Thursday, 27 May 1999

The SPEAKER (Hon. S. J. Plowman) took the chair at 10.07 a.m. and read the prayer.

The SPEAKER — Order! I suggest that any member who wishes to carry on a conversation while the prayer is being read should leave the chamber.

Honourable Members — Hear, hear!

NOTICES OF MOTION

The SPEAKER — Order! Are there any notices of motion?

Notices of motion given.

Auditor-General: prisons

Mr HAERMeyer (Yan Yean) — I desire to give notice that on the next day of sitting I will move:

That the house congratulates the Auditor-General on his yet-to-be-released report on the shambles in Victoria's prison system, and condemns the Kennett government's corrupt and dictatorial — —

Honourable members interjecting.

The SPEAKER — Order! I understand the report has not been tabled. The honourable member might explain how he obtained a copy of the report when it has not been tabled in the house.

Mr HAERMeyer — I am pleased to advise, Mr Speaker, that this report is available from the upper house papers office.

The SPEAKER — Order! I cannot accept the motion when the report has not been tabled in this house. I understand it will be tabled later today. The honourable member will have the opportunity tomorrow to move his motion, but I cannot accept it today until the report is tabled in the house.

Auditor-General: prisons

Ms CAMPBELL (Pascoe Vale) — I desire to give notice that on the next day of sitting I will move:

That this house calls on the Minister for Youth and Community Services to note the Auditor-General's report on Victorian prison system — —

when it is tabled — —

and to immediately stop moves — —

The SPEAKER — Order! I cannot accept a motion about a report that has not been tabled.

PETITION

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

Waverley Park: closure

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

This petition of the undersigned citizens of the state of Victoria sheweth that, despite its growing popularity and accessibility to many Victorians, the long-term future of Waverley Park football ground is uncertain.

Your petitioners therefore request that the Parliament do all in its powers to ensure the long-term viability of Waverley Park as an AFL venue. Your petitioners call upon the Parliament to work with the AFL to improve car and bus access to Waverley Park and assist in upgrading amenities at the ground.

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

By Mr PANDAZOPoulos (Dandenong) (2459 signatures)

Laid on table.

Ordered that petition presented by honourable member for Dandenong be considered later this day on motion of Mr PANDAZOPoulos (Dandenong).

INQUIRIES INTO CHILD DEATHS: PROTECTION AND CARE

Annual report

Dr NAPTHINE (Minister for Youth and Community Services) presented report for 1999.

Laid on table.

PAPERS

Laid on table by Clerk:

Auditor-General — Special Report No. 60 on Victoria's prison system: Community protection and prison welfare — Ordered to be printed.

Border Groundwaters Agreement Review Committee — Report for the year 1997–98

Members of Parliament (Register of Interests) Act 1978 — Summary of Variations Notified between 12 November 1998 and 26 May 1999 — Ordered to be printed

NOTICES OF MOTION

Building (Amendment) Bill

Mr THWAITES (Albert Park) — By leave, I move:

That I have leave to bring in a bill to require that a building surveyor must not issue a building permit unless he or she is satisfied that it will be consistent with the requirements and conditions of any relevant planning permit, to amend the Building Act 1993 and for other purposes.

Leave refused.

Equal Opportunity (Same Sex Relationships) Bill

Mr THWAITES (Albert Park) — By leave, I move:


Leave refused.

BUSINESS OF THE HOUSE

Adjournment

Mr GUDGE (Minister for Education) — I move:

That the house, at its rising, adjourn until tomorrow at 10.00 a.m.

Motion agreed to.

Televising and broadcasting of proceedings

Mr GUDGE (Minister for Education) — I move:

That until 30 June 2000 inclusive, the resolution authorising the televising and broadcasting of proceedings in the Legislative Assembly agreed to by the house on 18 February 1998 be amended by the omission of paragraphs 1(b)(i) and 1(d)(i).

The amendments allow the present practice of televising and broadcasting of proceedings of debate on a motion that grievances be noted, or debate on a motion moved by a minister for the adjournment of the house at the end of a day's proceedings, to continue. At present such televising and broadcasting is permitted pursuant to equivalent amendments adopted by the house on 1 September 1998 which are effective until 30 June 1999. The motion provides for the amendments to be effective until 30 June 2000. A review of future arrangements may be undertaken by a new Parliament.

Motion agreed to.

ROYAL PARKLAND BILL

Second reading

Mrs TEHAN (Minister for Conservation and Land Management) — I move:

That this bill be now read a second time.

The existing State Netball Centre was built in 1969. It is now in poor condition and has a leaking roof and unstable floor surface. Spectator and player amenities are substandard, seating capacity is limited and there are no male changing rooms.

Hockey has been played in Royal Park for 50 years. The State Hockey Centre was never fully completed when initially constructed. It has no cover for spectators and support amenities such as changing rooms; spectator toilets and lighting are well below acceptable standards.

Both facilities have now deteriorated to the lowest standard of any state centre for either sport in Australia and require renewal.

The redevelopment of State Netball and Hockey Centre will replace the existing dilapidated netball centre and the substandard hockey centre that are both located within Royal Park.

The redevelopment of the State Netball and Hockey Centre is included in the City of Melbourne's Royal Park master plan and will result in an increase of open space areas at Royal Park.

The new centre is designed to attract participants of all ages and all levels of competition — from children to veterans, to local and pennant competitions. It is estimated that 90 per cent of its usage will be for domestic club level activities and competition. The centre will have the capacity to cater for an estimated 270 000 users a year, of which 20 per cent are expected to be children under 15 years of age.
At the same time, it will meet competition standards for state and national championships and international events, such as the 2002 World Masters Games and 2006 Commonwealth Games.

