identifying community needs?

**Hon. R. M. HALLAM** (Minister for Local Government) — I am not sure whether Miss Gould has accurately captured what I said last week. In any event I will be happy to consider the attributes she has said are necessary for a fifth commissioner, if a fifth commissioner is appointed. I make the point that I do not accept her inference that the same attributes are not demonstrated by those who have already been appointed. I hope she is not reflecting upon the four commissioners who have been appointed. I am happy to give a commitment that the particular qualities she is advocating will be considered if a fifth appointment is made.

**DANDENONG RANGES—PORT PHILLIP BAY PARK LINK**

**Hon. B. N. ATKINSON** (Koonung) — Will the Minister for Conservation and Environment advise the House of any progress that the government has made towards the creation of a link between the Dandenongs and Port Phillip Bay?

**Hon. M. A. BIRRELL** (Minister for Conservation and Environment) — I am pleased to be able to advise the House of a recent land purchase which will provide a unique link of public parkland connecting the Dandenong Ranges to Port Phillip Bay. The government has purchased a 120 hectare site to link Lysterfield Park with Churchill National Park.

The purchase of former farm land will ensure that Victoria now has a large area of public parkland on the fringe of metropolitan development, and we can link together a range of other areas of public land to provide a continuous area for people to move along through the establishment of walking tracks or bicycle paths.
The land was previously a mix of open pasture, granite outcrops and bushland and is home to more than 160 species of native wildlife. The purchase of it by the government fills the missing link to provide an unbroken chain of protected open space.

It will provide local residents and visitors with an opportunity to walk or ride on public land from the Dandenong Ranges through Lysterfield Park, Churchill National Park and Dandenong Creek Park to either Port Phillip Bay or Jells Park.

The initiative is further evidence of the government's commitment to link urban parks as much as practical. It has been a long-term project and due credit goes to governments more than 20 years ago which zoned this land and marked it for purchase.

The credit specifically goes to the then Hamer government for its foresight in ensuring that the land was zoned appropriately, although it was only recently available for sale and purchase. It is an example of persistence paying off. In 1971 the then Liberal government ensured that this would be an open space reservation, and I am pleased that our government has been able to fulfil the promise of its time.

**NURSES BILL**

*Second reading*

Debate resumed.

Hon. D. A. NARDELLA (Melbourne North) — As I was saying before the interruption to the debate, the letters sent and representations made to the opposition and the government by the Royal College of Nursing Australia, Victorian Chapter, the Public Sector Psychiatrists Association by Professor Woodruff, the Convenor of the Heads of Schools of Nursing, and the President of the Australian College of Midwives Incorporated were made on the basis that they are independent bodies. Ms Asher was insinuating that they could not think for themselves, that they were part of the orchestrated campaign by the Australian Nursing Federation and that they were the federation's lackeys. That is not the case.

Those organisations have serious concerns about the legislation that have not been picked up by the government and that, in a real sense, goes to the heart of the reasoned amendment that the Bill should be withdrawn so further consultation can take place.

Ms Asher spoke about unprofessional conduct, and that is another major concern. Unprofessional conduct as defined at page 3 of the Bill is:

all or any of the following —

- professional misconduct; or
- (c)(iii) an offence against this Act or the regulations.

One of the major concerns of the opposition is how these particular clauses can be used to take away the existing rights that nurses have if they take industrial action. A number of industrial issues involving nurses arose during the time of the Labor government, but that government never challenged, as this Bill does, their right to practice and be registered as nurses.

Hon. W. A. N. Hartigan — You surrendered without argument. You gave in to anything they wanted without charge. Anything they wanted, the taxpayer paid for — not a problem.

Hon. D. A. NARDELLA — Thank you, Mr Hartigan, it goes to the heart of the problem that, according to Mr Hartigan, this Bill is the way that the government will control the nursing profession. I thank Mr Hartigan for outlining to us the real reason for the Bill. When people read *Hansard* they will understand that the opposition's concern is justified.

Hon. W. A. N. Hartigan — Thank you for selling off the services to the trade union movement!

Hon. D. A. NARDELLA — Here is somebody talking about selling off services while we are talking about the Nurses Bill! I wish Mr Hartigan would read the Bill and get with it. The charge of unprofessional conduct is of great concern to ordinary nurses, because sometimes all they can do is take some form of industrial action. They do not take it lightly because they are professionals, but sometimes it is their only avenue of action. Having made that heart-wrenching decision, under this legislation they face the prospect of having to appear before a disciplinary panel, and that will rub salt into the wound. It is not what this or any other Bill is about, and the opposition is concerned about it.

Ms Asher then talked about clause 38(1) —

Hon. W. A. N. Hartigan — Get on with it! I have a short-term memory problem!

Hon. D. A. NARDELLA — What a pity! The government has added that one must be a registered
nurse and says it has listened to and consulted with interest groups. If the government had consulted, why was this aspect covered by an amendment in the other House? Why was it not dealt with in the original Bill? If consultation had taken place — we contend it has not — the original Bill would have contained that provision. It is unconscionable — —

Hon. R. I. Knowles — It's a late request!

Hon. D. A. NARDELLA — That interjection goes to my point. It was a late request and the government heard that request, but it is likely that other requests have been made — —

Hon. R. I. Knowles — We've considered them and decided not to accept them!

Hon. D. A. NARDELLA — Other organisations may want further discussions with the government.

Hon. R. I. Knowles — They don't want further discussions; they want us to cave in!

Hon. D. A. NARDELLA — That relates to what I said earlier. The nurses, who are the people we are discussing, do not have ownership of this issue. It is not the type of change they are looking for.

Hon. R. I. Knowles — We want the public to have ownership of it. It is for public interest.

Hon. D. A. NARDELLA — My point is that when you are making changes that affect nurses you have to ensure that they are happy with them, and the Bill does not make them happy.

Hon. W. A. N. Hartigan — Is whether they are happy the only measure of success? I am not happy with everything either!

Hon. D. A. NARDELLA — I am not happy with everything, but the nurses' happiness is not the only issue. If Mr Hartigan had been in the Chamber at the beginning of my contribution he would have heard me say I am concerned about the lack of consultation and the issue of ownership. I contend that many other issues were left out of the consultation process and that the reasoned amendment allows for further discussion to take place.

With reference to clause 66, Ms Asher said the new board will have greater independence than the board it replaces, which was established under the 1958 Act. Under this legislation the Minister may appoint people to the board; therefore the Minister controls the appointees to the board and, ipso facto, controls the board. If the board does not do what it is told, under clause 69(3) it may be disposed of at the Minister's whim. That is the type of independence the board has under this legislation. The opposition is concerned when certain powers may override a board with responsibility for such an important area.

The crux of Ms Asher's argument in support of her comments was that opposition to the Bill is part of an attack by the ANF. She said the Bill should not be redrafted simply because the ANF is behind the various concerns. By making representations to the opposition and to the government the ANF is representing its members. It is one of the premises of a trade union that it represents its members, listens to them and speaks on their behalf. The nurses are concerned about the Bill and have made their views known to the ANF's officials through a number of avenues. According to Ms Asher they should be condemned for that. That is not my contention. Like the Royal College of Nursing and the Public Sector Psychiatrists Association, the ANF has the right and the responsibility to represent its members who will be affected by these changes.

The ANF has worked well for many years to protect the public and its members. As I said earlier, the ANF conducted industrial disputes which people may have disagreed with, but it was only representing the wishes of its members in those disputes. That is what it is doing in this case. It has consulted directly with its members and has been at the forefront of major changes in the health system, and it should be treated with respect. Unfortunately, the Bill does not treat nurses or their organisations with respect. The government even showed what little respect it has for this House by including last minute amendments to the Bill.

The concerns of those organisations that operate outside Parliament should be considered. Parliament cannot afford to get the Bill wrong and have nurses offside when changes are being introduced. The participation of those professional people in implementing the Bill is absolutely vital. I support the reasoned amendment because it gives the government an opportunity to consult with those organisations I have mentioned so that a better piece of legislation is passed. If that course were taken, the opposition would have looked upon this Bill more favourably and assisted the government in its passage through the House. That is what the House and the Parliament should be about —
Hon. G. P. CONNARD (Higinbotham) — I support the Bill, which is a massive rewrite of the Nurses Act 1958, and oppose the reasoned amendment. In the past several years the provision of health services has been considered, which has resulted in the rewriting of many Acts associated with the health industry. Probably the most massive change was the rewrite of the Health Act, which had a long and turbulent career before it came to this place some years ago.

The inception of this Bill was in 1989 when the debate about nursing education was raging. There were arguments about whether to retain the apprenticeship-type training of nurses or to introduce a professional and more academically based training within the nursing community. There is no doubt that the nursing profession has been dragged into the modern world to become a genuine partner in the health care system. To some extent I was involved in that movement in my role as a member of hospital boards of management and as a member of the then opposition, but I am not sure whether nursing education is completely right yet.

In the mid-1980s when the arguments about the Bolger approach to nursing arose I was invited by Mrs Cooney, then the executive director of a federally based union, to talk to the members of that union. I suggested that nurse education should be based on the education of pharmacists, which was my own profession. I had played a part to construct an education system for that profession some 25 years ago, which is based on three years academic study with apprenticeship work at the end of every year of academic study and a full year of practical experience. I still think that the nursing profession would have been better off if it had taken that course in education, which was mainly accepted by the federal union, but the Bolger debate in Victoria precluded that from happening.

There were a variety of people on the then Victorian Nursing Council and negotiations with it were a sham. I cannot imagine why the Nursing Council was led by a doctor, even though one of my closest friends, Dame Joyce Daws, was a distinguished President of the Victorian Nursing Council. I could not understand why nurses would let a doctor be a president of their council at a time when all paramedical professionals were fighting for their autonomy. I emphasise that I do not want to decry Joyce Daws, who was a thoracic surgeon and a woman of high standing.

At that time I took my thoughts to the government of the day but it did nothing and let the situation continue. Perhaps it was too frightened to tackle the Victorian Nursing Council. So far as I was concerned the council was inept. The two hospitals for which I was a member of the board of directors had excellent directors of nursing. Some directors had come into the modern world and others had retained their archaic view to nurse training. However, these days right throughout the profession directors of nursing are interested in improving the profession.

When I began my career as a pharmacist doctors ran the whole health system and any other paramedical practitioners were the handmaidens of the doctors. It was a matter of yes sir, no sir. Pharmacists were almost treated with contempt, as were nurses and physiotherapists. It has taken a great deal of fighting to get doctors to accept paramedicals as equal partners in the health care system.

Physiotherapists, occupational therapists and a whole range of paramedical professions by their own endeavours, with the cooperation of governments of the day, have raised their standards to a high level, but for the reasons that I have outlined that did not happen in nursing. Nurses have always dragged the chain.

Over the past 10 years I have sat at hospital board tables when the issue of cost containment has been raised. Almost inevitably the chief executive officer would say, "This year the government requires us to reduce expenditure by this percentage" and he would propose some change that would affect doctors. The director of medical services would defend his troops and say that the whole hospital would collapse if any changes were made to procedures affecting doctors. If the reduction was aimed at the general administrative area, cuts that might affect the gardeners or the cooks, the director of administrative services would defend his troops to the end. During those discussions the director of nursing would look out the window and not contribute to the overall corporate debate on the hospital. When it was time for a report on nursing, the director of nursing would say that nurses were doing this or that and that the hospital had so many agency nurses, which was a bit of a problem; but the director of nursing and nurses did not enter into the corporate debate over many years.
I can only blame the Victorian Nursing Council as one of the significant partners that should have lead the agenda. When I tried to encourage the directors of nursing, whose modern generation I hold in high esteem, to take part in the council, they looked at me hopefully and asked why should bother wasting my time. Several people who were actively involved in the health industry could not encourage directors of nursing to take a virile approach to the debate through the council. So that inertia has been felt through to this day.

When the issue of nursing education was raised there was debate about whether it should be an apprenticeship-type course or a full tertiary education course, but the Nursing Council did not respond as strongly as it should have in fulfilling its duties. Although hospital boards received reports from the council, they were not fighting reports — they were not reports of considered opinion. Over the years the Nursing Council has not done what I believe the other paramedical professions were doing. The council was not fighting for the autonomy of nurses in the modern world. It has not caught up with the 1980s and 1990s, as have other paramedical service providers, which are part of what I call a health team for the total care of patients in whatever discipline it may be.

I turn now to the remarks of the opposition concerning the correspondence that Mrs Hogg received from midwives and psychiatric services. It has been long felt that nurses should have gone down the track that almost all paramedical professions have followed in Australia. For example, the training of doctors in every Australian State provides them with a basic qualification in surgery, medicine and obstetrics. They then choose to stay in one of those disciplines, move to general practice or branch out and become specialist practitioners in one of those disciplines or in others. The same principles have applied to almost all the paramedical professions.

My own profession of pharmacy is an example. Pharmacists are trained in the basic requirements of pharmacy and practitioners can then choose to move on to postgraduate training; on achieving their diplomas they can follow whatever disciplines they like, whether it be community, hospital or manufacturing pharmacy. They are fundamentally trained as broad-based professionals and then move on to higher qualifications. The same can be said about almost every professional medical sector in Australia, except for nursing.

There have been continuing "problems" with psychiatric nursing. Over the years many psychiatric institutions have been a closed shop to other professionals. The honourable member for Preston, Michael Leighton, who came from that profession, told me that psychiatric nurses were trained to be experts in the psychiatric sector but were not trained in general nursing or multiskilling. In many institutions psychiatric nurses should have detected in patients other health indicators but they did not have the fundamental training of general nurses to do so. Instead of having a broad-based approach, psychiatric nurses specialised from the start.

Australia takes its culture from the British model and we expect all our professionals to have fundamental broad-based training. Although generally Australian nurses are well respected and well trained, whether it has been through apprenticeship-type training or tertiary education training, many countries do not recognise them. They cannot be registered simply because, apart from general nursing, they lack that broad-based training that countries such as Canada and other Western World countries enjoy.

For some time Victoria has had a fundamental problem with the training of nurses, which successive Labor health Ministers have known about. There is a strong need to have broad-based fundamental, highly qualified training as a starter for the nursing profession.

The government expects that as nurses decide on the direction that their careers will take, some will remain as general nurses working in either hospitals or community areas and will subsequently specialise in whatever discipline they like, whether it be psychiatric nursing, mothercraft nursing and so on. With the modern approach to salaries being reflected in agreements, those postgraduate diplomas will be respected professionally and will be adequately remunerated in agreements that nurses will negotiate with their hospitals or institutions. I would propose that the government should reward its employees by having appropriate amounts for qualifications and duties recorded in agreements.

The farce that Mr Nardella mentioned in his contribution will not occur. With all respect to Mrs Hogg, I should have thought she would be aware of the educational issues addressed by the Bill. She should appreciate that nurses and the profession will be given incentives to strive for better standards, which the community expects from
its medical and paramedical professions. This is what the nursing profession has wanted for many years.

Mr Nardella and Mrs Hogg referred to the government’s lack of consultation on the measure. As a member of the government’s Bill committee I can advise the House that the draft legislation for the Nurses Bill was sent at the beginning of June to the following organisations: the Victorian Nursing Council, the Australian Nursing Federation (Victorian branch); the Victorian Hospitals Association; the heads of schools of nursing; the Health and Community Services Unions; the Royal College of Nursing Australia; the Federated Miscellaneous Workers Union; the Association of Directors of Nursing; the Australian College of Midwives; and the Australian College of Mental Health Nurses.

The government received correspondence from all those organisations and their views were carefully noted and most of their concerns are addressed in the Bill, so it has consulted with the community. Additionally, responses were received from the following: the Statewide Child Care Committee, the Southern Metropolitan Region Senior Psychiatric Forum, Ms Nora Drake, Ms Julie Fechner, the Victorian Senior Psychiatric Nurses Association, the Australian Catholic University, the Maternal and Child Health Special Interest Group of the Australian Nursing Federation, the Mothers and Midwives Action Group, the course coordinators of the Bachelor of Applied Science (Intellectual Disability) at the Royal Melbourne Institute of Technology and Deakin University, and others. It is untrue to say that the government did not consult or receive advice.

The majority of the concerns of those organisations were addressed during preparation of the Bill. I concede that the letters Mrs Hogg has received and read to the House are valid and I am sure the Minister has noted some of the concerns expressed in them, but I do not accept all those concerns for the reasons I spoke of earlier.

I was disappointed by the contribution of Mr Nardella because he gave the impression that he had not even read the Bill. The Bill incorporates several amendments made in the Lower House. The registration sections are little different from other registration sections in medical and paramedical legislation. Indeed, the registration sections in this Bill are more extensive than those in the Medical Practitioners Act.

Mrs Hogg and Ms Kokocinski are concerned about the provisions relating to professional misconduct and the mental or physical health of registered nurses. Those provisions commence at clause 20 and finish at clause 49. They describe the arrangements for proper and due care to be taken by an inquiry into the conduct of a registered nurse. I note that these inquiries must be addressed by the Nurses Board in conjunction with the Health Services Commissioner, so it is a two-way process of inquiry and the legislation stipulates that there must be consultation between the board and the commissioner. The commissioner is independent and can make reports or undertake investigations direct to the Minister and to Parliament. The Nurses Board has a duty and a responsibility to report to the Minister and, if necessary, make public those reports. The Bill has a balance, because if the board is autocratic and unduly reprimands nurses they can appeal to the Health Services Commissioner and either the commissioner or the board can recommend action and/or report directly to the Minister, so Mr Nardella’s arguments are farcical.

I do not intend to speak in depth on the provisions relating to inquiries into registered nurses, but they are similar to the provisions that apply to medical or paramedical boards, which are bound to investigate competently the professional conduct of their respective professions.

Honourable members should bear in mind that only a small percentage of members of the medical and paramedical communities are investigated for misconduct or breaches of their professional conduct code. Every profession has incompetent people, people with criminal intent or silly people who bring the professional standards of the professions into disrepute. All honourable members expect that the various medical and paramedical boards will judge the misconduct of their members. The majority of the people to be appointed to the Nurses Board will be nurses of high standard with various disciplines. The board will also comprise two community members and one lawyer. The proposed membership of the board is similar to the membership of other medical or paramedical boards. It is appropriate to have a lawyer appointed to such boards to provide the informal legal advice, and it is equally important to have community representatives to ensure that the board does not become too incestuous. If some of the apprehensions expressed by Mr Nardella occur, the community representatives can advise the Minister directly that the board is not behaving appropriately. The board is well balanced, and I believe it is appropriate to
rely on the integrity of the Minister to select the right people for it.

The Victorian Nursing Council was unable to attend to its duties properly and has not done as well as it should have. It is important that the provisions regarding the mental or physical health of registered nurses be included in the Bill. Occasionally a professional may report on the lack of self-discipline of one of his or her colleagues, or the poor health, mental disturbance or drug addiction of a nurse.

The same difficult issues arise in other health areas. Clauses 26 to 49 address those issues. It may be necessary for a nurse to be deregistered by the board, perhaps for a short period. A nurse may formally or informally complain to the Nurses Board, giving information about a colleague. Given the high standard of nurses who will become members of the board, it will not be a Star Chamber. Members of the House know that if such a board became a Star Chamber the government would rapidly reform it.

All the evidence is that the board will handle delicately any investigation into the mental or physical health of nurses, and the Bill reflects the sensitivity with which the matter should be handled. The government has gone to great lengths to ensure that. Any decisions of the board can be reviewed by the Administrative Appeals Tribunal, which will ensure that they are not arbitrary. That is a satisfactory process.

The board will deal with the normal things such a board should provide — for example, the payment of fees and allowances. Appointments will be by the Governor in Council and the board can establish advisory committees on a variety of topics. Government members expect that the restructuring of the board will be important in bringing the nursing profession into the 1990s and do not see it as likely to have the retarding effect suggested by members opposite.

As an aside, I wonder why members of the opposition have decided to launch a major campaign against this Bill. It is strange because their ground is so shaky. Both Mrs Hogg and Mr White know well the difficulties the government has had in having the changes agreed to by the profession. Members opposite have expressed concern that people trained in mental retardation nursing, midwifery and other disciplines will be disadvantaged. There will be no difficulty of that sort because people who have been trained in those disciplines will be entitled to continue to practise. There is no difficulty in their continuing their chosen professions in any of the disciplines.