Due to the importance of this facility to the public and major events such as the 2006 Commonwealth Games and 2002 World Masters Games, it is appropriate that it is ensured that there is no risk of this state-significant project being delayed through any doubts whether the redevelopment complies with the reservation over the land. The provision of such certainty is consistent with that which provided for other state-significant sporting facilities such as Melbourne and Olympic Parks and the Melbourne Sports and Aquatic Centre.

I now turn to the particulars of the bill.

Clauses 1 and 2 relate to the purpose of the bill and its commencement.

Clause 3 provides definitions for 'State Netball and Hockey Centre land' and 'Royal Park land'. The State Netball and Hockey Centre land relates to the area to be used in the carrying out of works to build the facilities.

Clause 4 provides for removal of any doubt that the State Netball and Hockey Centre land may be and always has been able to be used for the purposes of sport, recreation, entertainment or social activities; purposes connected therewith and the erection of buildings or structures or the carrying out of works for those purposes.

Section 85 statement

I wish to make a statement under section 85(5) of the Constitution Act 1975 of the reasons for altering or varying that section by this bill.

Clause 5 provides that no compensation is payable by the Crown in respect to anything done under or arising from clause 4.

Clause 6 provides that it is the intention of clause 5 to alter or vary section 85 of the Constitution Act 1975.

The reason for altering or varying section 85 of the Constitution Act 1975 is to limit the jurisdiction of the Supreme Court to prevent compensation being awarded in respect of anything being done or arising out of clause 4. Claims for compensation based on anything being done or arising out of clause 4 may delay or prevent the redevelopment of the State Netball and Hockey Centre. The facilities are being redeveloped to benefit the community as a whole and it is in the public interest for the rights on the site to be clarified to ensure that the redevelopment of these facilities of state significance is not jeopardised.

The redevelopment of the State Netball and Hockey Centre will significantly enhance the amenity of the area to park users, local residents and Melburnians generally.

I commend the bill to the house.

Debate adjourned on motion of Ms GARBUtT (Bundoora).

Mrs TEHAN (Minister for Conservation and Land Management) — I move:

That the debate be adjourned until tomorrow.

Ms GARBUtT (Bundoora) — I move:

That the words 'until tomorrow' be omitted with the view of inserting in place thereof the words ‘for two weeks’.

Mr Perton interjected.

The SPEAKER — Order! The honourable member for Doncaster!

Mr Perton interjected.

The SPEAKER — Order! If the honourable member for Doncaster interjects again while the Speaker is on his feet I will name him forthwith. Don’t tempt me — not today or any day!

Ms GARBUtT — This week has come to symbolise what the government is about and the arrogant style it has brought to government — a culture of secrecy, abuse of Parliament and devaluing of democracy. Members on this side of the house have watched with rising dismay and disgust as the government has systematically reduced Parliament to a rubber stamp and made a sham of our democracy. Proposing to adjourn debate on the bill for just one day is absolutely outrageous. It confirms that the agenda for the week is secrecy, abuse of Parliament, making a rubber stamp of Parliament and reducing democracy to a promise and a dream. A one-day adjournment of this bill makes a mockery of Parliament and is a deep insult, both to the Victorian Parliament and to all of its members. It is an outrage for all Victorians. A one-day adjournment of a bill of this importance provides absolutely no time for any member of Parliament to carry out the role for which he or she was elected — to be accountable to his or her constituents. No scrutiny is possible in the time proposed by the minister.
Less than an hour ago, just before Parliament resumed for the day, the minister told me she would organise a quick briefing for me this afternoon. I need a briefing, certainly, because the bill is a complicated piece of work. I need also, however, to talk to other people who will be interested and vitally affected by the bill, which deals with issues that have been controversial for two years. Although I can get a briefing by shoving aside other work I have, I cannot go and visit the area concerned because Parliament will be sitting continuously.

Mrs Tehan interjected.

Ms GARBUTT — Are you suggesting 8 o’clock in the morning? The minister’s suggestion is absolutely outrageous. Last night we finished at about 3.30 a.m. Perhaps I could go in the dark and have a look!

I cannot go and consult with interested parties about what has been an issue of raging controversy. That is a great insult to those people. Who is involved in this issue? Who would like to have their opinions heard? Who would like to talk to the opposition and to all members of Parliament about it? First among them would be the local residents, the Melbourne City Council and the planners. The government has pushed its project through by bypassing normal planning processes and freezing out the residents and the Melbourne City Council, which would normally be the responsible planning authority. That has already been done and the pattern set. Now its strategy is confirmed by today’s motion to give the bill only 24 hours consideration.

Netballers are vitally interested in the outcome of the bill. Netball is one of the state’s most popular participant sports. The number of netball courts in Royal Park is being reduced from 21 to 4, and netball associations across the state have a huge interest in that. Will they have time to have a look at the bill, digest what is in it and make their thoughts known to their members of Parliament? Of course not! Not overnight, in one day, in an indecent rush.

The project has already commenced, and members of the Royal Park Protection Group have been out there sitting in front of bulldozers. Will they be consulted? Will they have time to look at the bill, digest what is in it and come back to the minister, the shadow minister and local members of Parliament to say what they think? Of course not! That is not possible overnight. Honourable members might sit here until ridiculous hours in the morning, but normal people are home in bed, and I guarantee most netballers are included in that. Royal Park Protection Group members are at home in bed. They are not going to spend the wee small hours of the morning looking at the bill and trying to contact the minister, the shadow minister or their local member. It is absolutely outrageous that the minister should propose an adjournment of only 24 hours for this bill.

There is no time to consult with any of those groups. The lack of time for consultation is an insult to all Victorians who support proper democratic processes by voting to elect representatives whom they expect will represent their interests and ideas in Parliament. When we are given only one day, those people have no opportunity of speaking with their elected representatives and making their views known.