Basically the Bill addresses the seven disciplines of general nursing, psychiatric nursing, maternal and child health nursing, midwifery, State enrolled nursing, mothercraft nursing and mental retardation nursing. The government expects that those seven disciplines will continue and that, broadly speaking, there will be some reconstruction in postgraduate qualifications.

Broad-based general education is vital. I will tell a story to bring home its importance. Dame Joyce Daws, who was one of Australia's leading thoracic surgeons, will probably never forgive me for telling this story. I worked with her on a hospital board and I can remember her coming into a meeting quite excited because she had been at her home at Ocean Grove at the weekend when someone was having a baby. No-one else was available, so the people involved rushed to Dame Joyce and said, "You are a doctor. Come and help". She said that it was absolutely amazing that she still had the skills in which she was trained 30 years ago. Perhaps she was not as skilled as a gynaecologist, but she safely delivered the baby. That is the benefit of a broadly based education. In my own health discipline I would probably also have those broad skills. I would be able, although perhaps with a little difficulty, to manage a hospital pharmacy because I have the broad-based skills which are absolutely necessary and the continuation of which the Bill aims to ensure.

The Bill will enhance the nursing profession. The board retains the capacity to regulate training courses conducted in hospitals, such as State-enrolled nurses courses. There is raging debate even now on how many State-enrolled nurses are needed — or whether they are needed at all. I will not go into that, but debate is raging in the profession. The board will coordinate and advise on standards of nursing in a diverse range of university-type courses for the training of nurses.

I am certain that the board will be able to investigate allegations of misconduct in a proper way and without affecting the profession, and I am also sure that investigations will be conducted fairly. I point out that the Health Services Commissioner will be acting side by side with the board and decisions can be reviewed by the Administrative Appeals Tribunal.
Consequently, I do not share the concerns of members of the opposition. The Bill is good, and I applaud its introduction. I see no reason to pursue the reasoned amendment moved by Mrs Hogg.

Hon. PAT POWER (jika jika) — I support the reasoned amendment to the Nurses Bill. I enjoyed Mr Connard’s contribution, although our conclusions differ on many points. The Nurses Bill states:

The aim of this legislation is to replace the Nurses Act 1958 with a modern statutory framework for the registration of nurses in Victoria.

In particular, the Bill will —

(a) establish a registration board for nurses;
(b) provide a new registration scheme for nurses;
(c) establish a more humane process for dealing with nurses whose capacity to practice is in question; and
(d) create disciplinary procedures which conform with the rules of natural justice.

The Bill has the political and personal style of the Minister written all over it. This is one of the more unfortunate measures to have come before the House, not because of the issues Mr Connard addressed but because it is an attack on the nursing profession. The Bill interferes with the rights of nurses and gives some people the licence to pursue others in the name of investigating professional misconduct.

I am interested in the political message the Bill delivers. As a member representing Jika Jika Province, which contains psychiatric institutions such as Larundel and Kingsbury, I am more aware than most of the achievements of the nursing profession in general and the psychiatric nursing profession in particular. I am certainly aware of the stress under which those people work. I do not believe the Bill will address the shortcomings of the industry, particularly the issue of education, which all members of the profession acknowledge should be subject to ongoing adjustment. I place on record my appreciation and that of other opposition members of the people who have given a lifetime’s service to the nursing profession. I particularly acknowledge the psychiatric nurses who have worked in difficult and trying circumstances in institutions such as Larundel and Kingsbury.

I was deeply concerned by some of Ms Asher’s remarks last evening. I am not sure whether she was influenced by the Minister’s presence, but her speech was not in keeping with her usual high quality. The assessment Ms Asher made of some of the correspondence Mrs Hogg read to the House was unfortunate. The suggestion that a range of individuals and organisations wrote those letters simply as part of an orchestrated campaign was regrettable and is not something of which Ms Asher should be proud.

I am sure that those who support the Bill were anxious to have their views circulated in the community and used by advocates on their side. I do not suggest that the correspondence the government has received in support of the Bill is the result of some unhealthy, perverse campaign. I have no doubt it was the result of the type of campaign in which people who live in a democracy have a right to participate.

I expect government members to acknowledge that people wrote to the opposition as a consequence of a similar sort of campaign. That in no way diminishes their right to express their views; nor does it diminish the quality of the arguments they put to the opposition. Regardless of how deeply we feel about a government’s style or direction, it is important that we fight to preserve a basic tenet of democracy — the right of people to express their will. If that results in a campaign, so be it.

The comments I shall make on the Bill are the result of the contacts I have had with industry practitioners, their clients and the families of clients. They are concerned that the proposed board, the members of which will be hand-picked by the government through the Minister, is an unhealthy model. I acknowledge Mr Connard’s contribution, during which he said we should be able to accept that the Minister of the day is capable of exercising judgement and integrity in those matters. That is not the issue.

I am concerned not about whether a Minister will act with integrity and commitment and make the right choices but about whether the community will perceive that that is what has happened. I am concerned about whether it is possible for the community and the profession to be confident of and participate in the workings of a board that is made up of political appointees. I am not suggesting that the Minister will not make selections that are professionally appropriate; but I hope that no member of the government benches will suggest that the Minister would not take political imperatives into account when making the choices.
Some of the strongest arguments were put to me by psychiatric nurses. Most of them acknowledge that the strength of their advocacy springs from their participation in their professional organisation, in their trade union and in the processes and the structures of their workplaces. They are not meek and mild professionals; they claim that they are progressive.

Psychiatric nurses insist that they are deeply committed to their profession and that they are appropriately trained. They insist that the range of activities I have just described is the result of their commitment to ensuring that their clients enjoy a high quality service. They insist that that commitment is a demonstration of the fact that the profession of psychiatric nursing is critical and has a strong and enduring place. They are deeply alarmed that the legislation will provide “extraordinary powers” of investigation into the conduct and fitness of a nurse to practice.

I have no difficulty with the picture Mr Connard painted. I support absolutely the picture he painted of the necessity for a psychiatric nurse to meet an accepted community standard, but once again I hark back to the concern expressed by the community about a board made up entirely of political appointees. Given the history of the legislation and the rhetoric of a number of prominent Ministers about trade unions and their professional activities, I believe these people are entitled to be alarmed about whether their practices, which they see as a commitment to their profession, will be seen in the same light by the new board.

I suppose 1996 is not far away. I wonder whether those now on the government benches would consider that a future Labor government would have the integrity the coalition government now claims it has. I wonder what they would say if a Labor government introduced this legislation. Would they see it as laudable? That is how it has been described to us.

Hon. G. P. Connard — Absolutely!

Hon. PAT POWER — Another point that has been raised with me is educational standards. I have no difficulty with the view that Mr Connard expressed but, just as we have seen with legislation affecting education, it is the view of the opposition and the community that the legislation will enable the government of the day to employ anyone as a nurse.

It is my view that legislation dealing with education does not prevent a Minister employing unqualified persons to teach. Those of us who experienced the education system during the 1960s will recall examples of that. It is legitimate for people to have similar concerns about this legislation. Perhaps members of the government might like to reassure me when responding to the debate that under the Bill it will not be possible for a person with lower qualifications than those now accepted in the profession to hold a position as a psychiatric nurse. I ask for that simple undertaking.

The outline of the Bill states in part:

(c) establish a more humane process for dealing with nurses whose capacity to practice is in question; and

(d) create disciplinary procedures which conform with rules of natural justice.

In other debates on coalition legislation it has been difficult for members of the opposition to hear the words “natural justice” and keep a straight face. Recently I received — as I am sure other members have done — correspondence from the Victoria Police Association about the Police Regulation (Discipline) Bill. Many police officers would laugh when reading a coalition Bill that said it wanted to introduce disciplinary procedures that conform with the rules of natural justice. The Police Association believes natural justice has been thrown out the door by the coalition.

It has been put to me that nurses, certainly psychiatric nurses, find it difficult to see natural justice as an element in the determination under the Bill of the capacity to practice and of discipline. I invite government members to reassure me that under the legislation the home of any psychiatric nurse will not be visited. I invite the government to expand on the definition of “natural justice”. Will the government give an assurance that, in line with the community’s understanding of the words “natural justice”, the privacy, rights and non-working time of psychiatric nurses will not be impinged upon.

I raise those issues because they are matters that have been put to me. I did not place an advertisement in the Preston Post Times asking people to approach me with their views on the legislation. I did, however, receive telephone calls, correspondence and personal visits from people. I have not been contacted by anyone who supports the Bill. Although I do not attach any weight to that, and do not for one moment suggest that government
members who have claimed to have received messages of support are not genuine, I have as the member for Jika Jika Province been contacted by a number of people who have expressed a substantial level of anxiety about the future of and the rights of individuals in the nursing profession.

Although none of those who contacted me has contested the sorts of issues raised by Mr Connard, in a sense they were worried about the darker side of the legislation; that it represents what the Minister for Health in another place has said about issues since October of last year.

Hon. R. S. IVES (Eumemmerring) — I support the reasoned amendment and oppose the Bill. Mr Connard asked why the opposition should spend so much time on and make such a big issue about the Bill. Mr Power answered that question.

The opposition's attitude derives from the depth and extent of complaints and representations opposition members have received from concerned nurses and paraprofessionals in the health area and because it believes the representations are genuine. We do not deny the point made by Ms Asher that in many cases it is an organised campaign. By definition, all campaigns are organised. It would be impossible to organise a sustained campaign if the heat of felt injustices generated by the Bill did not exist. The opposition is also concerned that the Bill exemplifies the style of the government.

Mr Connard mentioned the need for change. The opposition agrees there is a need for change but objects to the end result of the proposed change. Mrs Hogg, who as Minister performed with considerable distinction, began this process of change when a paper was issued detailing the principles that a good registration system should encapsulate.

The four principles were that there should be benefit to the public, that the regulation must be the most thorough way of correcting a problem, that it must be the minimum necessary to alleviate the problem and that the benefits of occupational regulation must outweigh the costs. Despite the rhetoric about the Bill being more humane and demonstrating principles of natural justice, the opposition believes the end result does not satisfy those criteria.

The Bill has been extensively debated both here and in another place, so I will not go over arguments that have already been advanced. I answer Mr Connard by saying that although the opposition accepts the need for change it believes change should be measured against certain criteria; and those criteria have not been met in the Bill.

The second point raised by Mr Connard was the issue of specialised and generalised education. Although his comments were informative and I listened with attention to what he said, I felt he did not deal with the Bill or answer our objections. The opposition has no difficulty with the concept of a generalised education that leads to specialisation, whether it be in psychiatric care, midwifery, theatre or any of a range of other specialities. The opposition does object, however, to the attempt to deregister nursing by allowing nurses who are not adequately trained the possibility of being employed in an area for which they are not properly trained. That was the gist of the objections the opposition received from professional associations.

Ms Asher said we should let the market decide and made the point that high-profile and well-trained nurses are used to dealing with state-of-the-art technology and no hospital manager in his or her right mind would employ a less-than-adequate theatre nurse. That point is no doubt correct in relation to theatre nurses because evidence of failure in that area is so quick and dramatic. However, in the psychiatric area and other fields failures are more insidious and difficult to measure but can be just as disastrous over a long period.

Because hospital administrators are constantly being forced to cut their budgets and reduce costs there will be a greater temptation for them to employ less adequately qualified and trained staff, particularly if they receive lower remuneration. Although that will not happen in the high-profile areas where publicity of failure is immediate, the same cannot be said for the whole of nursing.

Mr Connard's third point concerned consultation. He assured the House that the government had sent out to a whole range of professional and paraprofessional bodies the definitions and drafting instructions released in June and had received back replies, which it had noted. That is not evidence of consultation!

Ms Asher said surely we were not asking the government to take on board everything professional associations might say. No, we are not. The opposition would simply like the Bill to show some evidence that some of the things have been taken on board. If the government does not wish to take on board or incorporate suggestions from
professional organisations, those suggestions should at least be replied to and some evidence provided that the government has turned its mind to the issues. There is no evidence in the second-reading speech, the Bill, the memorandum or in the speeches of government members that the minds of government members have been engaged on the issues.

The expressions of discontent read out by Mrs Hogg from sources such as the Convenor of the Heads of Schools of Nursing, the Public Sector Psychiatric Association, the Health and Community Services Union, the Australian College of Midwives Incorporated, the Department of Child Care Studies at Swinburne University, the Faculty of Health and Behavioural Sciences at Deakin University and the Australian Nursing Federation were all carefully chosen as people of weight and substance in the profession. To simply dismiss them, as Ms Asher did, as part of an organised letter-writing campaign — as if Ms Woodruff, in accordance with the instruction of the ANF, would systematically send five or six faxes a day to a range of Ministers to make a point! — trivialises the point we are trying to make: that there was no genuine consultation!

The third point made by Mr Connard concerned the question of checks and balances. He assured honourable members that the Health Services Commissioner would provide adequate checks and balances against the board. He said that clauses 20 and 49 concerning inquiries were principally to deal with people who were silly, incompetent or showed criminal intent and who could be judged by their peers, the nurses appointed to the board.

The nurses and paraprofessionals who approached the opposition have some difficulty with that. The most essential safeguard — namely, section 23(C)(2) of the Nurses Act — states that:

A nurse is not guilty of professional misconduct only on the grounds of action taken by that nurse pursuant to an industrial dispute.

The easiest way of allaying those considerable fears and anxieties is to reinsert that section of the principal Act in the Bill. The government has not provided an adequate explanation for its removal. Therefore, it is understandable that people fear the worst.

Mr Connard said that surely we can trust the wisdom of the Minister. Irrespective of the person concerned, why should we trust the wisdom of any Minister? Good legislation does not depend on us having confidence in the judgment of a Minister. The Labor Party had direct experience of that. The most grotesque and absurd example concerns an appointment made by a former Queensland Premier — not a Minister. When a Labor senator died, as some sort of joke, Pat Field was made a senator. When he was asked why Pat Field — a sad, pathetic, inadequate, stupid, clown-like figure — had been appointed as a senator, the Premier's answer was: "He is a good Labor member; of course I appointed a unionist". If a State Premier is prepared to appoint a fool and a clown to a major legislative body, why should we trust a State Minister? My answer to the Minister for Housing is that we do not trust any State Minister.

Hon. R. I. Knowles interjected.

Hon. R. S. IVES — Due process assumes that candidates have the endorsement of at least some electoral body. If candidates are elected by the Australian Nurses Federation or some professional group they may well be stupid and clownish also, as indeed are many elected representatives in this place. However, if we believe elections to Parliament somehow carry some sort of accountability, substance and legitimacy, the same argument can be put in the case of the proposed Nurses Board. Apart from that there is the issue of perception, which was argued by Mr Power. As I argued in the debate on the Board of Studies Bill, such representatives can perform a very useful role for the government as they did at the Victorian Curriculum and Assessment Board. If the government is prepared to have elected representatives as of right, by engaging the relevant professional group, it can engage in dialogue with it; otherwise opposition will be driven underground and it will be persistent. Without elected representation no professional group will ever have to take responsibility for any of the decisions made. That in a sense creates a situation the government is attempting to avoid.

Next Mr Connard argued that the Nurses Board would not be a Star Chamber. There would be considerable respect for the medical and mental health examinations, which would be handled delicately. One would hope so. However, what are the perceptions of the nurses despite all the assurances of the government. The perception, for better or for worse, is that as soon as the government politically appoints a board, those political appointees are beholden to the patronage of the Minister. They are not in positions to make independent judgments.
Mr Connard told a delightfully whimsical story of a person who had not been nursing for 20 years. When she helped someone in an accident she found she had not lost her old skills. That was supposed to be evidence of the effectiveness of a broad general education that is never lost. I have no doubt that many of us could stumble into some of the situations of our earlier professions and, if faced with an emergency, make a reasonable fist of the job. In the case of Mr Mier, I should imagine that if a pipe burst he might make a reasonable job of repairing it. But what would he be like on a multi-storey plumbing job? Although Mr Connard’s story is charming, what is the point? That is the opposition’s answer to some of the points raised by Mr Connard and Ms Asher.

Hon. B. W. Mier — By the way, I retain my plumbing registration.

Hon. R. S. Ives — I have no doubt, Mr Mier, that plumbers are the strongest single faction in this House. However, even the possession of a slip of paper does not make one a multi-skilled professional these days.

I would like to comment concerning our broader concerns as to how this Bill demonstrates the style of the government. After examining the actions of the government over the past year it has become obvious to the opposition that 10 commandments have emerged. One suspects that all Ministers have them pasted behind the doors of their lockers. The 10 commandments are designed to prevent the mobilisation of the opposition, to remove checks and balances, to remove or limit community representation, to remove any as-of-right representation and to remove sources of independent advice.

The first commandment is to deceive, plan secretly and strike decisively and unilaterally without allowing any means of recourse. The second commandment is to abolish boards with independent statutory bases. The third commandment is to downgrade statutory boards when it is politically undesirable to abolish them, exclude representation as of right, place all members under the patronage of the Minister and effectively turn those boards into kitchen Cabinets. The fourth commandment of the government is to make significant changes by regulation rather than by statute. The fifth commandment is to ignore outside bodies with legitimate interests in the area. The sixth commandment is to strip the opposition of resources and limit its access to freedom of information. The seventh commandment is to abuse the process of Parliament. The eighth commandment is to employ high-powered and well-paid administrators and, wherever possible, centralise administration. The ninth commandment is to remove the Minister from accountability at law, and the tenth commandment is to rid the system of lawyers and other professionals when professional expertise is a source of countervailing power and authority.

I now intend to test this legislation collectively against those 10 commandments. In this case the following apply: the third commandment — to downgrade statutory boards when it is politically undesirable to abolish them, to exclude representation as of right, to place all members under the patronage of the Minister and effectively turn those boards into kitchen Cabinets; the fifth commandment — to ignore outside bodies with legitimate interests in the area; and the seventh commandment — to abuse the process of Parliament.

There is no reason why the Bill should be rushed through the House; it should be withdrawn and redrafted. Considerable discontent and alarm has been expressed by the opposition and people outside this place. Although those fears could perhaps be readily allayed, no effort has been made to do so. On that basis, the opposition supports the reasoned amendment.

Why should any government feel concerned about the 10 commandments? What is the main fear? It is a fear expressed in programs like Yes, Minister: that any group becomes essentially self-serving and responsible to itself rather than its clientele. Dr John Paterson and some Ministers claim that, by and large, teachers do not serve the needs of students, they serve the needs of teachers; parents do not serve the needs of their children, they serve the needs of parent organisations; nurses do not serve the needs of patients, they serve the needs of nurses; and health professionals do not serve the needs of patients, they serve the needs of health professionals. If one wants a soundly managed system that serves the client, one has to remove all those self-interested groups from having an impact on the management of the system.

So far as possible one limits the role of teachers, doctors, nurses and the management of the system and, so far as possible, one limits all checks and balances, all counter influences or anything that may present some degree of independent authority within the system.
What does that leave us with? It leaves us with a government that, it could be argued, is the largest and most profound self-interest group of all. What evidence is there that this government serves the needs of the people rather than itself? Why should this government be any different from teachers, parents or nurses? What if it did not serve the people of Victoria but instead served its own agenda, ideology and motivation and tried to get rid of any countervailing opposition in the system?

Hon. M. A. Birrell — It is the only one elected, that seems to distinguish it from those other groups, doesn’t it?

Hon. R. S. IVES — Not necessarily. You were elected on a certain platform.

Hon. M. A. Birrell — Called a mandate.

Hon. R. S. IVES — This is not part of the platform. The saddest point was made by Ms Asher about this sad, deluding, slightly pathetic fallacy. She spoke with high dudgeon concerning her claim that the ANF refused the Minister for Health permission to address a union organised mass meeting of nurses. Did the Minister hope that her charisma, forceful argument and skill in debate would appeal directly to members over the heads of those rotten, inverted members of the union bureaucracy, thereby leading them to say, “We have seen the light and understand the reasonableness of the government. You have explained it all”?