The Macleod Netball Association, which is in my electorate, is an active organisation that is most interested in the Royal Park issue. It put up a proposal for its own centre in Banyule but was knocked back by the government. It received no support or funding, yet there are insufficient facilities for netball in my electorate. The bill reduces people’s access to those facilities even further. One day’s adjournment gives me no time to contact the association and seek its response to the bill. I am sure every honourable member has as constituents many hockey players, netball players and others who are interested in Victoria’s parkland, and they too will not have time to consider the bill.

The bill is the sign of an arrogant government which is out of touch with the electorate and which is quite content to jackboot legislation through with only one day’s notice, overnight or whatever you like. The government will use its numbers to crunch the bill through. The government is abusing the standing orders, which provide for proper democratic processes in this place, in its unholy rush to crunch the bill through. I remind the government of the words contained in the Fitzgerald report: ‘In an atmosphere of secrecy or inadequate information corruption flourishes’.

Why is it necessary to push the bill through in one day? Bulldozers are already tearing up the park! Obviously, the government has bungled again and needs to fix something up. The rush allows no time for the details of the bungle to surface, but that comes as no surprise to honourable members on this side.

An honourable member interjected.

Ms GARBUTT — We will never know because there is no time. In 1996 some $50 000 was allocated from the Community Support Fund for a feasibility study on the project. Why were the mistakes not picked
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up three years ago. What has happened since then? Why has the government not got its act together? Honourable members are being asked to fix up yet another of the minister's bungles. That happened with the catchment management authorities, where procedures set in place several years ago had to be subsequently validated because they had not been properly implemented. The authorities were happily taxing people without any authority to do so. The bill is the same sort of thing: it has been introduced to fix up a bungle by a minister who has made a mess of Victoria's health system and is now doing the same with the environment.

It is important that honourable members have time to scrutinise the bill and obtain legal advice on the problem that is the reason for the bill being rushed through. There will be no time to do that — but that is the minister's intention. It is part of a pattern of the abuse of Parliament by the Kennett government, which is overwhelmingly secretive.

The Auditor-General's report criticised the government's excessive secrecy. It is a government that hides behind freedom of information legislation, commercial-in-confidence provisions and limited sitting and pushes through 14 — now 15 — bills in one week. The reasons why are obvious, which is why I have moved the amendment. The parliamentary sittings should be extended until next week to ease the pressure on honourable members and obviate the need to sit until 3.30 a.m. or 4.00 a.m. Honourable members should be given the time and the opportunity to properly scrutinise and debate the issues, which would happen if the sitting were extended until next week or the following week.

Rushing through bills has become a symbol of the Kennett government's attitude to Parliament. Its devaluation of democracy, its arrogance and its philosophy make a sham of democracy. What is happening today should not happen, and the opposition will not accept it.

Mrs TEHAN (Minister for Conservation and Land Management) — The honourable member for Bundoora has said she would like more time for debate on the bill. It is a simple bill, the purpose of which is clearly spelled out in the second-reading speech. Despite all the suggestions of conspiracies, cover-ups, problems and bungles — that is, all the well-practised emotive terminology for which the honourable member for Bundoora is now well known — the bill ensures that there is no risk of this significant project being delayed by any doubts about whether the redevelopment complies with the reservation over the land.

The bill clarifies the acts of Parliament under which the building proposal is going ahead. As outlined in the second-reading speech, the development of the facilities is a much-needed project of state significance. As the honourable member for Bundoora said, netball is a popular and growing sport that is played by a large number of women. It is excellent exercise and develops friendship and teamwork. The need for a vibrant new sporting project is now being addressed through the building of the netball centre.

That is timely because the old Royal Park centre, which was built in 1969, was totally inappropriate.

Hockey is also a much needed — —

The SPEAKER — Order! The minister is now debating the substance of the bill and is not directing her comments to the proposed amendment, the effect of which would be to delete the word 'tomorrow' and insert in its place the words 'two weeks'. The minister must speak to the amendment.

Mrs TEHAN — On the amendment, Sir, I was seeking to point out that because the proposed building will be of state significance it is vitally important that construction proceed forthwith. The purpose of the bill is to clarify the law and allay any doubts. In those circumstances the government believes an adjournment of one day is appropriate. I have advised the honourable member for Bundoora that the department will provide her with a briefing on the bill. There will be sufficient time during the next 11 hours for her to make phone calls and carry out the investigations she has indicated she would like to make. It is light at 8 o'clock in the morning and Royal Park is not far from the city, so there is no reason why she could not inspect the site tomorrow morning. If she does she will see that the new development is within the footprint of the old facility and will not occupy any additional open space, which is an issue about which people may be concerned.

The adjournment period I have suggested is adequate given the clarity of the bill and the simplicity of its purpose.

Mr PANDAZOPOULOS (Dandenong) — The minister's comments confirm why the government is rushing the bill through the house. It has nothing to do with whether the Royal Park hockey and netball facilities are built, nothing to do with the value of those sports or the important contribution they make, and nothing to do with the footprint of the building and the amount of public open space that is available for public
purposes as compared to the active recreational pursuits for which the facility is designed. The minister cannot tell us that the real issues are the major legal considerations of limiting the jurisdiction of the Supreme Court and ensuring that no compensation is payable.

As the honourable member for Bundoora said, the government’s actions typify what it is all about. A number of the bills debated this week have been designed to fix up messes the government has created by not considering matters properly and rushing legislation through Parliament. That was the case with the Food (Amendment) Bill and it will be repeated with the bills that deal with the gas and electricity industries, particularly the government’s inability to take action against gas cheats. The government bungles things time and again because it does not allow proper debate on issues. Now it wants to do the same with this bill by proposing an adjournment of only one day.

Opposition members are told they can be confident because they will receive a briefing from the minister’s department. We do not need briefings from the minister’s department; we need briefings from constitutional lawyers. The issue is what rights will be removed by the bill and advice on that matter will not be available within 24 hours.

The issue crosses portfolio boundaries. The honourable member for Bundoora is the shadow minister for environment and conservation, I have portfolio responsibility for sport and recreation and the bill also affects the planning and local government portfolio. The proposed adjournment period will allow no opportunity for discussions with all the interested parties following any legal advice, even if that advice were able to be provided in such a short time frame, and no opportunity for those parties to consult their constituent bodies. What respect does the government have for democracy when it will not allow consultation to take place and does not want to hear people’s opinions?

The opposition supports Melbourne’s bid for the Commonwealth Games; the front page of the document that has been submitted to the Commonwealth Games Federation is a letter of support from the Leader of the Opposition. It is a bipartisan bid. The opposition has meetings with the Commonwealth Games committee every three months — one was held two weeks ago — yet this issue has never been raised. Why is there such haste? The project has been in the pipeline since 1991 and one wonders why the problems were not fixed earlier. As the honourable member for Bundoora said, a grant of $45 000 for a study of the Royal Park sports precinct facilities was approved in January 1996. If that study had been done properly surely it would have identified any real concerns. The reality is that there are no concerns about the project’s not going ahead. The bill is all about reducing the government’s liability.

I turn to what the opposition needs to test by obtaining legal advice. If the government removed its liability to pay compensation, would the partners in the facility — the netball and hockey clubs — be prevented from taking legal action against the government if they were not satisfied with the project? The opposition cannot get the necessary advice or consult the interested parties in the time proposed. What if the government does not handle the tender process properly and legal action ensues? Will the effect of the legislation be that if the government bungles no legal action will be able to be taken against it? And if legal action cannot be taken against the government, against whom can it be taken?

Mr McArthur interjected.

Mr PANDAZOPOULOS — The honourable member for Monbulk interjects and refers to the question of time. The questions I have posed need answers. I am not debating those questions or discussing the details of them; I am highlighting questions that need to be considered before debate on the bill takes place.

Work has commenced on the project. It is important that Parliament treat the Labor opposition with respect and allow it to do what is expected of an opposition — that is, consult, consider, analyse and test what the government says and proposes. What sort of democracy does Victoria have when the government uses its large majority to deny the opposition the opportunity to do its job and tries to force through without proper discussion and debate issues on which it does not necessarily have a mandate?

The last thing Victorians want is additional problems for which the government must fork out more money, such as those highlighted by the Auditor-General in his report. The last thing Victoria needs is for legislation to be rushed through, because recent experience has demonstrated that the government simply does not get it right.

The opposition supports improving the hockey and netball facilities, but that is not what the bill is about. I ask the government to seriously consider an adjournment of two weeks. The Premier has said the election will not be held in June or July, so there is no logical reason why Parliament cannot come back to
discuss such an issue that significantly affects the constitutional rights of Victorians.

The bill is not simply about whether the facility is built — although that is what the minister is trying to say — or the importance of netball and hockey. It is really about what powers will be removed from the Victorians who use the facility actively or who engage in passive activity around its perimeter — and about what rights they will have in the future. This issue of major importance should not be rammed through in less than 24 hours by this extremely uncooperative and arrogant government.

Mr McARTHUR (Monbulk) — I support the motion moved by the minister and I oppose the arguments of the honourable members for Bundoora and Dandenong.

Firstly, I wish to correct the assertion of the honourable member for Bundoora that the motion, if passed, would offend the standing orders. That is not the case. I am sure that if any motion were to affect the standing orders, Mr Speaker, you would direct the matter to the attention of the house without delay and would not allow it to continue. The normal adjournment period of two weeks is a tradition and custom of the house and is not provided for under the standing orders. The honourable member for Bundoora should be aware of and understand that.

I agree that for many years the custom has been to adjourn bills for a two-week period to allow the procedures mentioned by the honourable member for Bundoora to take place — namely, to allow members to take bills out into the community and consult on them before the bills are debated in light of the information received during the two-week period. There is good reason for that practice of the house. It is a tradition the house should uphold and adhere to wherever possible and only in unusual circumstances or when important issues are at stake should the house vary it. In making the decision about whether to vary the practice the house should consider the issues involved.

On the one hand there is the tradition of an adjournment of two weeks to provide an opportunity for consultation, while on the other hand there is the series of risks that would be posed by allowing that amount of time in this case, and the minister has raised some issues about that.

The project the bill will facilitate is important. The honourable members for Bundoora and Dandenong pointed out that it has been on the drawing board for many years, so the consultation they seek would not be about whether the project should proceed. The parties involved understand the issues surrounding the netball and hockey centre and have been consulted about the design, location and other facilities. Those who support the project know what is entailed in it. Those who oppose it — —

Ms Garbutt — On a point of order, Mr Speaker, the honourable member is now debating the bill rather than the question of why we have to come back tomorrow and debate it in unseemly haste.

Mr McARTHUR — On the point of order. Mr Speaker, I was not debating the bill. I was saying that the project is well established and the parties — the protagonists — understand the issues. There is no need for consultation about the project. That issue was raised by the honourable member for Bundoora and I am responding to it. The point she raised about consultation being necessary on the project is spurious because such issues have been well and truly debated.

The SPEAKER — Order! I do not uphold the point of order.

Mr McARTHUR — The honourable member also referred to the Royal Park Protection Group. The group is also well aware of the project and the details of it. It has adopted its position and another two weeks of consultation with it is unlikely to change its position. To that extent, consultation with it is unnecessary.