It is fairly sad, romantic, self-deluding and fallacious self-aggrandisement. I am reminded of Quentin Crisp’s story about Eva Peron addressing a crowd in Argentina. It was said that when Eva Peron stood on the balcony at the Presidential Palace before the assembled mass media and raised her hands to the heavens, clunks of diamond bracelets fell around her elbows, as she began her speech with the salutation, “We the shirtless ...”. Quentin Crisp was moved to remark, “At least she had style”.

Unfortunately, when considering the conduct of this Bill through Parliament one cannot even claim that the Minister for Health has style!

Hon. D. E. HENSHAW (Geelong) — Because my opposition colleagues have ably covered many criticisms of the Bill, my remarks will be brief. I read the Bill in the context of a personal view; I have high regard and respect for nurses and the nursing profession. From that point of view I was generally dismayed by the Bill. The nursing and medical professions are important sectors of the general health community. It appears that the government has adopted a different approach in this Bill from that which one might expect in legislation dealing with the medical profession. I was taken with the first page of the Bill and the term set out in the first paragraph, which states:

In particular, the Bill will —

(c) establish a more humane process for dealing with nurses whose capacity to practise is in question;

The word “humane” is a curious one to be used in this legislation. If the House were considering a Bill about doctors registration no doubt honourable members would have read the word “carer” as part of the process of a doctor’s capacity. Why has the government used “humane”? Is it derived from a view within the government that regards nurses in some paternalistic way, perhaps bracketed or coloured with the view that nurses are associated with a union — the Australian Nursing Federation (ANF). It seems that description contains a form of paternalism that I find obnoxious.

When one examines one of the main features of the Bill contained in Part 3 — dealing with investigations into registered nurses — it seems we have a remarkably detailed series of processes and ways of looking at the services of nurses and psychiatric nurses. I cannot help but wonder whether similar processes would be established for doctors, for example. It is reasonably true to say that old or sick doctors just fade away whereas this Bill appears to be intent on registering nurses away! I query the Bill’s general approach.

I am intrigued that the ultimate aim of the Bill is to have two divisions in the register. A number of honourable members have commented on that aspect of the legislation. I am optimistic enough to believe that the means used to employ nurses who are not suitably qualified in the disciplines of nursing — such as mental retardation, psychiatric or child and maternal nursing — will be covered. I fail to understand why the Bill has not enabled the inclusion under their registration of either the qualifications or certifications of nurses so that employers can judge from registrations in which fields nurses could sensibly be employed. There is no suggestion that that is the case.

It is proposed that nurses will be registered in general categories. Why can there not be a more detailed listing of their qualifications or certifications in a dual register? I also question the necessity for nurses to be registered every year. Most professions
retain a register and do not require their professionals to apply every year. Why has the opportunity not been taken to modify that procedure? A nurse who has worked professionally for a period of years with an employer has no need to apply for new registration. The initial registration should sensibly be maintained. I can see no reason why the Bill could not have rectified that situation.

The government is keen on doing away with administrative excesses. What is the point of renewing the registrations every year? That aspect should have been examined. If Mrs Hogg’s amendment is accepted, the legislation will be reviewed and that provision could well be re-examined. I certainly support the reasoned amendment and oppose the Bill.

House divided on omission (Members in favour vote No):

Bells rung.

Members having assembled in Chamber:

House divided on motion:

Ayes, 28
Asher, Ms (Teller) Forwood, Mr
Ashman, Mr Guest, Mr
Atkinson, Mr Hall, Mr
Baxter, Mr Hallam, Mr
Best, Mr Hartigan, Mr (Teller)
Birrell, Mr Knowles, Mr
Bishop, Mr Skeggs, Mr
Bowden, Mr Smith, Mr
Brideson, Mr Stoney, Mr
Connard, Mr Storey, Mr
Cox, Mr Strong, Mr
Davis, Mr Varty, Mrs
de Fegely, Mr Wells, Dr
Evans, Mr Wilding, Mrs

Noes, 13
Davidson, Mr Mier, Mr
Gould, Miss Nardella, Mr
Henshaw, Mr Power, Mr
Hogg, Mrs Pullen, Mr
Ives, Mr Theophanous, Mr (Teller)
Kokocinski, Ms (Teller) White, Mr
McLean, Mrs (Teller)

Pair
Craigie, Mr Walpole, Mr

Motion agreed to by absolute majority.

Read second time.

Hon. B. W. MIER (Waverley)(By leave) — I wish to report that there was a wrong count when the House divided on the reasoned amendment. The opposition vote was recorded as 12 but should have been 13. The Honourable Ms Kokocinski was not counted.

The PRESIDENT — Order! Apparently Mr Ives and Mr Cox missed Ms Kokocinski in the count for the division on the reasoned amendment. It is clear that Ms Kokocinski was in the Chamber. I order the correction of the record.

Amendment negatived.

The PRESIDENT — Order! As I am of the opinion that the second reading of this Bill is required to be passed by an absolute majority, I direct the Clerk to ring the bells for 1 minute.
Clause 2

Hon. R. I. KNOWLES (Minister for Housing) — There has been wide-ranging debate on the Nurses Bill and I thank all honourable members for their contributions, some of which canvassed a range of issues that are important not only to Parliament but to the broader community. It is clear that some of the issues on which there is objection reflect the quite different approaches of the government and the opposition, which is perfectly understandable and what one would expect.

There are probably five areas on which there is some difference. I do not think there is any difference between the government and the opposition about the need for a Nurses Act to reflect the professionalism and commitment of the nursing profession and to bring it into line with modern practices.

I point out that the government intends the Bill to be a model for a number of professional bodies, including that of the medical profession. Some of the changes that have been the subject of debate in the Bill are already incorporated in the registration and regulation of medical practitioners. I will come to that matter.

Certainly the government does not see the nursing profession as being in a generic sense substantially different from other professions. The government recognises, as does the Bill, that certain standards are required to be set. They need to be monitored and regulated, and there needs to be a process for preventing any breach of the very high standards that are set. The community vests a great deal of power in the nursing profession and is very dependent on the commitment and professionalism of those who practise nursing.

The first issue on which there is some disagreement is the aim of the Bill. The government sees the legislation as being there to protect the public. The contributions of some members of the opposition make it obvious that they see the Bill as having the role of protecting the nursing profession. Members of the opposition may well argue against my assessment, but from my perspective that is how I would categorise the difference between how the government and the opposition see the legislation.

Second, there has been argument about what the opposition sees as lack of consultation. This Bill has had a very long gestation period and, as has already been canvassed, was commenced under the previous government. A range of consultative processes and meetings have occurred. I am advised there were something like 34 meetings with the Australian Nursing Federation, the existing Nursing Council and all the other professional organisations. I think the dispute arises from the fact that, after consulting those groups, on some issues the government reached different conclusions from them. In my view the argument is really about the conclusions that came out of the consultation rather than a lack of consultation.

Third, there has been criticism of the abolition of separate registries and bringing the disciplines into a general registry. That is not to downgrade the standing of any of the different components of the nursing profession. In fact, the qualifications of nurses who have undertaken additional or specialist study will be included in the general registry, but through the Bill the government will ensure that in future there will be a general study of nursing and expertise will be developed after graduation. That is not a new approach. It is what happens in the medical profession. Everybody entering that profession studies general practice and some go on to develop expertise and undertake further study in particular disciplines, and they are recognised for that expertise.

Several members cited psychiatric nursing as an example. At present some nursing professionals have studied psychiatric nursing but not general nursing. It is envisaged that they will continue to practise, and as the government brings psychiatric practice into the mainstream with acute area practice, there will be an ongoing need for nurses to have specific psychiatric training. It will be required. The standards will be set by a body on which the majority of members will be nursing professionals. They will accredit courses and indicate on certificates that specialist training has been undertaken. The providers who are responsible for delivering those services will have a registry against which they can check the qualifications of nurses who might be seeking to fill positions.

Therefore, the opposition to the abolition of separate registers is based on fears that will not be realised, and it is certainly not the intention of the government that this move will lead to any diminution of expertise in those areas where extra study and professional development are required.

To give an example, Mr Ives mentioned clinical sisters or theatre sisters. Their specialist expertise has been developed through both study and
practice. They are vital for the successful operation of a theatre in any major hospital, but they do not have a separate register. Mr Ives said he was concerned that a failure in that area would be highlighted in any public debate because it was a high-profile area. That would certainly apply also in the psychiatric care area — if providers were seeking to somehow deliver a service using what we might describe as unskilled staff, a number of mechanisms would clearly bring that act to the fore, and in fact it would be an unsatisfactory and unacceptable situation.

The fourth area of contention is an appointed board rather than an elected one. A range of professional bodies are appointed rather than elected, and the Medical Board of Victoria is one such board. The government’s view is that given that this is about protecting the public, it is an obligation of the Governor in Council to ensure that the body that has that responsibility should be free from any need to be elected from within the professional body. We need people from a wide range of experiences, committed to ensuring that the highest standards are maintained within that profession.

Although the Victorian Nursing Council is currently elected, that was not always the case. It started out as an appointed council. The government now recognises the need for a majority — in fact, 9 of the 12 members of the board — to be nursing professionals themselves. It feels that two should have a legal background and one should bring a community perspective to the deliberations of the board.

Concern has been expressed by a number of opposition members that changes may lead to a denial of natural justice to those who may face disciplinary procedures. The government rejects the argument that there is a denial of natural justice. In fact, the existing nursing council, as I am advised, has not had the power to examine areas of concern because it has not had the power to obtain evidence. Therefore, some provisions in the Bill establish that power, but the board will have to go to the Magistrates Court to obtain court orders.

The Bill develops three different components for handling complaints. The first is to examine issues in a preliminary way to determine whether there is any substance to the complaint because we do not want the board being used for frivolous complaints or in ways that might be improper and unfair to the nursing profession. That is the first component.

If it is established that a complaint requires further investigation, there is both an informal and a formal approach any time during which ill-advised accused, if I can put it in those terms, are entitled to seek legal representation. The government would argue that that is not about instituting a new system to deny natural justice; it is about trying to ensure that the board has the powers to investigate any complaints, and if they are found to have substance the board has the power to fully investigate and handle them.

The Committee should be aware of a number of examples in other professions where there has been a great deal of community concern about a person operating in that field. It would not be hard for the Committee to think of someone in the medical field about whom a lot of concern has been expressed, but the existing professional boards have argued that they have had an inability to examine the situation and to reassure the community that that professional was either of sufficient standing and should therefore be allowed to continue to practise or was not conducting himself or herself professionally and therefore should not to be allowed to practise. The government is concerned that the boards have the power to ensure that the community can have confidence, that those registered retain the standing to be able to continue to do so and that the community can have ongoing confidence in that practice.

I accept that some of those issues will be contested and that there will be different points of view, but the government’s view does not have a dark side, as one honourable member described it. It is a genuine endeavour to ensure a registration board of the highest professional standard within the nursing community, and one which is structured in a way that the community can have confidence into the future. It is imperative that the board acts in a way that is fair and just to members of the community and that it recognises that the first obligation is to the public interest rather than an obligation to the profession itself.

Clause agreed to.

Clause 3

Hon. C. J. HOGG (Melbourne North) — I move:
1. Clause 3, page 4, line 6, after “regulations” insert —
   
   but does not include any action taken by a nurse pursuant to an industrial dispute".
The amendment makes it perfectly clear that the proposed legislation does not seek to catch in the net nurses who may have been involved in industrial disputes. The amendment clarifies the government's intention in that regard.

In the history of legislation relating to nurses there has always been a view that industrial matters should not be the concern of the Victorian Nursing Council. Industrial action taken by nurses over the years has always made provision for emergencies. We may not always like it, we may not ever approve of industrial action, but that is a different matter from opening up the possibility of defining "unprofessional conduct" to include action taken by a nurse pursuant to an industrial dispute.

The opposition's amendment is part of the original legislation, and I am unaware of the government ever saying that the provision caused any problem. The opposition asks the government to consider the amendment, which will make it clear that the changes it is seeking are not aimed at nurses who may have taken industrial action.

I thank the Minister for having clarified some of the issues that have been of concern during the debate. I thank him for the specifics he has been able to put on the record this afternoon, but this clause and the amendment I have moved highlight the real difference in the way the opposition and the government view the legislation. To put the minds of members of the opposition at rest, we insist on this amendment being included in the Bill because we believe if we have misconstrued the government's intentions in any way, this is an opportunity for the matter to be clarified.

Hon. R. I. KNOWLES (Minister for Housing) — As Mrs Hogg has indicated, this is an issue on which there is a clear difference between the government and the opposition. The opposition is arguing that a nurse can never be found guilty of unprofessional conduct if that occurred during an industrial dispute. We would argue to the contrary — that is, that professional misconduct is a serious issue and that if someone is on strike or undertaking industrial action, that does not alleviate the responsibility of that person to maintain his or her commitment to patient care.

This is not an argument about whether a nurse can take industrial action or not; that is not at issue. What is at issue is that nurses taking industrial action are not relieved of their obligation to maintain professional conduct.

The government cannot accept the opposition's amendment. It is an issue on which it feels strongly and it believes a nursing professional should maintain the highest professional conduct at all times. The fact that a person is on strike does not alleviate that responsibility.

Hon. LICIA KOKOCINSKI (Melbourne West) — I point out that what the Minister has effectively read into the report is a bans clause. When people go on strike they withdraw their labour, and that includes nurses. The nursing profession has had a way of dealing with emergency situations and critical care situations when there is a strike. In some way or another they usually exclude nurses working in serious critical care wards, intensive care wards, maternity wards, neonatal wards and areas of acute emergency care. The Minister knows that, and members of the opposition are acutely aware of it.

By enshrining in this legislation the current provision and not accepting the opposition's amendment, the Minister is saying to the nursing profession, "We are legislating a bans clause on your" — —

Hon. R. I. Knowles interjected.

Hon. LICIA KOKOCINSKI — I am sorry, but I would like you to say on the record that going on strike will not be treated as professional misconduct when nurses withdraw their care from non-urgent patients in hospitals. The opposition maintains that the government is enshrining in legislation a bans clause.

Hon. R. I. KNOWLES (Minister for Housing) — I will quickly respond to that. The government is saying that if a nurse goes on strike and leaves a patient at risk that nurse may be open to a charge of professional misconduct and that would be arbitrated by the board. It does not, just as it did not in previous times when there have been industrial disruptions. My understanding is that efforts are taken to ensure that patients are not at risk when industrial action occurs. As I read the provision, that circumstance would not open a charge of misconduct.

Under the opposition's amendment a patient could be left at risk during an industrial disruption and there would be a defence against the charge of professional misconduct. The government could never, and will never, accept that is a reasonable, logical or fair situation. It is not right to say that it is legislating a bans clause. The crucial test
is whether patients are left at risk; if so, does the question of professional misconduct arise? If it does, it should be tested and interpreted before the board.

Hon. D. A. NARDELLA (Melbourne North) — In a sense the Minister has answered my question, but I am concerned, that whenever industrial action is taken patients are always left in a bad position. Nurses are not looking after them. When industrial action is taken nurses leave the bedside or the wards in which they work.

Hon. R. I. Knowles — It is question of whether they are at risk.

Hon. D. A. NARDELLA — But you put them at risk in a sense, don't you? It is the responsibility of the hospital to then look after those patients. If nurses take industrial action by going on strike and walking out of the ward, under the government's definition that constitutes professional misconduct. In many instances where industrial action has been taken, all care has been taken by the nurses before they leave the wards to make sure the patients under their care are looked after in whatever way, shape or form. They do not say, "We are on strike, see you later, alligator" and leave. They do not do that.

The problem with the government's definition is that nurses may be responsible in that case. The nurses I have dealings with are absolutely professional. They may go through a process of having discussions with management about going on strike and making arrangements, but they will not walk out until they are sure the patients are properly looked after. That is the dilemma, and it was faced during the 1987 nurses dispute. In many instances, when the nurses left the wards the management had to look after the patients.

Hon. C. J. Hogg — Appropriate provisions were made.

Hon. D. A. NARDELLA — That is right, yes. However, the government's provision provides that even though nurses may go through a responsible process, they could still be charged with professional misconduct because they have left their duty of care and are out on strike. I am concerned about that.

Hon. R. I. KNOWLES (Minister for Housing) — I want the opposition to focus on the reality of what will happen if its amendment is incorporated in the legislation. The amendment relies entirely on the good faith of every professional nurse to make sure no-one is left at risk. Mr Nardella has just described what may occur when industrial action has been taken. He said we have to rely on nurses to do the right thing by the patients. If the opposition's amendment were incorporated in the legislation, a nurse who did not participate in the process and walked away, leaving a patient at serious or life-threatening risk, could never be charged with professional misconduct. I put it to the Committee that that is intolerable if we are to give the community confidence that anyone registered as a nurse will conduct himself or herself in a professional manner at all times.

The opposition is trying to say we should suspend the question of professionalism in the event of industrial action. I accept that it is a genuine concern that professional nurses have the right to pursue industrial action. That is not the question. However, they must not put at risk the most vulnerable members of the community: the sick and those who are dependent on the nursing profession.

As has happened in industrial disputes in the past, every effort has been put into ensuring that patients are not left at risk. That is appropriate. Under the government's proposal nobody will be vulnerable. Any member of the profession who, in taking industrial action, does not comply with what may be agreed ought to be open to a charge of professional misconduct and the matter ought to be arbitrated by the board. I understand the motivation for the opposition's concern but I put it to the opposition as strongly as I can that it has not thought through the ramifications of the issue. It wants to place members of the profession in a position of privilege that no other profession enjoys. According to the opposition's amendment, no matter what a nurse does during industrial action, he or she can never be examined on the question of professional misconduct.

If the opposition were to examine the issue in that light it would recognise that, in the event of the situation I have outlined, the sorts of concerns that might have motivated the amendment are better addressed by the Bill as it stands. We are still able to assure the community that, so far as is possible, anyone registered as a professional nurse will conduct himself or herself in a professional manner at all times and that if not there is a mechanism for the question to be examined and arbitrated.

Hon. B. W. MIER (Waverley) — I support the amendment but at the outset I must ask why the government wants to insert this provision. At no
stage during the debate has the Minister or any
government speaker given an example of where this
type of misconduct has occurred. Why does the
government want to insert this provision in the Act?
One can assume only that the government is
expecting industrial action to take place. All I can
say is that unprofessional or unethical conduct or
whatever the board and the government want to call
it does not matter during an industrial dispute.

Nurses demonstrated to the community in the
dispute which occurred several years ago and which
had wide community support that they will not
accept deregistration. If the government saw fit to
pursue a course of deregistration because nurses
took industrial action, they would simply extend the
terms of settlement of a dispute and the dispute,
whether it was a strike or a refusal to wash bedpans,
would not be resolved. The additional claim would
be that the deregistration of nurses would be an
issue in the dispute.

There is industrial legislation dating back more than
150 years containing a multitude of clauses and
provisions — the books on the Chamber table are
full of provisions against industrial action — but it
does not mean a thing in the long run. You can have
your pipedreams or whistle dixie and do whatever
you like, but if you extend the terms of the
settlement of the dispute by fining or gaoling
workers and deregistering nurses, you will not
resolve the dispute. The government will probably
try to use the provision to instil fear, but if the
dispute is relevant it will evolve.

The government’s proposal is an insult to nurses. In
fact the whole Bill is an insult to nurses. I have been
involved in a registered trade but at no time could
anybody tell a plumber that he would be
deregistered because he was ill. Nobody would
force a plumber down the path these nurses are
going to be forced down under the legislation.

In respect of industrial disputes, a provision like this
could apply to plumbers. The government could
say, “If you go on strike and the sewage blocks up
and you create a health hazard, you will be
deregistered”. It is just not on. The provision does
not exist, it will never exist and nobody would be
game enough to introduce this sort of measure. The
legislation is designed to intimidate nurses. To date
there is no example of a nurse causing the sorts of
problems the Minister has outlined, and one expects
that nurses would not do so. They have never done
it in the past, but the government is insisting on
inserting the provision. All it will do is extend the
terms of settlement of any dispute.