Another issue that should be considered is what would happen if the matter were adjourned for two weeks. The honourable member for Bundoora pointed out that the house is not scheduled to sit two weeks from now, so an adjournment of two weeks would have one of two consequences. The first possibility is that the matter would be deferred until the spring sitting, in which case the project may well be delayed until the spring sitting. That possibility involves a range of attendant risks that the government believes are unacceptable in this case. It has been pointed out that the project is important. Athletes competing in the Commonwealth Games and the World Masters Games will use the facility and it is important that its construction proceed in a timely manner and be completed on schedule. It is important to the participants, the government and the community as a whole.

The alternative consequence of a two-week delay would be that the sitting would be extended, with the house being recalled two weeks from now to debate the bill. If there were sufficient and substantial reasons for doing that perhaps that should be considered. However, debate on almost all the outstanding legislation will be
completed during today and tomorrow and a couple of bills will lay over until the Spring session to allow further consultation on matters about which there should be detailed consultation. There is not enough on the notice paper to justify recalling the house two weeks from now purely to debate the Royal Park Land Bill.

The bill contains six clauses. I read it while the minister was delivering her second-reading speech. Any honourable member who is interested in the bill could have done the same. It is not complex or difficult. It is a simple, straightforward and direct bill that clarifies an ambiguity in the current situation. Whether the current project is at any legal risk has not been determined and could not be determined by the courts for months, and perhaps years. The government needs to clarify the matter now for the benefit of the sporting groups involved, the general public and the people involved in and working on the project. It is much more sensible, timely and beneficial to sort the matter out here rather than rely on the courts to sort it out.

I believe that if the matter went to court it would be resolved satisfactorily, but that would take substantial time. The minister’s motion should be supported because time is of the essence in this case.

Mr THWAITES (Albert Park) — I support the amendment moved by the honourable member for Bundoora and oppose the government’s proposal to ram through legislation one day after its second reading.

The starting point must be this: it is the government that is acting in an extraordinary and exceptional way — the opposition is not seeking any indulgence or an extension of time. The custom and practice of the house is that debate on bills is adjourned for two weeks following their second reading. That practice is in place for a good reason, as even the honourable member for Monbulk has admitted — to ensure that there is time for proper consultation and consideration, and that mistakes are not made.

Heaven knows how many bungles and mistakes with bills Parliament has called back to fix up in the past six and a half years, as occurred last night with the amendments to the Food Act.

The minister gave her second-reading speech today and is attempting to have the bill debated tomorrow. Given that that is a departure from normal practice, I would have expected the minister to give her reasons for behaving in such an extraordinary way. However, she gave no reasons at all in her second-reading speech — in fact, quite the opposite. The minister said it is a simple bill and that essentially had nothing in it. If that is the case, why are we being forced to act in an exceptional way and allow the bill to be debated with just one day’s adjournment?

If an exceptional factor threatened the future of the project, I would have thought the minister would have told the house. All she said was that the bill is a simple matter that clarifies the existing situation. If it is so simple, why not deal with it in the ordinary way? Why not handle the bill, as all bills ought to be handled, by allowing the usual adjournment so it can be considered before it is debated? The minister and the government will not do that. One can only assume that the house is being called on to act in this exceptional way, which is contrary to traditional practice, because the government is covering up a major bungle in its handling of the project.

If the minister knows about the bungle, why will she not tell the house? I go so far as to say that the minister is being deliberately misleading by refusing to reveal the reason behind the bill. I believe she is embarrassed by yet another bungle in her portfolio. This will be the final strike in the minister’s career, because one problem after another has arisen with everything she has touched. The minister has a reverse Midas touch — everything she has touched has turned into a major problem.

I would have thought everyone would be supportive of the Commonwealth Games — the opposition certainly is — and that the government would handle the preparations for them efficiently. But no, it seems there is a secret problem that opposition members are not allowed to know about. Given that debate on the bill is being adjourned for only one day, I would like to know whether government backbenchers have been informed of the reason for the bill, because it gives no indication of any reason for urgency. There are no details of any errors that need to be corrected, yet the house is being expected to pass the bill in record time.

The reasons for the house’s traditional practices are sound. If bills are not properly considered, not only are people not consulted but mistakes can be made. The government has set up a process to allow Parliament to properly consider bills. But in her usual arrogant way the Minister for Conservation and Land Management has told the shadow minister that if she wants to consult on the bill she can make some telephone calls tonight.

Will the Scrutiny of Acts and Regulations Committee get the chance to review the bill properly? Will it get an explanation from the minister? Will the chairman have
to recall the Scrutiny of Acts and Regulations Committee to produce a report so the house can read it before the bill is debated? I would have thought this is the very type of bill the Scrutiny of Acts and Regulations Committee ought to comment on, because it was set up to consider possible trespasses on people's existing statutory or legal rights. It appears that, on its face, the bill may do just that, because contrary to the minister's assertion that it merely clears up possible doubt, the bill clearly removes compensation rights. Clause 5 clearly states that no compensation is payable by the Crown. That is an extremely broad provision — and it involves a removal of legal rights. Clause 5 may remove legal rights at common law under the Planning and Environment Act or the Land Acquisition and Compensation Act. If the clause does not remove legal rights for compensation, why is it in the bill?

The Scrutiny of Acts and Regulations Committee has every right to consider that issue, and it may well be that the chairman and members of that committee will tell Parliament that the bill tramples on existing rights. In those circumstances, how can Parliament deal with the bill tomorrow when it has not even been considered by the very committee Parliament has established to consider proposed legislation?