Hon. R. I. KNOWLES (Minister for Housing) —
Would the opposition allow the Medical Act to be
amended so that a medical practitioner is exempt
from any examination of professional misconduct
committed during an industrial dispute. Of course it
would not support that. It would be outrageous.
This Bill is about reassuring the public that the
nursing profession — —

Hon. B. W. Mier — I don’t believe that a doctor
would be deregistered for taking industrial action.

Hon. R. I. KNOWLES — That is an interesting
comment because doctors in New South Wales are
taking industrial action.

Hon. B. W. Mier — Are they being deregistered?

Hon. R. I. KNOWLES — Under the
government’s proposal they would not be exempt
from examination of professional misconduct simply
because they are on strike, which would be the effect
of the opposition’s amendment. I understand what
motivated the opposition to develop this
amendment and that it is afraid that the clause may
end up becoming a bans clause. It is not a bans
clause; it is about ensuring that if professional
misconduct occurs during an industrial dispute it
should be open for examination by the board.
Nurses should not be given a blanket exemption
from ever being examined because industrial action
has occurred.

It is clear that opposition members do not intend to
back off from this amendment. I have explained as
well as I can the government’s view. I argue
vigorously that anything other than the
government’s view is intolerable, and if the
opposition follows through on its amendment we
would be in a much weaker position to reassure the
community that anyone registered as a nurse under
the Act will be required to always act in a
professional way. If professional misconduct arises
at any stage, the board should be able to examine it.

Hon. B. W. Mier interjected.

Hon. R. I. KNOWLES — The honourable
member should envisage the situation of a sick
person in an acute hospital ward while industrial
action is occurring and just one nurse deciding that
she is not bound by the arrangements being entered
into. In any marketplace a person should be open to
a charge of professional misconduct in those circumstances. If a patient dies in those circumstances it is not the fault of the ANF or anyone else. It is the fault of the person who has deliberately decided to put others in a life-threatening position. The community will have no confidence in the Bill if that question of professional misconduct is not examined.

The government insists that the Bill be passed as currently drafted. It rejects the opposition's amendment because it is obvious that the opposition has not thought through its ramifications.

Hon. C. J. HOGG (Melbourne North) — The opposition will not debate this for the next 24 hours. I appreciate what the Minister is saying and that he is trying to give a full explanation. But why is the Minister not satisfied with a clause which has stood us in good stead over the years and which states that a nurse is not guilty of professional misconduct only on the grounds of an action taken by that nurse pursuant to an industrial dispute? If that has not been completely captured in the amendment then it could be remedied because the opposition is keen to include it in the Bill.

Hon. R. I. KNOWLES (Minister for Housing) — I am advised that the section Mrs Hogg refers to was included during the 1980s, so it is not true to say that it has stood us in good stead over the years. The government is ensuring that all legislation covering professional bodies is consistent. Just as it would argue that a medical practitioner should not be exempt from examination of professional misconduct simply because he is part of an industrial campaign, so it argues that nurses and any other professional is not exempt.

Hon. LICIA KOKOCINSKI (Melbourne West) — I am concerned about the Minister's comments that the opposition has abrogated its responsibility to care for patients. Somewhere the Minister is trying to paint the opposition into a corner by saying that it does not care about patients but is more concerned about protecting the right to strike.

Hon. R. I. Knowles interjected.

Hon. LICIA KOKOCINSKI — I am sorry, Minister, but that is what you said. If the Minister reads the Hansard record he will see that that is exactly what he said. The Minister is painting the opposition into a corner while saying that he, as spokesperson of the government, is the saviour of patients while the opposition is interested only in industrial action. That is grossly unfair because the opposition is just as concerned as the Minister about the future of patient care and the protection of patients. The Minister cannot get away with saying that the opposition does not care about patients.

Hon. PAT POWER (Jika jika) — I understand clearly what the Minister is saying about what the government insists on. Personally I do not have any difficulty with that. I do not wish to be smart, but I do not think the Minister understands what the opposition is saying. Perhaps that is the opposition's fault. The fact is that the Parliament, the community and the profession are faced with the situation of a section concerning industrial action being deleted from the Act. The Minister has said he does not contest the reality that people will take industrial action. The opposition has emphasised that it is absolutely critical for those people in the lead-up to a period of industrial action to act professionally and responsibly. In that sense the opposition does not disagree with the government.

However, I am concerned that if it is allowed to go ahead it is reasonable for Parliament, the community and nursing professionals to assume that someone who has practiced with due responsibility in the lead-up to industrial action could be charged as a result of that industrial action. I am not suggesting that the Minister would do that, but it is possible that people would be fearful about that. The government is proposing that it will remove a clause from the Bill and that no provision that addresses the issue will be re-inserted.

The opposition has also heard that the Nurses Board will be comprised of political appointees. I am not attempting to make trouble over the issue. It is a difficult piece of legislation for members of the government and the opposition. The opposition believes in the right to take industrial action. It is important to accept that a period of industrial action is separate from the period leading up to it; if not, there will be ongoing difficulty in the community. I do not believe the Minister can provide an undertaking or assurance that a board comprised of political appointees would not take action against those involved in industrial action. For that reason people in that position may find themselves being charged as a direct consequence of having undertaken industrial action.

Hon. D. E. HENSHAW (Geelong) — Over recent years in a number of industrial disputes involving nurses arrangements have been made to provide duty of care through a process of negotiation
between nurses and hospital management. One of
the difficulties with the government's position —
and the opposition understands the government's
intent — concerns the removal of any reference to
industrial action. Hospital management is then in a
strong position to say to nurses, "You provide duty
of care; otherwise you will appear before the Nurses
Board".

As the Minister said, it is unfortunate that during the
debate we have not been able to agree on a form of
words that covers both situations. The Committee
could also include in the amendment proposed by
Mrs Hogg the words "after due negotiation had
taken place between the disputing parties".
Although I do not have the exact words, I ask the
Minister to consider that point.

Hon. R. I. KNOWLES (Minister for Housing) — I
take up Mr Power's suggestion because I believe he
brought the government to a point where there was
no disagreement and we then parted company. I can
see the line of argument that might lead the
government of the day confronted with an industrial
dispute in the nursing profession to say, "The way
we will try to resolve this is to charge all those who
go on strike with professional misconduct".

Hon. Pat Power — Or just one of them.

Hon. R. I. KNOWLES — Or just one of them,
even though they acted professionally to ensure that
while industrial disruption was occurring
patients were not put at risk and the system is
maintained. Does Mr Power seriously believe a
board will make that decision? If the government
replaced the board with people compliant to that
sort of scheme, rather than professional people,
would such a decision not be overturned at the
Administrative Appeals Tribunal? There is a right of
appeal to the AAT.

The whole concept is to maintain the highest
possible professional standards within the nursing
profession. How could that be done if the board
operated in such a crass, unprofessional way? The
opposition is trying to find dangers where they do
not exist. Its solution would weaken public
confidence in the operation of the profession. The
government is trying to introduce a regulatory
process to ensure that at all times the nursing
profession and individual members operate
professionally.
graduation. Under the proposed legislation they appear to have been seriously misinformed.

The amendment will pick up students such as school leavers who are likely to apply for re-enrolment in January or February. Changing the date from 31 December 1993 to 30 June 1994 will ensure that justice is done.

Hon. R. I. KNOWLES (Minister for Housing) — The Department of Health and Community Services intends to write to all institutions upon the passage of the Bill acquainting them with the changes being made so that by 1 January next year no student will be enrolling in a course that he or she will not clearly understand.

The department is undertaking to advise all universities and colleges, and I am advised that students do not enrol after 1 January. I understood Mrs Hogg to say that those who enrol in January for specialist courses which may not embrace the general nursing degree ought to start the course after the Act receives Royal assent and will still be registered. The government believes the cut-off point should be when the change is being made. It is prior to any person making a decision to commence a course. Students will be aware of the changes prior to the making the decision, and the government gives a clear undertaking that the department will notify all universities and colleges so that people contemplating undertaking the course are aware they will not be registered unless they undertake a general nursing course.

Hon. C. J. HOGG (Melbourne North) — I thank the Minister for his explanation. The effect of my amendment is to argue for another year because I thought some students would already have enrolled.

Hon. R. I. Knowles — I am advised not.

Hon. C. J. HOGG — And that others may enrol early in January. It appears we have all been subject to misinformation. I am glad that clear information will go to all universities and colleges so that potential students will understand the course for which they intend to apply. The opposition will pursue the amendment but will not call for a division on it.

Amendment negatived; clause agreed to; clauses 8 to 37 agreed to.

Clause 38

Hon. C. J. HOGG (Melbourne North) — I move:

3. Clause 38, lines 4 to 7, omit sub-clause (1) and insert —

"(1) A panel appointed by the Board under section 37 is to consist of not more than 3 persons —

(a) who, subject to sub-section (2), are to be members of the Board; and

(b) of whom at least 1 is to be a registered nurse."

The opposition will persist with amendments Nos 3 and 4. Amendment No. 3 provides a clearer expression of what is acknowledged now as the Minister's intention: that a registered nurse should be a member of the panel conducting an informal hearing.

The amendment makes clear that under normal circumstances where members of the board constitute the panel one person must be a registered nurse. When the government appoints persons other than board members the panel must still include a registered nurse. The opposition is advised there may be ambiguity in the way clause 38(1) applies, so we urge the government to consider and adopt the amendment.

Hon. R. I. KNOWLES (Minister for Housing) — The government does not believe there is any ambiguity. It is envisaged that panels will include a registered nurse, which is not beyond dispute.

Hon. C. J. HOGG (Melbourne North) — I acknowledge that is the intention of the Minister for Health. I was advised by a draftsperson that there may be some ambiguity. Perhaps the Committee ought to make clear that it is the Minister's intention to have a registered nurse as a member of an informal panel hearing, even when outsiders or experts are called.

Hon. R. I. KNOWLES (Minister for Housing) — The government believes the position is clear. It does not believe any issue of substance will be served by accepting the amendment.

Amendment negatived; clause agreed to; clauses 39 to 44 agreed to.

Clause 45

Hon. C. J. HOGG (Melbourne North) — I move:
4. Clause 45, lines 32 and 33 and page 24, lines 1 and 2, omit sub-clause (1) and insert —

"(1) A panel appointed by the Board under section 44 is to consist of not less than 3 persons —

(a) who, subject to sub-section (2), are to be members of the Board; and

(b) of whom 1 is to be a lawyer and at least 1 is to be a registered nurse.”.

Amendment No. 4 is precisely the same as amendment No. 3 in that it seeks to clarify something that the opposition believes in good faith may be ambiguous.

Hon. R. I. KNOWLES (Minister for Housing) — My response is the same as it was previously.

Amendment negatived; clause agreed to; clauses 46 to 65 agreed to.

Clause 66

Hon. C. J. HOGG (Melbourne North) — I move:

6. Clause 66, page 35, line 13, after “powers” insert “other than when the Board is carrying out a function or exercising a power in the course of conducting a particular investigation or hearing under Part 3, or in the approving or accrediting a particular course to provide qualifications for registration purposes or qualifications in addition to those required for registration purposes”.

The amendment moves the amendment to make clear that when an investigation is being carried out or when courses are being approved the process is free from Ministerial intervention, which is what the amendment ensures. Obviously both the instances I have spelt out — individual intervention or the approval of a course — should be free of Ministerial influence. That is what the opposition and the public would expect. I am sure that the Minister does not intend anything other than that, but it would be appropriate for the Committee to agree to an amendment that sets out clearly that there will be no intervention or influence of that kind.

Hon. R. I. KNOWLES (Minister for Housing) — The government does not accept the amendment. I am advised that subclause (3) does not give the Minister power to intervene in an individual disciplinary case. It gives power only to give policy advice. It is a much weaker power than exists in the principal Act. Members might like to focus on section 15 of the Nurses Act, under which the Minister has, in effect, an unfettered power to give directions and there is an obligation on the part of the Victorian Nursing Council to respond to any Ministerial order or direction. The government has already substantially weakened this power, which does not allow the Minister to do the sorts of things about which Mrs Hogg expressed concern. Therefore the government does not accept the amendment.

Amendment negatived.

Hon. C. J. HOGG (Melbourne North) — I move:

6. Clause 66, page 35, after line 13 insert —

"(1) Any advice given by the Minister under subsection (3) must be in writing and the Minister must cause that advice to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the Minister has given that advice.”.

The amendment sets out that advice the Minister may give from time to time must be laid before the Houses of Parliament to enable full scrutiny of that advice. This is a sensible provision designed to enable members to be aware of the way the Minister gives advice to the board. Particularly in a time of great change to the health system, as members of Parliament we would be less than diligent in our duty were we not interested in weighing up advice the Minister gives to the board.

It may be that the Minister has no intention of giving advice to the board; it may be that she has. The opposition is concerned that if such advice is given it be given in writing and in a formal way so that it can be scrutinised.

Hon. R. I. KNOWLES (Minister for Housing) — The government does not accept the amendment. It is seen as being unnecessary. If members want to scrutinise it because of some improper direction or advice given, it would be open to the board to make that advice public at any point. There is a requirement for the board to report to Parliament annually, and I would have thought that if the board received a direction or advice from the Minister that was on a matter of substance, it would as a matter of course be incorporated in the board’s annual report and therefore be open to scrutiny. The government cannot accept the amendment.

Hon. D. A. NARDELLA (Melbourne North) — It is important that formal advice be given in writing.
and it is my understanding of the amendment that that is its purpose. I make two further points. I understand that there is an annual report to the Parliament, but the amendment increases the accountability of the Minister through the provision of information to Parliament. The Minister has also said that further legislation dealing with boards that control professional conduct will come before Parliament. This legislation sets a benchmark. I put on record that the Parliament should be informed in a timely fashion of advice given by the Minister of the day and not necessarily once every 12 months.

Hon. R. I. KNOWLES (Minister for Housing) — I omitted to mention that the board is also subject to freedom of information provisions, so there is another mechanism for regular scrutiny if concern arises.

Amendment negatived; clause agreed to; clauses 67 and 68 agreed to.

Clause 69

Hon. C. J. HOGG (Melbourne North) — I move:

7. Clause 69, lines 2 to 6, omit subclause (1) and insert —

"( ) The office of a member becomes vacant if —

(a) the member becomes bankrupt; or
(b) the member is found guilty of an offence which is, or which would, if committed in Victoria, be an indictable offence; or
(c) the member is absent, without leave first being granted by the board, from three consecutive meetings of which reasonable notice has been given to that member, either personally or by post; or
(d) the member is registered under this Act or another Act requiring registration of people practising a profession and that member has been found guilty of an offence under the Act involving serious unprofessional conduct."

The amendment sets out the conditions under which the office of a member becomes vacant. These are pretty normal conditions for the removal of a person from a board. They have been set out by statute. They are normal, reasonable conditions, spelling out the circumstances under which such removal would happen.

The opposition insists on the amendment because it sets out clear circumstances and guidelines. As every member of the House knows, those conditions, or very similar ones, are in line with almost every piece of legislation passed by the previous government. Opposition members wonder why they have not been included in clause 69 and seek to have them included.

Hon. R. I. KNOWLES (Minister for Housing) — The government rejects the amendment. The board is established through Governor in Council appointments. Many of the disqualification criteria the amendment covers have already been picked up. If the government of the day abuses its powers by removing people, that will be a public issue. I have no doubt the government will be held accountable by Parliament for its actions. The government intends to stick with the original drafting.

Hon. C. J. HOGG (Melbourne North) — The opposition understands that that would become a public issue. It is trying to stop matters becoming embarrassing to the government and to the good working of the health system. This is a thoroughly inoffensive, sensible and reasonable amendment, and I urge honourable members to think about the amendment and support it.

Amendment negatived; clause agreed to; clauses 70 to 102 agreed to.

Reported to House without amendment.

Report adopted.

Third reading

Hon. R. I. KNOWLES (Minister for Housing) — I move:

That this Bill be now read a third time.

I thank honourable members for their contributions to the debate. It has been a substantial debate on an extremely important issue.

The DEPUTY PRESIDENT (Hon. D. M. Evans) — Order! I am of the opinion that the third reading of the Bill requires to be passed by an absolute majority. 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:
POLICE REGULATION (DISCIPLINE) (AMENDMENT) BILL

Wednesday, 24 November 1993

The DEPUTY PRESIDENT — Order! So that I may be satisfied that an absolute majority exists, I ask honourable members to rise in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

POLICE REGULATION (DISCIPLINE) (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. W. R. BAXTER (Minister for Roads and Ports).

PUBLIC SECTOR SUPERANNUATION (ADMINISTRATION) BILL

Second reading

Hon. R. M. HALLAM (Minister for Regional Development) — I move:

That this Bill be now read a second time.

This Bill represents a vital step in the rebuilding of Victoria's public sector finances. When we came into office 12 months ago one of the most serious problems facing this government was the huge and growing gap between the liabilities of the State's public sector superannuation schemes and the assets available in the superannuation funds to meet those liabilities. Across the whole public sector this gap — that is, the unfunded liability — amounted to $18.5 billion at 30 June last year.

The pressure that superannuation places on the State is an increasing one. Over the last decade superannuation outlays as a percentage of the Budget have doubled, and on present trends they would double again before starting to decline. Unlike many of the other problems the government inherited, unfunded superannuation liabilities are a long-term problem: the full effects of past extravagance will not be felt until next century. It would have been possible for this government, like its predecessors, to defer the hard decisions, leaving an increasing burden to be borne by our children and grandchildren.

In the Minister for Finance's statement of 7 April, however, he said clearly that the government would not walk away from the fundamental reforms that were necessary, and would not be content with temporary solutions. That commitment has been met with the Bill. It is particularly pleasing to be able to report that the seriousness of the superannuation problem has been generally recognised across the community. In all of the discussions the Minister for Finance has held with interested groups and individuals over the past six months there has been an acceptance of the need for change and a willingness to work with the government in managing that change for the benefit of all Victorians.

Superannuation is an emotional issue, and it has never been the government's intention to disregard the legitimate concerns of public sector employees and pensioners. Instead, we entered into discussions with employee representatives in the hope of finding a solution that was fair and reasonable. The result has been an historic agreement signed earlier this month between the government and the public sector unions. That agreement forms the foundation for this legislation, and the government is pleased to acknowledge the positive and constructive role the trade union movement has played.

The Bill makes a number of major changes to both the structure and the benefit design of Victoria's public sector superannuation schemes. Superannuation benefits which have already accrued will be maintained: no-one will be disadvantaged retrospectively by the operation of this legislation. Even in the case of the 1988 Commonwealth tax changes, which in some schemes have resulted in a windfall gain to employees at the government's expense, the adjustment to benefits will be made only from the beginning of this financial year. Full indexation of all pensions will be retained.

In future, however, the adjustments for inflation will be made annually instead of six monthly.

Future benefits for current employees in the Budget sector will be modified in a variety of ways to reduce costs. Benefits which are presently based on final salary at retirement will in future be based on the employee's average salary over the final two years of employment; death and disability benefits will all be based on service to age 55 or 60; the rights of employees to make matched contributions of greater than 5 per cent of salary will be restricted.
In addition, members of the old revised scheme in the State Superannuation Fund will be encouraged to transfer to the 1988 new scheme, giving up some of their accrued benefits in return for more flexible contributions and the security of 100 per cent lump sums. The transfer will be on a strictly voluntary basis, but the government is confident that more than 50 per cent of revised scheme members will be attracted by it because of the support offered for this change by the Trades Hall Council and public sector employee unions.

The existing defined benefit schemes are to be closed to new entrants, other than operational employees in the emergency services. New public sector employees will join accumulation schemes providing benefits at the level required by the Commonwealth Superannuation Guarantee Charge (SGC), which rises to 9 per cent of salary by the year 2002. These schemes will be fully funded from the outset. All public sector agencies will meet the full cost of employing new staff.

Although the SGC scheme has not been endorsed by the trade unions, the government is confident that new employees will readily appreciate the benefits of full funding. They will have the security of knowing that their benefits are backed by assets actually held in the funds, not by a government IOU passed down to future generations.

As I said earlier, superannuation is a long-term problem, and the short-term effect of these reforms on the State’s outlays will be relatively small. But they will greatly reduce the pressure on the Budget in years to come. It is estimated that by the end of this decade the unfunded liability will be reduced by about $5 billion from its projected level as a result of the changes in this Bill. Combined with staff reductions and superannuation debt repayment, in this time frame the reforms will cut up to $10 billion from the unfunded liabilities.

To illustrate the magnitude of these savings, I refer to a graph which I have already shown to Mr President with a view to seeking leave to have it incorporated in Hansard, and I ask for such leave to be granted.

Leave granted; graph as follows:

---

State Super Fund Unfunded Liability (1993 dollars)

<table>
<thead>
<tr>
<th>Year</th>
<th>December 1992</th>
<th>50% transfer</th>
<th>70% transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993</td>
<td>15</td>
<td>12</td>
<td>9</td>
</tr>
<tr>
<td>1998</td>
<td>20</td>
<td>16</td>
<td>12</td>
</tr>
<tr>
<td>2003</td>
<td>25</td>
<td>20</td>
<td>15</td>
</tr>
<tr>
<td>2008</td>
<td>27</td>
<td>22</td>
<td>18</td>
</tr>
<tr>
<td>2013</td>
<td>29</td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td>2018</td>
<td>30</td>
<td>25</td>
<td>21</td>
</tr>
<tr>
<td>2023</td>
<td>28</td>
<td>23</td>
<td>19</td>
</tr>
<tr>
<td>2028</td>
<td>26</td>
<td>21</td>
<td>17</td>
</tr>
<tr>
<td>2033</td>
<td>24</td>
<td>19</td>
<td>15</td>
</tr>
<tr>
<td>2038</td>
<td>22</td>
<td>17</td>
<td>13</td>
</tr>
</tbody>
</table>

Source: Trewin

Figure 1: PROJECTED CHANGE IN UNFUNDED SUPERANNUATION LIABILITIES AS A RESULT OF GOVERNMENT POLICIES
Hon. R. M. HALLAM — On the structural side, it has been recognised that a number of the existing superannuation funds are too small to be independently viable. These funds will be brought together with the State Superannuation Fund under a new board of trustees, the Victorian Superannuation Board. The Victorian Superannuation Board will consist of eight directors: four nominated by the government and four elected by employees. It will have power to administer the different schemes brought under its control and to transfer members between schemes, provided that their benefit entitlements are preserved.

The new board will also administer the Victorian Superannuation Fund, which will be the accumulation fund for most new employees in the Budget sector. Hospitals, emergency services, local government and the various statutory authorities will all have separate accumulation schemes based on the same model.

The government believes politicians should lead by example, and therefore, as the Minister for Finance announced earlier this month, changes will also extend to the Parliamentary Superannuation Scheme. Benefits will be adjusted for the Commonwealth tax changes, and there will be an additional reduction in accrual rates to reduce the scheme’s costs by 18.2 per cent. For future members, the benefits will be lower by at least 20 per cent. Current members who have already accrued their benefits will have them preserved, as required by Commonwealth law, but there will be a reduction in their future accrual rates of between 15 and 27 per cent. These and other lesser changes will bring down the total value of benefits in the scheme by an average of 25 per cent.

In addition to the substantive reforms, a number of technical amendments are being made to the various superannuation Acts. Problems with resignation benefits for people who transferred out of the revised scheme are being resolved; pension provisions are being amended to comply with the Commonwealth’s Sex Discrimination Act; and a range of lesser anomalies are being corrected.

This Bill represents the most far-reaching effort ever made in Australia to come to grips with inherited problems of public sector superannuation. The government believes these reforms will offer secure and sustainable superannuation coverage to the State’s employees while relieving a massive financial burden on future generations of Victorians.

SECTION 85 STATEMENT

It is necessary for me to make the following statement under section 85(5) of the Constitution Act 1975 of the reasons why it is the intention of the Bill to alter or vary that section.

Clause 63 of the Bill provides that no proceedings shall be brought for any prerogative orders, declarations, injunctions or orders under the Administrative Law Act 1978 in respect of the matters covered by certain provisions of Part 4 of the Bill. These provisions cover Orders in Council to bring existing schemes under the administration of the Victorian Superannuation Board, to make the board the successor to the existing governing bodies and to settle the terms and conditions of any transfer of assets, functions and members between the board and the administered schemes.

The government is concerned that legal proceedings could be used as a delaying tactic to frustrate the establishment of the board and the early implementation of the structural reforms. Clause 64 therefore provides that the jurisdiction of the Supreme Court should be limited to the extent necessary to prevent such proceedings being brought.

The government does not believe the substantive rights of any party will be prejudiced by this step. It is important to emphasise that the exclusion of legal proceedings relates solely to these structural matters and has no effect at all on measures relating to benefit design.

I commend the Bill to the House.

Debate adjourned on motion of Hon. D. R. WHITE (Doutta Galla).

Debate adjourned until later this day.

Sitting suspended 6.33 p.m. until 8.2 p.m.

GAMING MACHINE CONTROL (GENERAL AMENDMENT) BILL

Second reading

Debate resumed from 23 November; motion of Hon. HADDON STOREY (Minister for Gaming).

Hon. D. R. WHITE (Doutta Galla) — I move:
That all the words after "That" be omitted with the view of inserting in place thereof "this Bill be withdrawn and redrafted so as to allow the Gaming Commission to declare that the amounts payable under section 136 of the Gaming Machine Control Act 1991 by certain gaming machine operators holding a general licence are to be paid as if they are holders of a club licence."

As a consequence of this Bill, gaming venues at airports will be possible; the opposition does not oppose that measure. Taxation arrangements presently applying under the Racing Act to the three Tabarets will continue until 1 July 1998; we do not oppose that measure. The Bill empowers the Victorian Gaming Commission to recover investigation costs from applicants for venue operator licences; we do not oppose that measure.

The Bill will enable more funds to be distributed via the Community Support Fund as a consequence of recovering investigation costs. That is a positive outcome. The Totalizator Agency Board and Tattersalls will bear a considerable proportion of the costs of monitoring their systems; that measure also is not opposed by the opposition. Higher penalties will be applied for illegal gaming activities; despite some reservations about the nature of the penalties, that provision is also not opposed by the opposition.

Under the Act hotels receive 3 cents in the dollar for the operation of their machines and clubs receive 4 cents in the dollar. So far as the opposition is concerned, the Fitzroy Football Club operates a hotel, but it is not for profit. It is a community-based operation. The opposition moved the reasoned amendment because it is appropriate for the government to consider whether organisations such as the Fitzroy Football Club, the Melbourne Football Club and other sporting bodies in country areas might be better off buying licensed hotels rather than building new club facilities. The location may mean that a club is better able to secure day-to-day traffic and a steady flow of consumers, rather than failing to attract customers throughout the day because its facilities are isolated. That is what happens to many sporting clubs but hotels do not have the problem. We believe the government should support the amendment to enable clubs to take that action.

Because the Fitzroy Football Club operates hotel facilities it receives between $12 000 and $14 000 a week from the operation of its gaming machines, but if it were able to receive the extra cent in the dollar it would make a difference of more than $4000 a week or $200 000 a year to the club. That major revenue source, on top of the funds it has secured during the past week, would assist the club in 1994. It may be sensible for sporting clubs to be encouraged to take over existing hotels — there is an oversupply of hotels throughout Victoria — rather than setting up their own clubrooms away from passing traffic.

It is important to secure a good outcome for sporting clubs, many of which have experienced difficulties when they have put in poker machines because they do not been near passing traffic and have not obtained the results they had anticipated. However, electronic gaming machines are working effectively.

For those reasons the opposition does not oppose the other measures in the Bill. It is under the impression, gained from colleagues in another place, that the Minister will give due consideration to the reasoned amendment. We look forward to hearing from the Minister about that matter.

Hon. HADDON STOREY (Minister for Gaming) — I will respond on the reasoned amendment so that the House knows what the government's attitude is. At present the government does not accept the reasoned amendment, for a variety of reasons that I will not go into because the government has previously discussed and explained them. There are a number of reasons why it is inappropriate to allow a club operating under a general licence to have the same regime as applies to other clubs. It would affect the relationship between pubs and clubs.

I heard what the Leader of the Opposition said about the possibility of clubs in country areas taking over hotels that may otherwise be not operating particularly well to give them an opportunity of earning at a greater rate than they would be able to earn from operating a club.

I have said in the past that the government does not accept that proposition. However, because this issue has been raised again, because we now know that Fitzroy Football Club now has a saviour and will be fielding a team next year and because this decision will not affect its capacity to operate next year, I have decided to refer the issue to the review currently being conducted of issues under the Gaming Machine Control Act, with which the House is familiar from previous discussions. The review will report no later than March next year.

The review is examining the whole context of the Act and it is appropriate, because the issue has been
persistently and strongly pushed by the opposition and others, for that independent body to look at this issue in that context. I will refer the issue to the review and ask it to advise me on it when it tenders other advice to me nearer to March next year. I will take that action irrespective of the fate of the reasoned amendment.

For the reasons I have given, the government cannot accept the reasoned amendment.

Hon. B. A. E. SKEGGS (Templestowe) — The Bill is very much a housekeeping measure in many respects and straightens out a few areas that needed extra definition. It looks at recovery of costs, collection of fees and proclamation dates for provisions of the legislation and defines offences that will be recognised under the Act. It also deals with the future arrangements affecting Tabarets and their operation and the prospect of gaming machines operating on land controlled by the Commonwealth government.

The subject of the reasoned amendment has been addressed by the Minister in an encouraging way. All honourable members are aware of the position of the Fitzroy and Melbourne football clubs, neither of which enjoys the benefits of a social club licence to provide it with the advantages other football and racing clubs now enjoy. Clubs obtain a 4 per cent return from gaming machines as against the 3 per cent return from machines operating from hotel premises. Because the Fitzroy Football Club leases a hotel tavern it does not benefit from the higher club licence return. The government understands the problems of the football clubs. I welcome the announcement by the Minister that he will refer the issue to an advisory committee, which will report to him in the near future as to what can be done on that issue.

The Fitzroy Football Club has had the benefit of strong sponsorship support from the Victorian Health Promotion Foundation. The club has received an important contribution to its finances of some $250,000 each season through the foundation’s sponsorship of the Quit campaign. That sponsorship is a tribute to the foundation. In the case of many football, racing and other sporting clubs — particularly Fitzroy Football Club — the foundation’s sponsorship has probably been the difference between life and death financially. The government commends the foundation for its support of sporting organisations.

Now that a new benefactor has now been found for the Fitzroy Football Club, we hope the lions will roar again! Although the reasoned amendment has not been accepted by the government on this occasion, it is clear that the Minister’s undertaking to have the matter reviewed will be a source of true encouragement for the Fitzroy Football Club. I am sure the Leader of the Opposition will welcome that news.

The Bill deals principally with such things as collection of fees, enforcement of the provisions of the Act, offences and the regulation of gaming on Commonwealth land. The prospect of gaming machines operating on Commonwealth land would make possible the operation of gaming machines at Essendon Airport. The Victorian Football Association (VFA) recognises that this could be a possible source of future funding.

The VFA has an important place in the history of Victorian sport; it was in existence before the Victorian Football League was formed, and obviously long before the Australian Football League came into being. All honourable members will wish to see the VFA obtain benefit from the operation of gaming machines. If complementary Commonwealth regulations were enacted and other necessary actions taken the VFA would obviously go ahead with an application to operate a facility at Essendon Airport.

There has been an explosion in Victorian gaming activity following the introduction of gaming machines. Anyone who is aware of the money lost to the coffers of New South Wales and other States for so many years would welcome the advent of gaming machines in Victoria.

The annual report of the Victorian Gaming Commission for 1992-93 demonstrates the dramatic effect on the State from the introduction of gaming machines. Although Victoria still has only a limited number of machines in operation, the financial returns from them have been enormous. The report of Mr Steve Black, the Director of Gaming, notes that to 30 June 1993 gaming machine turnover was $2715.3 million. The average daily turnover per machine for the year was $1426. That demonstrates that Victorians have taken to playing gaming machines enthusiastically.

The return to government and to hospitals and charities has also been significant. The government receives from gaming machines one-third of the net cash remaining after the return to players. The total
amount credited to consolidated revenue for payment to the Hospitals and Charities Fund and the Mental Hospitals Fund during the year was $85.2 million on an accrual basis and $81.1 million on a cash basis.

The report also reveals that in the case of hotels, an additional 8.3 per cent of the net cash balance after the return to players is paid into the Community Support Fund. In 1992-93, revenue to that fund was $13.5 million. Those are dramatic figures that indicate that the future of gaming machines in Victoria is assured.

The report also reveals that by 30 June 1993, $81.1 million had been placed in the Hospitals and Charities Fund and $12.9 million had been placed in the Community Support Fund. Of the 9841 machines operating as at 30 June, 24.4 per cent were outside Melbourne, 40.3 per cent were in clubs and 59.7 per cent were in hotels.

In future there will be a phasing down of Tabarets. The amendments to the Racing Act, which was dealt with during the autumn session, allowed Tabarets to come under the jurisdiction of the Gaming Machine Control Act. The first stage of those amendments has not yet been proclaimed; it will commence on 31 December this year. Further changes will be necessary to ensure the effective application of enforcement and inspection provisions for Tabarets. With the explosion of gaming machines in clubs and hotels the future of Tabarets, which are important to the racing industry, are in doubt. The racing industry put a lot of money into funding the original Tabaret concept. We must ensure that the racing industry is not forgotten when future funding arrangements are made.

An important matter concerns the recovery of costs by the Victorian Gaming Commission, which spends considerable amounts investigating applicants for venue operators licences from a wide range of organisations. Although some organisations are large, some too are small, and officers spend considerable time on investigations. Those high costs should be recovered by the commission, and the Bill provides for that. The Bill also provides for the collection of fees to recover actual or substantial costs in processing and determining the venues and listing applications.

The offences that are dealt with under the Act are important. Unauthorised use or accessing of gaming equipment is an offence under the Act, but previously prosecution was dependent on the actual observance of an offender.

Now it is proposed that prima facie liability should accrue to the venue operator, gaming operator or listed manufacturer or supplier on whose premises the equipment was located at the time the offence was detected and who cannot show that sufficient care has been taken. It will ensure that it is possible to bring an action against an offender with a reasonable expectation of success.

Those provisions are important; public confidence in the operation of gaming machines is essential. In some countries suspicions have arisen that gaming machines can be tampered with and offences easily committed. Overseas experience shows that many people have succeeded in such activities in some gaming parlours or casinos. I have had the opportunity of visiting a number of countries and I am aware of the problems experienced. The government and its predecessor have taken extreme care to ensure that the legislation removes every avenue of doubt. It is important that a prima facie case can be established rather than the offence having to be actually observed.

The Bill is largely a housekeeping measure. It is hoped that the Federal Airports Corporation will amend its by-laws to allow bona fide clubs within airports to become licensed as venue operators. The Bill will make it possible for the Victorian Football Association to operate gaming machines and receive a flow of funds for our great Australian game. In addition, the Minister has agreed to examine the prospect of Australian Football League clubs, including the Fitzroy and Melbourne football clubs and others, having that option. I commend the Bill to the House.

Hon. B. W. MIER (Waverley) — I support the reasoned amendment. In doing so I advise that the opposition does not intend to force a division. I welcome the Minister’s statement about the Fitzroy Football Club. The club is not a private individual or a company and, although it holds a hotel or tavern licence, its position is different from that of hotels. I understand the technicalities that prevent the government from making a decision about the football club and the allocation of profits of 4 per cent rather than 3 per cent.

The club has been the subject of some notoriety in recent weeks. It has experienced financial problems with its banker, Westpac Banking Corporation, and, according to newspaper reports, the Australian
Football League was unwilling to assist. The football public of Melbourne in particular would regret the day that the Fitzroy Football Club folded.

The review should be based on the fact that the club represents football supporters and followers, not individuals or a private company that is seeking profits. Fitzroy Football Club involves a group of people who are attempting to field a team in the City of Melbourne — for that matter under the AFL constitution a team that can compete around Australia. I have no doubt that their argument is well based. The club should receive the same licence as other football clubs that operate gaming machines around the city and Geelong. The opposition welcomes the Minister’s statement in that regard. It does not oppose the various other provisions dealing with gaming venues at airports, offences and costs and charges that apply to the Totalizator Agency Board and Tattersalls. The Fitzroy Football Club, which is an integral part of Melbourne’s sporting culture, should have the opportunity of presenting a case to a tribunal to consider what I believe to be a justifiable claim.

Amendment negatived.

Motion agreed to.

Read second time.

Third reading

Hon. HADDON STOREY (Minister for Gaming) — By leave, I move:

That this Bill be now read a third time.

I thank the opposition for its support of the Bill. I understand the reasoned amendment has nothing to do with the actual provisions in the Bill. In another place points were raised to which I shall briefly respond. The opposition argued that the serious offence referred to in new section 18A should attract a prison sentence. After considering the matter my advice is that the penalty could apply only to corporations; therefore a prison sentence is inappropriate.

Reference was made to the amendment that will allow museums to house displays of machines rendered inactive. It was argued that the provisions should be redrafted to allow working displays but not to permit gambling. That presents some difficulties. Although the suggestion is worthy of consideration, the government is not now in a position to agree to it. Reference was also made to the need for clubs that avail themselves of the Federal airport provisions in the Bill to have a level playing field. I accept that that should be the case.

Motion agreed to.

Read third time.

PUBLIC SECTOR SUPERANNUATION (ADMINISTRATION) BILL

Second reading

Debate resumed from earlier this day; motion of Hon. R. M. HALLAM (Minister for Regional Development).

Hon. D. R. WHITE (Doutta Galla) — It is important to place on the record that when the subject of superannuation first arose in 1993 following the statement of the Minister for Finance in the other place, it became clear that it was the government’s intention to touch the accrued benefits of existing and retired members. Although the opposition is concerned that the government attempted to do that, to some degree it has continued in a more marginal fashion in that respect. However, the fact remains that the government opened that door, and that is something the opposition strongly opposes. The opposition believes that, had it not been for Federal legislation prohibiting the government from following that path, it may have continued with the notion of reducing accrued benefits for existing members and pensioners of superannuation schemes.

The matter was never put to the test; nor can it ever be put to the test. Although the opposition is grateful for the Federal legislation, it is concerned that the government knew what it was doing when it opened the door. If the Federal legislation had not existed the government may have attempted far more draconian ways of touching existing benefits that the opposition will always argue form part of existing contracts entered into at the time of employment. The opposition has not received adequate assurances from the Minister for Finance that at some stage in the future the government will not attempt in some way — although it is not clear how — to revisit that issue.
The Minister for Finance has not pursued the argument in any forum yet. He told the community that he wanted to abolish the indexation of pensions totally and absolutely. He pursued that for months and did not remove it from the table immediately. He has not publicly said anything about not wishing to pursue that issue at some stage in the future.

Hon. R. M. Hallam — Notwithstanding the contract clause with the unions.

Hon. D. R. WHITE — Notwithstanding that.

Hon. J. V. C. Guest — I will demonstrate that it will never be on.

Hon. D. R. WHITE — Since 1977 Mr Guest has been following public sector superannuation more thoroughly than any other honourable member. In the first place that element should not have been on the table. That door should not have been opened.

Hon. T. C. Theophanous — Mr Guest nodded approval.

Hon. Bill Forwood interjected.

Hon. D. R. WHITE — Go into your electorate, Mr Forwood, and tell the retired pensioners of the State superannuation scheme that because that door has been opened, they are no longer secure. Although their worst fears have not eventuated following the plan laid on the table in April, the mere fact that the door was ever opened means from their point of view a continuing element of insecurity.

If Mr Guest had been advising the Minister for Finance when the paper was introduced in April those two options would not have been placed on the table. Had others who are now advising the Minister for Finance — but who were not advising him in April — put their views then, those issues would not have been on the table. Besides Mr Guest, a number of other honourable members opposite said during the period April to September that it was not on and should never have been on. The unnecessary concern caused to pensioners and existing members of the State superannuation scheme should not have occurred. The pursuit of this issue reflects on the quality of the government and the quality of its superannuation dealings. The issue is well known to all members of Parliament and certainly well known to the likes of Mr Guest, who takes an active interest in superannuation.