The second-reading speech relates mostly to the background of the Royal Park development and to the netball and other sports stadiums that will be built there. Honourable members know all about that, so the second-reading speech provides no relevant information at all. All the information the house needs to know is left out and the superfluous information is put in. It might as well be the press release we received six months ago — and it probably is! It does not say whether the government has made a major mistake in its handling of the proposal or whether the land is being used in breach of a Crown reservation. It may be that the minister knows the land is being used in breach of a Crown reservation. If that is the reason behind it, why will she not tell us? Are there proceedings on foot? Is the minister aware of any proceedings?

Mr THWAITES interjected.

Mr THWAITES — We are happy to bring the debate on. What we do not want to do is bring the debate on before the house can be properly informed about the matter. There are occasions when debates on the issue of time are part of the general adversarial role of this place. But of all the bills I have seen introduced in this place, this is certainly one to which the issue of time is relevant because it takes away existing legal rights.
performance of the minister, I have no doubt that another mistake may occur. The minister had the arrogance to tell members on both sides of the house that they could go down tomorrow morning and have a look. Does the minister expect members of the Scrutiny of Acts and Regulations Committee to receive a briefing from her tomorrow morning? Are you going to do that, Minister? Have you promised that?

Mrs Tehan interjected.

Mr THWAITES — The minister has just said, ‘If you want one’. It is not for me, it is for the chairman. From her comments it is clear the minister has not bothered to contact the chairman of the Scrutiny of Acts and Regulations Committee to determine whether he wants a briefing or wants to issue a report on the bill. Following the opposition’s suggestion the minister will probably do that. The only way the government does anything decent is by following suggestions from the opposition. The fact is that the Scrutiny of Acts and Regulations Committee is not going to be in a position by tomorrow morning to properly consider the bill. Have the staff of the committee been notified? Has the executive officer been notified? I am sure that that has not occurred.

The final point — —

Mr Reynolds interjected.

Mr THWAITES — I have been on the issue of time for the whole speech. If the Minister for Sport cannot understand it, I sympathise.

There may be legal proceedings on foot in relation to this mistake by the government. It is legal tradition and practice that if that occurs the proceedings should not be affected by legislation. Legislation may affect subsequent legal proceedings but people should not lose existing rights as a result of subsequently introduced legislation. That is the sort of issue that should be properly considered during the adjournment period following the second reading.

I suspect there are existing legal proceedings on foot or the government would not be ramming through a bill like this on the eve of the close of the sitting. A bill to clarify the use of a piece of land should not be rammed through. I suspect the government would not introduce a bill just to provide that the land at Royal Park is to be used for a netball court or a sports stadium. I suspect something else is happening. I suspect legal proceedings are under way in relation to the use of the land and I would like to hear from the government about what effect the bill will have on those legal proceedings.

Mr Reynolds — Page 2.

Mr THWAITES — At page 2, the second-reading speech states:

Due to the importance of this facility to the public and major events such as the 2006 Commonwealth Games ... it is appropriate that it is ensured that there is no risk of this state-significant project being delayed through any doubts whether the redevelopment complies with the reservation over the land.

What is the risk? What is the problem? The minister has not identified the problem or whether there is any risk. The government might as well introduce bills for everything that happens in the state. Will it introduce a bill for the Docklands stadium? Is there a problem down there? Will the minister identify that? Will the government bring in a bill for City Link and everything else that is happening in the state? What are the doubts? If there are genuine doubts and a reason to contradict the practice of the house, the government should provide the house with details. If there is a problem it should have been mentioned in the second-reading speech. If the land is being used improperly or in a way that is inconsistent with the reservation honourable members should know about it.

In the context of clause 5, there is nothing in the second-reading speech about compensation or why tomorrow there is a need to remove peoples’ rights to compensation. The bill could have had a major effect — it could take away people’s legal rights. It could remove the right to take appropriate statutory action from many groups in the community, such as residents, the Royal Park Protection Group or the council. Given that none of those groups has been consulted on the legislation the opposition is asking for only the normal amount of time for consultation, not an extended period.

The opposition’s amendment would also provide an opportunity for the Scrutiny of Acts and Regulations Committee to deal with the legislation. I would not want to hear any speeches from the honourable member for Doncaster or others in the future about the committee’s great contribution to democracy if it is bypassed on the one occasion it is needed. If when there
is a potential for legislation to remove peoples' rights the government handles that legislation in such a way that the committee is precluded from considering it, I would not want to hear the honourable member for Doncaster spouting about the great benefits of the committee.

I was previously on the Scrutiny of Acts and Regulations Committee, as was the honourable member for Sandringham. I am not sure whether he still is on the committee, but I hope he has had an opportunity to be briefed on the reasons for the bill's being dealt with so urgently. Nothing has been revealed to militate in favour of the bill's being debated tomorrow. The only proper course is for the house to adopt the amendment of the honourable member for Bundoora and have the normal two-week adjournment.

Mr ROWE (Cranbourne) — I move:

That the question be now put

House divided on Mr Rowe's motion:

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Motion agreed to.

The ACTING SPEAKER (Mr Cunningham) — Order! The minister moved that the debate be adjourned until tomorrow, to which the honourable member for Bundoora moved an amendment that 'until tomorrow' be deleted with the view of inserting in place thereof 'for two weeks'. The question is that the words proposed to be omitted stand part of the adjournment motion.

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

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Amendment negatived.

Motion agreed to and debate adjourned until next day.
BUSINESS OF THE HOUSE

Program

Mr GUDE (Minister for Education) — I desire to move:

That the government business program agreed to by this house on 25 May 1999 be amended by adding the order of the day, government business, relating to the Royal Park Land Bill.

An Honourable Member — Wake up!