Hon. T. C. Theophanous — Personally.

Hon. D. R. WHITE — He has had a considerable interest in the State superannuation scheme for 16 years. In fairness to Mr Guest, I point out that he has been directing attention to unfunded liabilities in the State superannuation scheme since 1977.

Hon. T. C. Theophanous — He is not too good on numbers, though.

Hon. R. M. Hallam — You shouldn’t talk, after today’s contribution.

Hon. D. R. WHITE — The opposition understands that the main features of the package are as follows: that the existing benefit scheme will be closed to new entrants, except for the emergency services. That provision will create two categories of public servants: those in the Police Force and fire services will have a different and a better scheme than will the rest of the Victoria Public Service.

Hon. R. M. Hallam — Are you opposed to that?

Hon. D. R. WHITE — The opposition is not opposed to the Victoria Police having the scheme they have, but it should be put on the record that the reason they achieved the outcome they did is because of the clout they have with the government. They have succeeded in getting a superannuation scheme that other public servants have been unable to get.

Hon. Bill Forwood — It is only for operational members.

Hon. D. R. WHITE — I understand that, but the government argues that a nurse is not an operational member, yet a policeman undertaking a clerical task is operational. For instance, the government says that a nurse in an emergency ward of a major hospital is not operational when a helicopter arrives at the hospital and an emergency patient is taken into the operating theatre, but that the police officer taking .05 blood alcohol content readings or carrying out clerical tasks is an operational member.

The government has created a set of boundaries which are not logical for many people. Everyone knows why this is so. The Minister for Finance attended a meeting of police officers at Dallas Brooks Hall where he noted the reception he got — which was difficult for him — and reluctantly conceded to their scheme. They had him, they got him and they won.
Hon. R. M. Hallam — Let the record show that Mr White was smiling when he made that comment.

Hon. D. R. WHITE — The record shows that the Minister for Finance got done.

Hon. B. W. Mier — I understand he had trouble in the party room.

Hon. D. R. WHITE — He certainly did.

Hon. J. V. C. Guest — You were in trouble with the unions when you tried to reform the system in 1988.

Hon. D. R. WHITE — Mr Guest can tell us about that. New entrants will join an accumulation scheme providing benefits required by the Commonwealth Superannuation Guarantee Charge which rises to an employer contribution of 9 per cent of salary by the year 2000. The schemes will be fully funded from the funds of agencies. The opposition accepts the principle of these schemes. However, the trade union movement says that it did not accept the scheme provided for new entrants in the negotiated package. The opposition argues that the level of benefits that a new entrant will get from the scheme when he or she retires will not be sufficient to match what the person had previously been earning and will not be a satisfactory superannuation benefit.

The opposition believes this is creating an outstanding superannuation policy issue. In the immediate future the Minister for Finance will argue that the implementation of the new scheme will mean less pressure is being placed on the unfunded liability.

Hon. Bill Forwood — It is a funded accumulated scheme.

Hon. D. R. WHITE — The new scheme will put less pressure on the State superannuation scheme as a whole. The opposition argues that the level of employer contributions and the benefit going to the member when retiring will not be adequate. Public servants will not end up with adequate lump sums when they retire.

Hon. R. M. Hallam — Do you have a view on what percentage is required to meet your requirements?

Hon. D. R. WHITE — Not at this stage, but I am suggesting that the level of benefits proposed will not be adequate for public servants joining the new scheme.

Hon. J. V. C. Guest — The new new scheme?

Hon. D. R. WHITE — Yes. The opposition will come back to this in 1994, 1995 and beyond because it will remain a problem for all of us. Public servants generally, with the exception of those in the emergency services, will receive a level of benefit that will not be adequate. Very senior public servants employed under certain contractual arrangements may receive a level of benefit that is adequate, but the general run of the mill public servant who joins the new scheme from 1 January 1994 will not receive an adequate benefit.

I am not sure precisely what should be done about that, but the proposed level of benefits is unequal. Members of the revised scheme will be encouraged to join the 1988 new scheme, forsaking some accrued benefits for a 100 per cent lump sum. The government estimates that 50 per cent of revised scheme members will make the transfer on a voluntary basis. I shall come back to that later and talk about the actual amount they will have to pay to remain in the existing scheme and whether that creates a problem for relatively younger members of the existing public sector. For example, public servants may have to increase their contributions by 5 per cent above what they are currently contributing to stay in the existing scheme.

Hon. R. M. Hallam — You mean by existing scheme the revised scheme?

Hon. D. R. WHITE — Yes. Full indexation of all pensions will remain, but on an annual basis rather than with six-monthly adjustments. The opposition notes that some pensioners accepted that proposal. Like everyone else in the community, the opposition will monitor the provision to see whether it produces an effective outcome, but on balance it should.

Benefits will be paid on the average final salary during the last two years of employment rather than the final year of employment. It may well be that on that basis and with yearly indexation of benefits the government is intruding into the accrued benefits of existing members of the superannuation scheme and of pensioners. Notwithstanding what the Minister for Finance is saying, those two intrusions may also intrude on the Commonwealth legislation.
Hon. R. M. Hallam — How does it intrude on pensioners?

Hon. D. R. WHITE — Formerly when a public servant commenced employment in the public sector he did so on the understanding that there would be an adjustment of his superannuation benefit according to movements in the consumer price index twice yearly. The fact that benefits will now be indexed annually is taking away an existing benefit that a public servant believed when commencing his employment he would receive, and on that basis it may contravene the Commonwealth legislation.

Eligibility for death and disability benefits will be based on service to age 55 to 60 years. The windfall gain from the 1988 tax changes will be removed as from the beginning of this financial year. Small funds will be amalgamated under a new board, the Victorian Superannuation Board, which will give equal representation to workers. Hospitals, emergency services, local government and statutory authorities will have similar but separate accumulation schemes based on the same model. The Parliamentary scheme will be adjusted for Commonwealth tax changes, and there will be an additional reduction in accrual rates to cut the scheme’s costs by an estimated 18 per cent, and in the case of future members by at least 20 per cent. Further, current members will have future accrual rates reduced by between 15 and 27 per cent. Basically, in respect of existing members it is agreed that the tax changes that occurred in 1988 provided a windfall gain.

Hon. J. V. C. Guest — John Cain and company.

Hon. D. R. WHITE — A number of people on both sides of the House.

Hon. R. M. Hallam — Not exactly existing members, surely; only those who retired.

Hon. D. R. WHITE — It gave a benefit to members who retired at over 55 years of age. In fact even with the passing of this legislation, the after-tax pensions for existing members who retire at over the age of 55 years will be greater than they would have expected when they entered Parliament. If they entered Parliament prior to 1988 they will still be better off, even with these changes, but not as well off as members who have already retired at more than 55 years of age.

Hon. Bill Forwood — We can’t go and get it back.

Hon. D. R. WHITE — I am not suggesting that. As a consequence of these changes the after-tax position of newer members, if they stay until they are 55 years of age, will not be much different from that of members who left the scheme prior to the 1988 tax changes.

The rights of legal appeal to the Administrative Appeals Tribunal and the Supreme Court will be removed from the public sector schemes. The retrospective adjustment of indexation from half-yearly to annual computation, disability being subject to tighter definition and reduced to age 60 years, and calculation based on final average salary for the last two years of service rather than the final salary are all issues that, although to some extent from the government’s point of view may be on the margin, from the point of view of beneficiaries represent material changes and may contravene federal legislation.

There is certainly pressure on existing members to change to the new accumulation scheme. The Minister for Finance is making it clear that he is putting pressure on existing members to join the new accumulation scheme under threat of significant increases in their contributions — increases of between 2 per cent and 5 per cent in the 15 to 29-year age group.

Hon. Bill Forwood — Out of the revised scheme into the new scheme, not the new accumulation scheme.

Hon. D. R. WHITE — That is correct. I accept that, but the Minister for Finance has set a target of 50 per cent. Certainly, he expects most public servants in the 15 to 29-year age group who are faced with this prospect to move to the new scheme. By 1 November 1994 they will have to increase their contributions from 3 per cent to 8 per cent if they wish to stay in the revised scheme.

Hon. R. M. Hallam — And also depending on the migration rate.

Hon. D. R. WHITE — What do you mean by that?

Hon. R. M. Hallam — I mean the number who have actually made the decision to migrate from the revised scheme to the new scheme.

Hon. D. R. WHITE — But if someone between the ages of 15 and 29 years of age wanted to stay in the existing revised scheme, that person would have to increase his or her contributions from 3 per cent to
8 per cent. A young married person in that age group, with the obvious significant financial obligations of a young family and a mortgage, may be forced — the Minister for Finance does not talk in these terms — into a scheme he or she may not prefer to be in. He or she may prefer to be in the existing revised scheme but be forced, because of the substantial increase in contributions, to take the other option, which the Minister for Finance, with his normal degree of sensitivity, is quite happy for that person to do although he or she would prefer not to have to do so.

Hon. Bill Forwood — Only if 50 per cent have not gone by October 1994.

Hon. D. R. WHITE — Yes, but the message from the Minister is clear. He is presenting the case in such a way as to produce the outcome, irrespective of what the members want. I shall put it another way: our impression of his intention is that if he does not get what he wants he will come back here until he gets what he wants, almost irrespective of the circumstances of the individuals concerned.

Hon. J. V. C. Guest — He cannot do that. The Commonwealth legislation stops him.

Hon. D. R. WHITE — He is after a result. He has made clear what he is seeking to achieve, and we say that he may reach that aim by genuine voluntary transfers, which is what Mr Forwood talks about, but if he does not he may seek it by other means — by what are called reluctant voluntary transfers. Members can read between the lines of what he presents to them; he will be back if he doesn't get what he wants. The government is creating a setting where it may well be that a number of younger public servants not only in the age group between 15 and 29 years but also in the age group between 30 and 34 years may reluctantly be parties to changes in their superannuation arrangements. Because of their income circumstances and other obligations they might end up doing something they would much prefer not to do.

For new members the disability benefit is reduced to $50,000, and there is no pension. I shall refer to that later. It is important to place on record that the agreement and most of the arrangements negotiated with the Trades Hall Council on behalf of a number of employee organisations, and, loosely, on behalf of many of the retiree associations, cover existing members only; they do not cover new members. It is important to say explicitly that the Trades Hall Council is not a party to the new accumulated scheme, that the negotiated settlement does not cover that area, and that the Trades Hall Council reserves its right to revisit that. That has been made clear.

Hon. R. M. Hallam — They have made it clear from the outset.

Hon. D. R. WHITE — The unions believe retrospective changes are liable to challenge before the Insurance and Superannuation Commission and the Industrial Relations Commission, and members will see in 1994 whether that transpires with the new Superannuation Industry Supervision Act, which will have provisions that the trade union movement and others believe will cut across this Bill. We foreshadow that that may well be the case.

The opposition is aware of letters from the Federal Treasurer reinforcing the trade union movement perspective. I am not able to say whether the Federal Treasurer has made that letter available to the Minister for Finance, but those federal obligations will require the funds to be at arm's length from the employer and hold trustees accountable for investment performance. The union will seek clarification of the issues I have just mentioned and the impact on accrued benefits. The trade union movement will be pursuing what it regards as a number of outstanding matters. The Bill may well breach the Federal government's superannuation standards, and when the Federal Bill comes into effect in July 1994 this Bill may in fact be illegal because it interferes with the accrued benefits of members and pensioners.

Public servants entering the system in future may not have adequate income maintenance. The opposition is concerned that under the new scheme the level of benefits for members, even those who make significant contributions, may not provide adequate income maintenance commensurate with the history and tradition of what has occurred in the Public Service to date. The level of benefits for a person entering the scheme on 1 January will be substantially less than that for a person entering the Public Service in the period between now and 31 December. It may be so materially different that the "new scheme", as Mr Forwood describes it — —

Hon. Bill Forwood — Call it the new accumulated scheme.

Hon. R. M. Hallam — The new accumulated fully funded scheme!
Hon. D. R. WHITE — We are not disputing the fact that it is a fully funded scheme; we are not suggesting that that is not appropriate. However, the level of benefit may not provide an income maintenance commensurate with what has previously been the expectation of public servants in this State since 1926, and it may not be an adequate level of income by community standards, forcing public servants to be a burden on society in some form when they retire.

Hon. R. M. Hallam — It will also make the Commonwealth guarantee fund look pretty silly, won’t it?

Hon. Rosemary Varty — You are suggesting the Commonwealth scheme is no good either!

Hon. D. R. WHITE — We are suggesting that we will be pursuing this issue in 1994 and 1995, and coming back to you with more precise information. Notwithstanding Mrs Varty’s view on the Commonwealth minimum standards and requirements, the opposition does not believe that because the government is adhering to that as part of this new accumulated scheme, that of itself will produce an adequate income maintenance level. In accepting the minimum standards set down by the Commonwealth the government has not looked adequately at the issue of income maintenance levels.

The purpose of any superannuation scheme is to provide an adequate income maintenance, and the opposition is not assured that that will be achieved under the proposal. As I said earlier, it is for that reason that the Trades Hall Council, as part of a negotiated arrangement on the package before us, refrained from agreeing to support the new scheme.

Hon. Bill Forwood — What would you have done instead?

Hon. D. R. WHITE — We would have looked at the level of benefit in other jurisdictions, particularly New South Wales. The levels provided to new members in that State and the Commonwealth jurisdiction are certainly better than in this scheme. We would have examined all the schemes around Australia and then obtained an actuarial assessment as to the income levels in 1993 dollars for public servants when they retire. We would have then determined whether that was an adequate income stream for those people who have had a certain salary experience over their lifetime, and whether that would provide them with an adequate income level or would put them below the poverty line.

Hon. Bill Forwood — Because it is portable now and so many people do not see their careers from day one to age 55 as being in the one job, it has to be portable, and that is the problem with a scheme that is not transferable.

Hon. D. R. WHITE — The opposition accepts that career paths move more dramatically today and that it should be an accumulated scheme, but I shall refer to the circumstances of a person becoming a career public servant and remaining in the scheme until age 55. In that case I am interested in whether the income to be derived will produce an income stream after the person turns 55 that is adequate to maintain him. I am not assured that that will be the case, notwithstanding the fact that Mrs Varty says it is consistent with the minimum Commonwealth expectations. I will come back to that question.

Whether a person moves within the public sector or beyond, the opposition is interested in securing a level of benefit when a person retires at ages 55, 60 or 65 that will provide an adequate income level and ensure that that person is not subsequently a burden on the State.

Hon. Bill Forwood — The Bill allows you to make your own contributions into the accumulated scheme at the same time.

Hon. D. R. WHITE — I accept that there is some flexibility, but you have to take into account the person’s capacity to pay during his public sector career, so you need a test of reason to determine the capacity to contribute.

Hon. Bill Forwood — It is choice.

Hon. D. R. WHITE — Yes, I understand that, but I also realise that at different age levels and income streams people have different capacities to pay. In securing the result that the government wants in terms of it being a fully funded scheme, at the end of the day you have to ensure that the retirement benefit is adequate to enable teachers, nurses, clerical assistants or — dare I say it — Clerks of Parliament, benefits that will enable them to have adequate income maintenance commensurate with what they would expect. That is the ultimate aim of the superannuation scheme — that is, to enable a person to make contributions —

Hon. Bill Forwood — It is a retirement income policy!
Hon. D. R. WHITE — Correct. One must be able to secure a result. People misuse it and do not make adequate contributions. They make unreasonably low contributions, and that is something the opposition would discourage people from doing. People should be encouraged to make reasonable contributions, bearing in mind their capacity to pay and taking into account other normal obligations, such as families. At the end of the day, those people should have sufficient benefits to ensure that they have adequate income maintenance and are not significant burdens on the State. That is why an indexation of the pension must be maintained. You cannot avoid that because otherwise there would be not only a massive political problem but also a massive social problem.

What the opposition has not had adequately demonstrated to it to date is that, with all the characteristics of the scheme that have been put in place to ensure that it is fully funded and has flexibility in terms of contributions, it has not yet got that result. I foreshadow that we will be revisiting this issue. With those comments, I indicate that the opposition will not oppose the Bill.

Hon. BILL FORWOOD (Templestowe) — I enjoyed the conversation with Mr White, and many of the issues I will raise have already been discussed across the Chamber while members were listening to his contribution. It is important, however, that I go back a step and set the scene because, despite some of the issues Mr White raised, the Bill is being introduced for a particular purpose. As Mr White pointed out, Mr Guest has been in and around this area for a long time. This is not new. I shall set the scene to explain why the government has gone down the path it has taken.

It is important to look at the statistics. In 1982 the Budget superannuation outlays were $164 million. In 1992 they were $800 million and in 2002 on an unchanged policy basis they would have been $1960 million. I shall cite those figures as a percentage of the Budget: 1982, 3.8 per cent; 1992, 7 per cent; and 2002, on the basis of unchanged policy, 12.4 to 16 per cent of total Budget outlays.

The other aspect is unfunded liabilities, of which we have heard quite a bit. In 1982 the unfunded liability was $5 billion and in 1992 it was $19 billion. If the policy of the previous government had not been changed, by 2002 the unfunded liability would have reached $39 billion. The government had no choice but to take some action.

Hon. R. M. Hallam — We could have squibbed it like our predecessors.

Hon. BILL FORWOOD — Yes, we could have squibbed it like our predecessors. The problem is not new; it is easy to go back to the Rowe committee report of 1984, the Economic and Budget Review Committee report, which states:

If steps are not taken to reduce the predicted increases in the cost of superannuation, the State may be required to increase the level of financing of the State scheme by one or more of a number of measures, including increased State taxation and/or reduced expenditure.

Again one gets back to two choices — increasing taxes and decreasing expenditure or squibbing it, which this government was not prepared to do. The Nicholls report was done in the dying days of the Kirner government, of which Mr White was a member, and it states with some urgency:

Unless positive action is taken now by the Victorian government to control the emerging cost of superannuation and its effect on the State’s finances, there will be increasing restrictions upon the State’s ability to apply its revenue towards meeting other priorities such as outlays on capital works, education, health and essential services.

At the time that Nicholls was saying that, David Elsum, President of the State Superannuation Board, took up pages 8 and 9 of the annual report talking about the unfunded liability problems of the State superannuation system. It is salutary to quote briefly ‘from the State Superannuation Board’s report in 1992:

The steady growth in the public sector as a percentage of the total working population combined with years of high inflation and labour cost increases has caused this growth in unfunded liabilities.

The unfunded liability is the difference between the liability for accrued benefits and assets available to meet these liabilities.

The liability for accrued benefits is calculated each year by the board’s actuary. It represents the value of the State Superannuation Fund’s present obligation to pay benefits to members and other beneficiaries. It is determined as the present value of expected future payments which arise from membership of the fund as at the end of the financial year.
The graph in its 1992 report shows that on an unchanged policy basis it was possible that the unfunded liabilities could reach $50 billion by 2025. At that stage there would not be much money left to be spent on anything else at all! The board’s report states:

Major change to the growth in unfunded liabilities can only be achieved by bringing forward the timing of employer contributions, voluntary transfers of members to less costly schemes and/or significant change to the scheme design for prospective benefits.

This matter has a gravity going beyond the State Superannuation Fund and its current members. It affects the State of Victoria and all future public sector employees. The board recommends that government address this issue as a matter of priority.

That is what this government has done. In this year’s annual report Mr Elsum states:

The 1992 annual report highlighted the potential problems of growing unfunded liabilities and the annual costs of superannuation to Victoria. We are pleased that the State government has identified this issue as a matter for attention early in its term of office.

The finances of the fund were considerably improved during the year when the government raised funding levels by reimbursing the fund with a payment of $145 million for the employer’s share of pensions partially converted to lump sums during the 1992-93 year.

In the past the employer contributions have been reimbursed to the fund by the government over the life of the pensioners.

In the past this has led to an accrual of a debt to the fund by the government which now exceeds $1300 million. Since the close of the financial year the government has announced in its 1993 Budget that this amount will be reimbursed in total during the 1993-94 financial year. This action is greatly welcomed by the board.