The ACTING SPEAKER (Mr Cunningham) — Order! Is the motion seconded? It has been seconded by the Minister for Sport.

Mr BATCHELOR (Thomastown) — You've got to wake up. You were supposed to get it seconded. You were sitting there on your fat arse not worrying about it. What is happening today is outrageous.

Honourable members interjecting.

Mr BATCHELOR — It is disgraceful.

Honourable members interjecting.

Mr BATCHELOR — I said you should get off your fat arse and start doing some work. You know what I said.

Honourable members interjecting.

Mr PERTON — On a point of order, Mr Acting Speaker, I believe robust debate is a good thing, and if the honourable member for Thomastown is angry, let him be angry. However, using language like — —

Honourable members interjecting.

Mr PERTON — To use language like 'Get off your fat arse' to a minister at the table with the public in the gallery is totally inappropriate. To do so twice is totally inappropriate. I ask the Acting Speaker to call the honourable member for Thomastown to order, direct him not to use that language and to withdraw it.

The ACTING SPEAKER (Mr Cunningham) — Order! The honourable member for Thomastown has used that language, and I ask him to withdraw it.

Honourable members interjecting.

Mr BATCHELOR — All right. It is not fat. I am sorry.

The ACTING SPEAKER (Mr Cunningham) — Order! I ask the honourable member for Thomastown to make a total withdrawal.

Mr BATCHELOR — Yes, Mr Acting Speaker, I withdraw.

Given what the government is doing here today it is interesting what happens when the vernacular is used in the house — the honourable member for Doncaster gets absolutely outraged. He is offended by the use of the vernacular.

Honourable members interjecting.

Mr PERTON — On a point of order, Mr Acting Speaker, although you upheld my point of order the honourable member for Thomastown is now criticising me for raising that point of order. I ask that you call him to order.

Honourable members interjecting.

Mr BATCHELOR — On the point of order, Mr Acting Speaker, government members are a bunch of bullies. They are trying to stand over you.

Honourable members interjecting.

Mr BATCHELOR — They are nothing but a bunch of bullies. Just like the motion before the Chair, they are outrageous. The opposition will stand up for democracy. The government is nothing but a bunch of jumped up fascists who expect that by using their numbers they will force the opposition to agree to ram through legislation through the use of the guillotine. What is happening today is unprecedented. Any government member who supports what is happening shows a clear contempt for the parliamentary process. The opposition will not stand by and let that happen.

For those ignorant government members who are now leaving the chamber I will explain what is going on so they will be able to understand it. The government has moved a procedural motion that will add the Royal Park Land Bill, which has just been outlined in the second reading speech, to the bills to be guillotined by the government business program so it will be rammed through the house in the dying hours of this parliamentary sitting.

The Minister for Conservation and Land Management sits here grinning. She should get a job at one of the stalls at Luna Park where you put the ball in the mouth of a clown. She is smiling and nodding her head. She thinks it is funny, but it is an outrage. The opposition is entitled to be angry. This type of disregard for the
parliamentary process has never happened before in this Parliament, yet government members sit there thinking it is funny. When all the traditions of the Westminster system are gathered up and thrown out the window, all the honourable member for Doncaster worries about is the use of the vernacular — what a distorted sense of priorities. It is a distorted view of the traditions of the Westminster system. The opposition has some respect for Parliament and its forms, but it has no respect for the government because it is trying to trample over our democratic rights and the forms and traditions of the house. Members of the government stand condemned.

Mrs MADDIGAN (Essendon) — I join the honourable member for Thomastown in his belief that the behaviour of government members is absolutely disgraceful. The honourable member for Doncaster must have exceeded the limits of hypocrisy when he dared to suggest that the comments made by the honourable member for Thomastown would upset three members of the public, given that guillotining the debate on the bill is a denial of the public’s right, the normal processes of Parliament and the rights of residents of the area affected by the bill to have a say.

It is a denial of the legal requirements on contractors — the government has probably signed an illegal contract with them — and it ignores everyone else who has an interest in the Royal Park Land Bill. The government is in such fear and trepidation that it will be caught out that it cannot get the bill through the house fast enough.

The government is denying the house the right of democratic process and thereby treating it with contempt. It is treating all Victorians with contempt just so it can shove this bit of legislation through and cover up its mistakes. It does not want the Victorian public to know what is in the bill. The government wants to get the bill through before the rest of Victoria realises what it might be up to.

It is all very well to stand there and waffle about how wonderful the netball and basketball stadiums will be, but what about the other provisions that residents in the area are concerned about? What about the possibility of a hotel or a village on the site? What about a new road linking up to City Link? Government members would not want the people of Victoria talking about that, would they? Nor would they want honourable members to have time to listen to their questions. That is outrageous. Government members do not want anyone to know what they are up to.

They want to whip the bill through the house because they know the residents in the Royal Park area have been trying for ages to get answers from the government and that the Minister for Planning and Local Government has overridden normal planning provisions so that residents will not get an opportunity to engage their normal planning rights.

The whole process has been a denial of anyone’s right to be involved or consulted. No-one can find out the facts of what the government is up to. Members of the government would push it through in the next half an hour if they thought there were any legal avenue that would allow them to do so. The last thing they want is for people to know what they are up to. That shows how incompetent this government is.

Government members thought they would be able to get the project launched without any problems by keeping it quiet and avoiding normal planning processes. However, in their usual ham-fisted, incompetent manner they have mucked it up at the last moment and have had to shovel this piece of legislation into the house to get it sorted out as quickly as possible. As the honourable member for Albert Park said, they are aware they might be on very shaky legal ground and that many people who are outraged by the proposal are taking legal action — which is the normal response.