The board identified the problem, as had the Nicholls and Rowe reports before it. They identified the problem and the government has moved to correct it. The government moved to correct it firstly by bringing down the 7 April superannuation statement, which identified what the government was seeking to do:

- permanently lower future Budget superannuation outlays to a sustainable and affordable level;
- address the issue of unfunded liability...

The government produced five options; they were there for all to see and on that basis the government then negotiated an agreement. That process was difficult and complex. Nobody disputes that, and if one looks at the Bill, which runs to some 149 clauses, one sees that it is a substantial document which sets the scene for where we go from here.

Mr White outlined the issues he regards as important but at no time did he seriously challenge the direction the government has taken or suggest that there was something the government should have done that it had not done.

Hon. D. R. White — With the new scheme, I said.

Hon. BILL FORWOOD — The fully funded scheme? You did not deny that we needed to move from defined benefits schemes to accumulated schemes.

Hon. D. R. White — It was inevitable.

Hon. BILL FORWOOD — That is true. I am quite sure that had Labor been in government Mr White’s will and ability would have taken the legislation in a similar direction and at a similar pace and ended up with — dare I say it — the same result. The honourable member for Morwell in the other place said this is a complex issue and that we have obtained the best possible result.

Hon. D. R. White — We wouldn’t have put out the April statement. We wouldn’t have removed the indexation or accrued benefits. There’s no justification for that.

Hon. BILL FORWOOD — You may have done it in a different way but the result would have not been different from this.

Hon. D. R. White — We would have headed down a similar road.

Hon. BILL FORWOOD — I am pleased that Mr White has said that because it is important that we get as close as we can to the best result.

I should like to touch on the history of the indexation of the fund. I know Mr White will be interested in it. When the fund started in 1925 it was
not indexed. It was revised in 1958 but the State Superannuation Act contained no provision for pensioners at that stage. In 1966 the Pensions Supplementation Act was passed, and it started the process of adding to existing pensions. Between 1966 and 1979 those adjustments were made annually on the basis of with increases in the consumer price index.

In May 1980 it became a six-monthly indexation, and it stayed that way until 1988 when the new superannuation legislation came into effect. It was not a sacrosanct matter, but the six-monthly indexation came in at a time of relatively high inflation so members were eager to have it placed on a more regular basis. I am glad pensioner groups have accepted the change back to annual adjustments because they, too, have a role to play in returning Victoria's finances to better health than they were in when the government came to office a year ago.

It is mischievous to suggest that the changes we are making in any way contravene the occupational superannuation rules of the Federal government. I do not know whether Mr White is aware of this, but one of the clauses in the agreement between the government and the trade union movement says that if there is a doubt about any matter the other party can raise the matter and together both parties can get on an aeroplane, fly up to Canberra or down to Victoria and sort out the problem. I understand that to date nothing has happened and that detailed legal advice suggests that none of the changes this government has made contravenes the Federal Act.

Hon. D. R. White — The trade union movement is not saying that. It's foreshadowing that there are some outstanding issues.

Hon. BILL FORWOOD — I am sure there are outstanding issues.

Hon. D. R. White — Issues that may contravene the Commonwealth legislation.

Hon. BILL FORWOOD — Under the terms of the agreement the unions will contact the government and we will sort out the issues together, but it is my understanding that there has been an atmosphere of goodwill and we have arrived at a situation that Mr White said his party would have reached, although we have probably had more success with the unions than his party would have had.

Everybody recognised that this was a serious problem, and we have developed a system that works, with the principles of closing off the defined benefits schemes and moving people out of the revised scheme and into the new scheme, even if there is a stick-and-carrot approach to it — the same approach the opposition would have taken were it in government.

I have read a number of contributions, including Mr White's and several made in the other place, but I notice that nobody has gone through the Bill in detail. I see that as a tribute to the people who worked very hard to put it together. It is a complex Bill.

Clauses 31, 32 and 33 establish the Victorian superannuation and accumulation funds, and it is important to examine those funds. New employees of the public sector become part of the scheme and they are funded by employer contributions. Clause 32 states, in part:

each participating employer must contribute to the Fund ... so that the employer does not have an individual guarantee shortfall in relation to that member under the ... Act 1992.

The Bill is tied very closely to the Act. The Bill's explanatory memorandum states:

Clause 4 is an interpretative aid and ensures that in the event of any inconsistency with any Act or any form of the governing rules of an administered scheme, the provisions of the Public Sector Superannuation (Administration) Act 1993 prevail, provided that a provision of the Act or regulations made under the Act is consistent with the Commonwealth Occupational Superannuation Standards Act 1987 or regulations made under that Act. Where there is any inconsistency between the Commonwealth law and the Act or regulations, the Board has complied with the Act or regulations if it has complied with Commonwealth law.

The Bill is structured around the Commonwealth law.

Finally, I shall touch on a matter that relates to the Bill as it stands. We have developed a new scheme that will take $10 billion off the unfunded liability and cap the amount that is required out of Budget outlays, and the new board will become a significant Melbourne-based financial institution with assets of between $3 billion and $3.5 billion. The one umbrella body will have 120,000 members, 50,000 of them pensioners, and it will be the second or third largest
superannuation fund in the country. It will be based in Melbourne and will look after the interests and affairs of all public sector employees. I wish it well.

Hon. D. A. NARDELLA (Melbourne North) — The Liberal Party prides itself on having no factions. It supposedly does not have a Kroger faction, a wet faction or a dry faction. Government members always chide opposition members about the factions in the Labor Party and the things they get up to. However, on this issue there is the SOS faction within the Liberal Party. One would think with all the issues occurring at the moment that SOS would stand for the save our schools faction or the save our suburbs faction or even the save our State faction. But no, the Liberal Party has a special faction known as the save our super faction! That would have to be one of the most cohesive and important factions in the Liberal Party at the moment.

Time and time again in debate on Bills I have chided the government for not consulting the community. In 13 months the government has failed to consult with trade unions, school councils, communities, residential groups, kindergartens, ordinary workers and a range of other community groups. Only on this Bill has the government gone through the consultation process and that has resulted in a piece of legislation that has the support of both parties and will result in the best outcomes for everyone. That is important.

Hon. R. M. Hallam interjected.

Hon. D. A. NARDELLA — No, it is an important point to make, especially when the government can learn how to use that consultation process in the future.

I received a number of queries about the legislation from constituents and I referred them to the Minister for Finance, Mr Smith, in another place.

Hon. B. W. Mier — Did you get a response?

Hon. D. A. NARDELLA — I did.

Hon. B. W. Mier — Could you understand it?

Hon. D. A. NARDELLA — I could; and I have appreciated that. The public servants who approached me were concerned about their superannuation and their accrued benefits, but their concerns have been dealt with by the Bill. I said to those constituents that the trade union movement and the unions that they were members of were part of a negotiating team that discussed the matter with the government. That was the most appropriate way for the matter to be dealt with because the trade union movement has the experience, ability and resources to negotiate on the behalf of those public servants. That consultation is one of the more positive aspects of the Bill, and those people and others in the government should be happy with the outcome of it. Nevertheless, I am concerned about the change for retired public servants already on pensions and the reduction in the frequency of changes in line with the consumer price index, which will occur only every 12 months instead of every 6 months. Having two classes of workers in different superannuation schemes working side by side will be a problem, but it is my prediction that not too many public servants will be employed for some time to come, and eventually there will be no discrepancy.

Hon. Bill Forwood — Ultimately, over time they will be in the one scheme.

Hon. D. A. NARDELLA — That is correct, and ultimately I will be dead!

The government has dealt with this matter properly. Mr Forwood suggested that the former Labor government had squibbed on making the hard decisions because it was too busy providing money for health, transport and education. The government has now made the hard decisions.

Hon. Bill Forwood — We got that on the record.

Hon. D. A. NARDELLA — It is true that the government has not squibbed on making the hard decisions, but it has cut spending on health, transport and education.

Hon. R. M. Hallam — Do you reckon they are the easy decisions?

Hon. D. A. NARDELLA — I do not think they were easy decisions; I was simply pointing out the inconsistency of Mr Forwood’s argument. Nonetheless, the Bill is a positive step. It shows the way the government should operate within society and it is a good future outcome for many workers in the Public Service.

Hon. J. V. C. GUEST (Monash) — Firstly, it is important to put to rest any fears Mr White may have raised about the future abolition of indexation of pensions. I do not subscribe to the way Mr White put his argument because I am sure the Minister for
Finance is not doing something that is politically disastrous. Before Dr Griffin took over the substantial push for the achievements embodied in the Bill, an options paper was prepared that made a number of possible calculations. One of those said that of the $19 billion in unfunded liabilities $5 billion would be saved if pension indexation were abolished. That is a simple calculation, but someone a little more politically aware than some public servants asked what was the presumed indexation rate. Eventually someone discovered that it was 4 per cent and the conversation proceeded: "Well, at 4 per cent, if somebody retires at 55 years of age with a pension of $30,000, then by the time they are 73 years of age it will be worth $15,000 and by the time they are 91 years of age it will be $7500".

Perhaps the holder of a marginal seat full of retired public servants and potential retired public servants would not be interested in this proposal as a possible option once it is explained. But that is not the Minister's proposal. It is simply one of those calculations that is not and will never be a possibility for the future.

This most extraordinary superannuation agreement is a triumph. I give credit to the Minister for Finance and, particularly, to Dr Griffin who has lead the Minister's team. It must be remembered that the Minister has many extremely difficult matters to handle in his portfolio.

Honourable members interjecting.

Hon. J. V. C. GUEST — The government came to office with the need to reduce expenditure across a whole range of departments. The Department of Finance was central to that aim. This triumph has occurred in the most important of all matters the Minister has had to deal with. It was achieved by agreement with the unions who are now willing to make it work.

The basic problem with superannuation was that the large and growing commitments for the State Budget would affect its future. We tend to consider superannuation as if it is a separate subject, whether we are considering individual remuneration packages or the broad spectrum of employment conditions. We tend to treat superannuation as something special. Even Mr White, who understands financial matters better than most, has been doing that tonight.

It was not absolutely necessary to deal with superannuation as such. The government could have reduced salaries across the board. It could have made substantial percentage reductions in any aspects of the remuneration package. However, it chose to reduce the cost of the superannuation schemes. The government's agreement honours as much as possible in a moral sense the extremely important contract the State has with its employees. Eventually, as a result of working with unions who were genuinely doing their best to represent their members, the government achieved a wonderful result. More importantly, it satisfied a large sector of the Victorian public sector and has not just picked on a small or weak group and said that it does not have to be fair to those people.

I remind the House of the unfortunate or unrealistic valuations placed on land where people are paying between 3 and 5 per cent tax on the site value of land. We know that governments can be insensitive to the impact of new proposals on small groups. Death duties often apply long after inflation fails to adjust the rates of death duties. Although they inflicted real hardship on people most were able to accept that.

In this case, there has been a finetuning of the moral sensitivities of government. It is true that those who had previously been expecting to get their pensions indexed twice a year, or even more in some cases, will have them indexed only once a year. There is a deal of coercion involved in the choice that members of superannuation schemes have to make in order to encourage them to join the new scheme.

Honourable members interjecting.

Hon. J. V. C. GUEST — The government must face the fact that it has not honoured all the commitments and expectations that people have had, albeit perhaps excessively, because of the errors of governments in the past. Although we have not been able to honour them, we have dealt with this extremely difficult matter with a strong sense of trying to do the right thing. That is one of the main reasons why members of Parliament have imposed on themselves a cut in Parliamentary superannuation entitlements which is at least as great as the cuts imposed on others.

I will specify some figures to demonstrate what I mean. The average remuneration package of new members of Parliament is being reduced by about 25 per cent. That equates closely to the additional 5 per cent contribution that might have to be paid by a person 30 years of age or younger who is in and wishes to remain in the revised State.
Superannuation Scheme. In the Emergency Services Superannuation Scheme the cut in total remuneration is about 3.1 per cent, so members of the Parliamentary scheme have accepted a greater reduction.

It should also be noted that the older, long-serving members of all the relevant schemes suffer much less impact than those who have more of their working lives ahead of them. I do not know whether it has been articulated, but it could be said that those who have the greater choice available to them by having more of their working lives ahead of them have more expected of them than those who have less flexibility. In any event, to make severe reductions in the entitlements of those who have already accrued entitlements for 25 or 30 years is to simply take away what they have already earned, and with practically no exceptions that has been treated as anathema in designing the provisions embodied in the Bill.

I am tempted for the last time to put on the record some of the history of the problems and remedies of public sector superannuation. In his contribution Mr White said that in 1926 when what is now the revised scheme was the State Superannuation Scheme it applied to relatively few public servants. I am not sure whether it applied to teachers then.

Hon. D. R. White — Certainly not female teachers.

Hon. J. V. C. GUEST — It was a complicated scheme which, among other things, recognised that public servants and teachers were not expected to earn salaries that were comparable with the private sector. They had security of employment and their superannuation. I suppose in a sense they equated that with public servants such as judges and others who expected to be relieved of financial worries when they served the State in such positions.

Over many years the public sector grew considerably and it was recognised that many people saw superannuation as a convenient way for increasing their remuneration without it becoming explicit. The more complicated the superannuation scheme the better it was for concealing the effect of remuneration that people received. Defined benefits were complicated conditions. The Parliamentary Contributory Superannuation Scheme is good but the State Superannuation Scheme is more complex, although it does not have the step functions that the Parliamentary scheme has.

Until the 1970s, as most people will recall, real earning rates of funds not invested in equities were nil or negative and when governments increasingly dipped into the funds to finance the payment of lump sum benefits a serious funding problem started to emerge.

In 1973 and 1974 the Whitlam government instituted an extravagant extension to the Commonwealth superannuation scheme, which did not pass through the Senate, but in the meantime the Victorian and South Australian governments picked up the benefits and incorporated them into their respective schemes. The improved benefits were not as damaging for the South Australian superannuation scheme as they were for the Victorian superannuation scheme, because in South Australia membership of the main public sector superannuation scheme was not compulsory and it had only about 30 per cent membership. The Victorian superannuation scheme has about 60 per cent membership of public sector employees.

The very generous provision for pensioners included benefits based on their final year’s salary. In the private sector and only in the semimonopolistic sector covering organisations such as banks and insurance companies the normal provision was for the superannuation benefit to be based on an average of the final three years salary. That generous provision in the public sector was complemented on the contribution side by some senior public servants having to pay 30 per cent or even more of their salary by way of contributions. It was a good deal, particularly in the days of nil interest rates, because public servants could top up their superannuation from borrowings.

I do not recall all the details that added to the extravagance of the changes made at that time, but the Metropolitan Fire Brigades superannuation scheme was particularly expensive at the time. I know that the then State Actuary, Vic Arnold, was concerned about it, but there are problems in not appeasing fire brigade personnel and police officers, as has already been referred to.

Victoria, the Commonwealth and South Australia had brought themselves serious future problems. I give credit to Sir Roderick Carnegie, the then Chief Executive of CRA Ltd, and Bill Cook of Campbell and Cook, who examined public sector superannuation schemes in 1975 or thereabouts and who understood the severe future problems being imposed on State governments and the
Commonwealth government by adopting these new generous provisions.

When I came into this place in 1976, one of the areas in which I was interested was the future liability of public sector superannuation schemes. I recall in 1977 placing a question on notice about the emerging future costs of the State Superannuation Scheme and receiving a letter from the Treasurer after the prorogation of Parliament saying that Treasury had no figures on the future liability of the scheme. Treasury simply waited for the State Superannuation Board to notify it of the funds that were required. At that stage the unfunded liability was about 1.6 per cent of Budget outlays, but the figure was heading upwards — it was about 2.6 per cent by the early 1980s.

Ron Hay, a stockbroker and a Liberal candidate for Corio, and Howard Carter, an actuary, served on a committee investigating public sector superannuation liabilities. They produced a report that was forwarded to the State Council of the Liberal Party and finally referred to the Honourable Lindsay Thompson, the Premier and Treasurer at that time, and then to Campbell Cook and Knight. Unfortunately, Lindsay Thompson received the report about two days before the election of 1982 and, being a very proper person, he would not let me have a look at it and said that I would have to ask the incoming Treasurer, Mr Jolly. Treasurer Jolly sat on the report for a while because he had other things to do, but fortunately, the then Minister of Transport, the Honourable Steve Crabb, being an actuary, was interested in the subject and, believing it to be a bipartisan subject, he caused the then Economic and Budget Review Committee to be given a reference to examine the issue.

The Rowe committee, as it was known, did not do any work on public accounts for some time, but spent two years thoroughly investigating public sector superannuation. It only partly completed its task, because although it ensured that people recognised there was a problem that had to be tackled it made some unfortunate recommendations regarding early retirement. In October 1984 I was compelled to write a minority report covering not just the judges' and Parliamentary superannuation provisions dealt with in a part of the report but the whole ambit of public sector superannuation.

I mention that because what I said then is what I believe now — the basic starting point is total remuneration. Different elements of a person’s package should not be concentrated on without reference to others. The principle behind a remuneration package should be flexibility. Any economist with technical knowledge can prove that costs will be minimised if choice of elements in a remuneration package is allowed, or any other package of different elements, because the person will give something in return for choice.

The superannuation scheme should be an accumulation scheme primarily so that people are rewarded at the end of their service in proportion to what they have given up in current spending power on the way through and in proportion to return on the investment that has been made for them. They should have the choice of a person making the investment for them, whether a government body or a private investor. If they want something in addition, they should pay for that. For example, if they want certainty, if they want to know that they will get a rate of accumulation of 3 or 4 per cent in real terms over the life of their superannuation investment or policy, that will be at the expense of the profits they might make if the fund did better.

Hon. Bill Forwood — They will be safer.

Hon. J. V. C. GUEST — They will be. If a pension was wanted on retirement, that will come at a price. If life or disability insurance is wanted, that comes at a price. This principle is embodied substantially in the Bill. It is a mark of the growth of economic rationalism. It is good sense that being rational about economic matters now appears to be the natural and sensible way to go.

It is not a coincidence that the person who raised the subject of public sector superannuation as a public issue in the mid-1970s, Sir Roderick Carnegie, was one of the first leading businessmen in Australia to have a Master of Business Administration. There is nothing magical about an MBA. Mr White and I did our MBAs in the same year. We focused on calculating compound interest and compound discount matters. Mr White would probably remember the finance directors of major companies who came along to the course saying that they still based decisions on reference to a payback period rather than any discounted cash flow calculations, and that was in the 1970s.

Hon. D. R. White — Mr Guest stood for Brunswick East in May 1970.

Hon. J. V. C. GUEST — And I had sideburns. I am pleased to say that the community has benefited from small beginnings in the 1960s, when Bert Kelly
was desperately trying to make people understand the cost for the rest of the community of maintaining privilege for the protected. We have progressed to the extent that people realise that inflation rates, real interest rates and compound interest at different levels have an important impact. Something as simple as total remuneration and flexibility in a package being important has been recognised.

I am delighted that we are now adopting those principles, but this should have been done at least nine years ago — much earlier. Mr White would have known that if he had turned his mind to it. The Director of Superannuation, Ronald Champion, did a good job for the Labor Party, with all the limits imposed on his ability to perform over the past six or seven years of Labor government. He said that my minority report was spot on and that he wanted to adopt those principles, but he had to work within limits because his left hand was held behind his back by the trade union movement. A system that treated superannuation as a separate element was simply not going to work, but he managed to get the new scheme in place. To a limited extent, I have to give credit to the economically literate in the Labor government for putting that in place.

Hon. Bill Forwood — Who did that?

Hon. J. V. C. GUEST — Labor must have been satisfied with Mr Champion's scheme, which, without being perfect by any means, certainly allowed ultimate pay-outs way beyond those in the private sector but was defensible in the percentage of salary costs contributed by the employer. Some members, contrary to their interests or perhaps because they were relatively poor, did not contribute as much to the scheme as they might have done, and therefore were not able to get the full benefits of the scheme. That offends, among other things, the principle that there should be equal pay for equal work. If the total remuneration concept is accepted, one takes into account what someone receives implicitly from the employer by way of superannuation. People who could not afford or were not bright enough to pay maximum contributions were being less well paid even under the new scheme.

That brings me to another point made by Mr White. Under the new accumulation scheme — —

Hon. Bill Forwood — It is fully funded.

Hon. J. V. C. GUEST — Under the fully funded accumulation scheme, Mr White suggests that benefits would be inadequate for income maintenance. In a sense he is perfectly correct. Anyone in the scheme from the age of 30 to 55 years, even having received a superannuation guarantee contribution of 9 per cent all that time, would not have anything like enough to maintain after the age of retirement the lifestyle achieved when earning income, but under clause 33 the officer will be able to make his or her own member contributions. With the tax imposed on superannuation funds and on contributions these days, members may find that they are called upon to invest or may just be interested in investment, negative gearing and providing for themselves in other ways.

None of that answers the point raised by Mr White, which is that the employer has some paternalistic duty to ensure that people will, at the end of their employment, have enough money to live on without reducing their standard of living. Under the Public Sector Management Act people are much less likely to be serving 30 or 40 years and saying, "We could not manage our money. Can you look after us and provide a pension?" The reality is that they are likely to move from one firm to another. With investment and portability being virtually required by the Commonwealth legislation, they will have to make their own judgments and arrangements. If one wishes to be paternalistic and say that it is still the duty of the — —

Hon. D. R. White — How would you describe the Parliamentary superannuation scheme?

Hon. J. V. C. GUEST — I will get onto that later. If one felt a duty to be paternalistic to public servants and say that those who join in their early 20s and serve until they are in their 60s will be ensured of being looked after by the public sector scheme, there is still the problem that they are not given the flexibility to take their remuneration in whatever way they want to.

In commenting on the Parliamentary scheme I have already pointed out that an 18.2 per cent reduction in costs on top of the adjustments made for the tax changes in 1988 is equivalent to a 5 per cent reduction in the total remuneration package, not including electorate allowances. One would hope that the scheme would not be instituted in its present form, given all that I have said about the desirable form of superannuation schemes.

If one were starting from scratch I would certainly support — I know Mr Forwood and the Minister would support it — a new scheme for new members
that was simply an accumulation scheme to which the employer had to make contributions actuarially calculated to be the equivalent of those made to the present scheme. That scheme might no longer provide that a member who served for eight years suddenly leapt to a point where implicitly the employer had given a 60 per cent per annum contribution to the superannuation fund whereas if the member just missed out being in for eight years the contribution would be about 20 per cent — as it would be under the scheme before the amendments embodied in this Bill.

Hon. D. R. White — So it would be graduated.

Hon. J. V. C. GUEST — When this was being considered my preference was for a scheme where employer contributions in the early years would be considerably higher than in the later years simply because people should be encouraged to come into Parliament knowing it would not be an absolute disaster if they lost their seats in the next election and went out after one election or two.

Younger members would probably be more likely to have dependent families or need something, if not in superannuation benefits, at least in retrenchment, rehabilitation or readjustment benefits, none of which are provided in this occupation even though they are in many other walks of life.

In the future there is scope for a scheme that is an accumulation scheme with various options which allow people to pay for extras by way of disability or death benefits if they are needed and which realistically accounts for the fact that for some members life as a Parliamentarian would be short, which should not be too disastrous for them.

Hon. D. R. White — What would the level of benefit be at the end?

Hon. J. V. C. GUEST — Mr White asks what the benefit at the end should be. One factor to bear in mind is the impracticality of going beyond reasonable benefit limits. One of the advantages of starting with high up-front contributions which tail off later would be to reduce or eliminate the risk of members, even longer serving members, going beyond reasonable benefits limits. Implicit in his question is whether one would really want the benefits in an accumulation fund to be the equivalent of the benefits that may be paid under our present defined benefits scheme.

In logic I would say the answer is yes, unless we say that the total remuneration packages for members of Parliament at present are totally out of kilter — far too much or far too little.

Hon. D. R. White — We agree with you.

Hon. J. V. C. GUEST — People such as Mr White and Mr Landeryou have thought about this and basically agree. It is something that should be done on a bipartisan basis sensibly and openly so that there is no suggestion that we are surreptitiously trying to increase the remuneration of members. It should be done in the interests of rationality. Mr White also referred to the possibility that the Bill offended against the Commonwealth requirement that accrued benefits not be reduced. One of the examples he gave was the reduction in the frequency of indexation pensions. Advice I have taken from an authoritative source is that that is not a relevant reduction — I am referring not to Dr Griffin but to somebody who has obtained the authoritative advice.

The Commonwealth legislation takes the fairly primitive view that if the monetary amount is not less, one has not actually suffered a reduction. There is another argument that I put on that score. After all, one could have a deflation. I am not sure that the indexation provision is actually contemplating reductions in pensions in case of deflation, but in principle one would have to say that the indexation provisions are of a kind that adjust to the value of money.

Hon. D. R. White — The consumer price index or 5 per cent, whichever is the lowest.

Hon. J. V. C. GUEST — In any event it is a fairly technical point. I know Mr White is not really trying to score points; he is simply putting on the record something that we will have to keep an eye on. In the end, difficult decisions have to be made with elements of coercion and of disappointed expectations —

Hon. D. R. White — Where was the coercion coming from?

Hon. J. V. C. GUEST — The carrot and the stick. The fact that, as you and I have both mentioned, Mr White, members under 30 years of age may in the end find they are paying an extra 5 per cent of salary, which is similar to the reduction in remuneration packages of 5 per cent, which I spoke about before.
Another matter should be put on the record because some sort of action should be taken on it. The younger members of Parliament are likely to be disadvantaged if they wish to take pensions. If one of the not-so-younger members such as the Honourable Tom Roper, who will be retiring well under the age of 55, takes a pension — I believe he will not — he will not get the 15 per cent rebate on tax, which is a substantial benefit because he will be taking it before the age of 55.

However, it would make a lot of sense, except from the point of view of discouraging people from taking pensions, if on retirement members were allowed to take deferred pensions, which would be actuarially adjusted so that the pensions they took at say 55 or 60, or whenever they chose to take them, were actuarially of the same value as the ones they would otherwise have taken at 48 or 40.

Hon. D. R. White — Would the Commonwealth have to agree to that?

Hon. J. V. C. Guest — I believe if that were provided for — it would be in the nature of a preservation until the age of 55 at any rate, which is a requirement of Commonwealth legislation — there would not be any problem about achieving the 15 per cent rebate when the pension came to be paid at the age of 55, or whatever age it was.

The relevance for members of Parliament is that it is probably the only occupation in which those who cease that occupation without being disabled can take a pension at a young age. One member of Parliament went out at the age of 33 years after eight years service and took a pension. I am in favour of choice. Younger members will be considerably disadvantaged not only because of the effect of the Commonwealth tax law but also because they cannot defer their pensions in the way I have suggested, and if they have not served a number of years they will suffer reduction in the accrual rate for benefits.

I can bear the 50 per cent of base salary which I qualified for as soon as I served eight years, subject to section 15 of the Constitution Act, but after eight years Mr Forwood or Ms Asher will get only a little more than 36 per cent, although they have already accrued some benefit at a higher rate — it would be more like 37.5 per cent. New members, unless they bring in an accumulation scheme, will receive 37.5 per cent.

Mr White will remember that when he came to this place the amount was 42 per cent, but then we did not have the potential advantages of rebates that are now available for pensions, although lump sums were better treated. We have not gone back to something markedly different from the situation in 1976. However, it will make a considerable difference to new members.

I remind the House of the strong element of propriety in the Bill in relation to superannuation schemes. It is nine years after the final report of the Economic and Budget Review Committee on public sector superannuation that we are now legislating to ensure that, at least for future members, the effects of inflation in the working formula in section 15 of the Parliamentary Salaries and Superannuation Act will no longer create windfalls or cause unjustified losses. The practical effect is that Mr White's numerator is probably declining in relation to his denominator. He is one of those who is suffering, as is Mr Roper in another place.

In the future substantial savings will be achieved so long as the Parliamentary Superannuation Scheme continues. The savings are probably of the order of 2 or 3 per cent, because naturally the windfall effect of inflation in the formula was much greater than the opposite effect for every Jock Granter or any other former Minister who stayed on for years until a general election in times of relatively high inflation while his or her benefit actually decreased. Many more Ministers earn higher salaries at the end of their careers and retire or lose their seats. That is a substantial saving the government and Parliament should be given credit for.

Section 20 provides another area of saving under the Parliamentary Salaries and Superannuation Act to which the Economic and Budget Review Committee drew attention when members who took a lump sum or their contributions plus a further supplement under section 15(3)(a) of the Act are defeated or retire from Parliament, but subsequently return to Parliament. Under section 20 those members would be able to go out with a lump sum and when they regain a seat in Parliament they would be able to add the years they had previously spent in Parliament to their subsequent years, and their pensions would be based on that figure. That would provide them with a momentous windfall.

An attempt was made in the low inflation days to provide against such a windfall by reducing the amount of ultimate pension entitlements in proportion to the amount of time people had spent...
out of Parliament and in proportion to the lump sum they received. It did not allow for inflation because it greatly underestimated the benefits they received in real terms by taking a lump sum or equivalent at early retirement or after loss of a seat. That provision has been attended to, as has the technical deficiency in the drafting of section 24 of the Act, which was apparently intended to ensure that Sir Henry Bolte received an adequate pension, given that he had served many years before Parliamentary superannuation was legislated for.

A conscious effort has been made to achieve a proper result in relation to the Parliamentary scheme as well as ensuring that any member is expected to bear part of the burden of reducing the imposition on the State of the public sector superannuation by accepting the equivalent burden. For those reasons I support the Bill.

The DEPUTY PRESIDENT — Order! I am of the opinion that the second reading of the Bill is required to be passed by an absolute majority. As there is not an absolute majority of members of the House present I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in Chamber:

The DEPUTY PRESIDENT — Order! I am of the opinion that the second and third readings of this Bill require to be passed by an absolute majority. In order that I may ascertain that the required majority exists, I ask honourable members in favour of the motion to stand in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Read second time.

Third reading

Hon. R. M. HALLAM (Minister for Regional Development) — By leave, I move:

That this Bill be now read a third time.

I acknowledge the contribution of all honourable members who have spoken on the Bill. I also thank the opposition for its support of the measure. I commend all who have played a part in the production and passage of the Bill.

The Bill is a measure of extraordinary importance in the life of the Parliament. I pay tribute to my colleague the Minister for Finance in another place who was centrally responsible for forming what will be acknowledged by all as an historic agreement between this government and the Trades Hall Council.

Motion agreed to by absolute majority.

Read third time.

ADJOURNMENT

Hon. R. I. KNOWLES (Minister for Housing) — I move:

That the House do now adjourn.

Taxi industry

Hon. D. R. WHITE (Doutta Galla) — I direct a matter to the attention of the Minister for Roads and Ports. During question time this afternoon the Minister told the House that on his visit to Melbourne Airport today he had been extremely well received in both a specific and general sense by taxidrivers at the airport. Will the Minister explain to the House how it comes to pass that in an article in the afternoon edition of the Herald Sun, which is not an unsympathetic newspaper from your point of view, totally contradicts the report you provided to the House.

It is reported in the article that taxi drivers completely rejected the Premier’s proposal for the introduction of pink taxis as a tourist attraction and were not convinced about the Premier’s proposal to give genuine consideration to the provision of a third express lane from Flemington Bridge to Bell Street for taxis and buses travelling from Melbourne to the airport. None of the taxidrivers is convinced that when the third lane is constructed it will be exclusively for the use of taxis and buses.
The opposition wants an assurance from the Minister that he and VIC ROADS are seriously considering dedicating the third lane of the Tullamarine Freeway between Flemington Bridge and Bell Street exclusively to taxis and buses. The Minister did not answer that question; he did not make a commitment that following its construction that lane would be dedicated exclusively for the use of taxis and buses.

Moreover, taxidrivers do not believe the Minister. It is not surprising that the report of the reaction of taxidrivers to the Premier totally contradicts the explanation given to the House by the Minister for Roads and Ports about how he was received at Melbourne Airport this afternoon. The report in the Herald Sun clearly shows he was not well received at all and that the notion of pink taxis was rejected totally.

The opposition wants an assurance from the Minister that there was no support from taxidrivers for the Premier's proposal for pink taxis.

Use of roads for livestock movements

Hon. D. M. EVANS (North Eastern) — I raise for the attention of the Minister for Roads and Ports the rights of livestock owners to drive livestock along country roads, particularly between one part of their property and another. I stress that I am not referring to the use of what is euphemistically called the long paddock for grazing by livestock owners but to the conditions under which livestock owners generally move livestock between two points on their properties.

I understand that government roads were initially constructed to provide a connecting link between various parts of properties, to provide legal access to properties and to provide a means for residents of particular areas to move goods, services and people from one point to another along legally accessible rights of way.

I refer to the restrictions currently being put in place through the establishment of roadside vegetation controls, roadside reserves and so on and to the issue of third-party liability. Both issues impose significant restrictions on the rights of landowners to move livestock along roads. Any inhibition of that right imposes significant cost penalties and burdens on those operating livestock businesses in rural areas.

I ask that the Minister establish an inquiry into the various issues involved in the matter, which will in due course report to him and Parliament so that eventually, if necessary, legislation can be introduced on the issue.

In relation to the question of liability, which in the case of an accident can include third-party liability, uncertainty as to the legal position has been created by the cases of Searle v. Walberg in England in 1947 and the Victorian case of Brisbane v. Cross, which was heard in Shepparton in 1975.

I ask the Minister to examine these important issues that are of increasing concern to livestock owners who need to move livestock between various points on their properties and which impose significant costs on those businesses.

Outsourcing of road marking

Hon. R. S. IVES (Eumemmerring) — I direct a matter to the attention of the Minister for Roads and Ports. At question time today the Minister announced another milestone in the onward march of VIC ROADS to more and more outsourcing; namely, if I heard him correctly, the outsourcing of the painting of white lines on roads.

The announcement made sense of an otherwise unintelligible message faxed to my electorate office this morning by a constituent who paints white lines on roads for a living and is concerned about his job security.

I ask the Minister to describe the nature of the new outsourcing arrangement, including the name of the successful tenderer, that firm's policy towards local employment and what, if any, provision will be made for staff of either VIC ROADS or subcontractors who were previously engaged in painting white lines on roads.

Transport Accident Commission funding

Hon. B. N. ATKINSON (Koonung) — Although my question may be as popular as an atheist at the Vatican, I refer the Minister for Roads and Ports to the level of government sponsorship of football clubs in the Australian Football League. I am concerned that the Transport Accident Commission (TAC) has recently become a major sponsor of the Essendon Football Club with its Speed Kills program and with its 'If You Drink, then Drive, You're a Bloody Idiot campaign it is a major and
minor sponsor of the Richmond and Footscray football clubs.

Furthermore, the government sponsors the Fitzroy Football Club through its Quit program. According to press reports today the Quit program is to increase its sponsorship of the Fitzroy Football Club. I realise that matter is not within the Minister's province. I am concerned about the clubs' lack of commercial sponsors. The fact that they have turned to a number of government authorities for funding reveals that some qualms exist about the value of such sponsorship.

Although the Quit and drink-driving programs have been of considerable value because of their associations with high-profile football clubs, will the Minister assure the House that those sponsorships will be continually monitored. Their success should be measured to ensure that the government is not propping up the football clubs and failing to get the best value for the money from its community service programs.

Floods in north-eastern Victoria

Hon. PAT POWER (Jika Jika) — I direct a question to the attention of the Minister for Housing who is the representative in this place of the Minister for Community Services. Two weeks ago Mrs Hogg and I had the opportunity of visiting Benalla and Shepparton at the invitation of the Prime Minister's regional rural task force, which was examining flood damage.

At Shepparton we met representatives of the Shepparton-Rodney Flood Committee, which is concerned about the ongoing damage to dairying and fruit growing areas. It is not yet clear whether fruit trees will be affected by flood damage or ongoing problems associated with salinity. The Shepparton-Rodney Flood Committee said it would be seeking funding from the Minister for Community Services to enable the employment of an economist to present a realistic picture of the levels of consequent or ongoing damage in the area. Will the Minister urge the Minister for Community Services to give sympathetic and urgent consideration to the request for funding?

Responses

Hon. W. R. BAXTER (Minister for Roads and Ports) — Mr White referred to a matter he raised during question time concerning the visit the Premier and I made to Tullamarine this morning to talk to taxidrivers. I stand by my report. The meeting was amicable; we did not strike — as a newspaper article reports — 100 angry taxidrivers.

While I can sympathise with the fact that Mr White draws certain inferences from the photograph, his long experience in this place should lead him not to believe everything he sees or reads in the newspapers. Although it may look as though the gentleman is gesticulating angrily, I point out to Mr White that the large stomach beside Mr Kennett belongs to me. I was present at the time and I assure Mr White that the gentleman was not angry; he was making a logical and fair point to the Premier and me.

There was some discussion about pink taxis. The article accurately reports the Premier as saying that the idea of pink taxis was by way of illustration only. There was universal agreement this morning that a common livery for taxis is desirable. Taxidrivers agreed that consideration should be given to some commonality in taxi colour, design and fit-out.

There was no dissension about the Tullamarine Freeway. Comments were made about the time it takes to get into the city from Tullamarine and the possibility of a transit lane on the freeway. The Premier, supported by me, said that the Budget announcement about the widening of the Tullamarine Freeway would be given further consideration.

Mr Evans referred to the important matter of the ability of farmers and stock owners to move stock along public roadways. I support that principle wholeheartedly. Historically roads exist for people to gain access to their properties. That includes the ability to move livestock. Obviously it is inappropriate for stock to be moved along freeways and roads constructed especially for the carriage of high-speed traffic. I do not believe Mr Evans was suggesting that.

However, on ordinary country roads — including highways in some cases — it is necessary that from time to time stock are moved either along the roads or, more particularly and perhaps more regularly, across the road when farmers own paddocks on either side of the road.

I am concerned that there have been moves afoot in some areas of local government, the Green movement and others organisations to deny farmers that right. They assume that because people are
driving cars they have priority. Drivers should be educated about how to drive through stock that are being driven along a road. On many occasions when driving stock — particularly ewes and lambs — along roads, I have been frustrated because drivers have no idea how to approach and pass mobs of stock on roads.

More attention should be given to that matter. I will take up Mr Evans's invitation to have VIC ROADS provide me with advice. The reference to *Searle v. Walberg* and *Brisbane v. Cross* is more a matter for the Attorney-General, but in association with my responsibilities as Minister for Roads and Ports, I will discuss the matter with the Attorney-General with a view to ensuring that the trends of the past few years, which seem to be far too restrictive, are reversed.

Mr Ives referred to a constituent who is currently employed by the line marking division of VIC ROADS. He wonders what his situation will be when the outsourcing, to which I referred earlier in the day, proceeds. Because I do not know the gentleman's circumstances and duties I am not able to give Mr Ives a direct answer. However, my clear expectation is that when the outsourcing proceeds, three or four different companies, some of which are not involved in line marking directly at this stage, will employ many of the existing staff. Mr Ives should report that possibility to his constituent and encourage him to keep an eye on what is happening so that he can apply at the appropriate time.

Mr Atkinson referred to sponsorship by the Transport Accident Commission of certain sporting bodies. In some respects that is not a matter on which I can comment directly because the TAC falls within the jurisdiction of the Treasurer.

However, the case he advanced about the need for a sufficient evaluation when such sponsorship is granted is valid. I do not suggest that the TAC does not undertake sufficient evaluation because I am not in a position to so judge. However, some sponsorships that VIC ROADS had granted when I became Minister appeared to be totally lacking any sort of evaluation. In two instances I did not renew sponsorships when they were presented for my approval. I shall refer that matter to the Treasurer and he may care to reply to Mr Atkinson in due course.

Hon. R. I. KNOWLES (Minister for Housing) — Mr Power raised an issue for the attention of the Minister for Community Services in another place. It involved an application from the Shire of Rodney flood group, which is applying for funding to employ an economist to assess the ongoing costs of flooding in that area.

I am not sure whether the matter comes within the purview of the Minister for Community Services or the Minister for Police and Emergency Services in the other place, but I shall certainly refer the issue on and see what information is available for Mr Power.

Motion agreed to.

House adjourned 10.52 p.m.