Residents are forced to take legal action because they have never had the opportunity to discuss the bill in an informed manner with the government. They have had their democratic rights removed because of the denial of proper planning processes including a suitable period for people to examine the details and discuss the bill at length.

The government argues that the proposal has been around for some time and that, therefore, another opportunity to discuss it is not needed. That is an absolute lie. We saw the contents of the bill and a vague diagram of the site for the first time this morning. The plan defines an area of parkland to be removed without any compensation. What a joke! Why is the government presenting such legislation when it could have built the facility at the showgrounds, which already has an appropriate planning scheme and public transport?

Mrs Henderson interjected.

Mrs MADDIGAN — They don’t want to talk about that. They don’t want the community to have an opportunity to look at other sites because they made the decision in secret, by themselves, and went ahead with it without providing any opportunity for others to discuss it or look at other sites. It is all very well for the minister to say by interjection that the Labor Party supports it. Of course we support the building of a
BUSINESS OF THE HOUSE

1346 ASSEMBLY Thursday, 27 May 1999

Mr E. R. SMITH (Glen Waverley) — It might be of benefit to the house if I go through the procedure the house is following at the moment. We have heard a lot of emotion.

At the change of business, following the convening of a special meeting of the government business program committee in accordance with standing orders and without leave, the Leader of the House or his nominee may move to amend a resolution. The debate thereon will not exceed 30 minutes or 5 minutes per speaker. We are going through that process at the moment.

Mr Acting Speaker, so far we have heard a lot of outrage from the opposition. Members of the opposition feel that procedures have not been followed. I can assure them, however, that they have been followed. We have had the debate on the adjournment of the second-reading debate. The bill is simple, and no-one in the house doubts that. A lot of passion — or feigned passion — has been generated about nothing. People can be led up the wrong path and believe that the passion they are displaying is relevant to what is going on.

I believe a relevant piece of legislation is coming through. If honourable members opposite had been here for the debate they would understand, but — as usual — they were not in the house because they were not prepared to make the effort. They are being led by the nose into adopting any passionate thought that is placed in their brains as if it were a reality. It is not.

The procedure we are following places the bill on the government business program for reasons outlined dispassionately in the minister's second-reading speech. The house now needs to debate the bill and the proposition in it. When it does that honourable members will find that nothing new is being proposed. In fact, at the end of the day more land will be available.

The first facility was provided in 1949, and in 1969 netball facilities were provided. As the Minister for Conservation and Land Management explained, the facilities were the worst in Australia for both netball and hockey. The government is endeavouring to have those much-needed facilities for Melbourne up and running for the games.

The procedure must be taken into account. During the debate honourable members raised other issues that were properly put. At no stage did the government attempt to stifle debate. The opposition’s continual opposition to every tiny piece of legislation reeks of an opposition devoid of ideas. An earlier speaker said, ‘No matter what sort of briefing we get, we do not want it’. It is a sad state of affairs when an opposition does not want to be briefed on the facts. All the necessary procedures have been undertaken — that is, the debate on what is required and what is best for Melbourne and the community.

I cannot understand the extraordinary outbursts that have taken place this morning. Most debates in Parliament are repetitive and add nothing new. If the opposition requires more time in the next 24 hours —

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

Mr HULLS (Niddrie) — Honourable members opposite are sick and tired of the holier-than-thou nonsense that comes from the mouth of the honourable member for Glen Waverley. Whenever democracy is discussed he stands up and pontificates about the opposition opposing every piece of legislation. That is absolute nonsense. His contribution is trivial, repetitive and boring, just like the honourable member!

Honourable members are not debating the merits of a bill and whether the park should be used for playing hockey. The debate is on the motion setting the time of the adjournment. This is a debate about democracy. Victorian democracy is already in a very sick state and the government's latest outrageous move shows that democracy is terminal.

The autumn sessional period is finishing the way it started — that is, in an anti-democratic way. The move is a breach of agreements between the government and the opposition. It also clearly shows that the government is happy yet again to snub its nose at democracy in Victoria.

Mr Finn interjected.

The ACTING SPEAKER (Mr Cunningham) — Order! The honourable member for Tullamarine is out of his place and disorderly.

Mr HULLS — The motion confirms that Victoria is a secret state and government members who support the motion are happy to live in such a state. The Minister for Conservation and Land Management cannot be trusted. The opposition needs time to consult people about the legislation, but it also needs Parliament to work properly. The Minister for Conservation and Land Management is a recidivist.
One need only look at the Intergraph scandal, her preparedness to give land to Lindsay Fox, the fax machine in her office that chews up — —

Mr Finn — On a point of order, Mr Acting Speaker, the standing orders of the house clearly state that no member may cast aspersions on the character of another member without substantive motion. In the way in which he has become famous the honourable member for Niddrie is doing just that. I ask that you bring him to order and tell him to refrain from doing so.

The ACTING SPEAKER (Mr Cunningham) — Order! I uphold the point of order. The honourable member for Niddrie should return to the motion.

Mr Hulls — The Minister for Conservation and Land Management, who represents the electorate of Seymour, wants to ram the legislation through without debate. The minister needs scrutiny because of her involvement in a range of scandalous matters.

Mr Finn — On a point of order, Mr Acting Speaker, the honourable member for Niddrie is not only repeating his original crime but also flying in the face of your ruling. He has doubled his original offence, and I ask that you take the appropriate action.

Mr Batchelor — On the point of order, Mr Acting Speaker, the honourable member for Tullamarine is raising a frivolous and vexatious point of order. The honourable member is complaining about the honourable member for Niddrie casting aspersions on the character of another honourable member, but he is doing the same thing.

The ACTING SPEAKER (Mr Cunningham) — Order! I do not uphold the point of order. I ask the honourable member for Niddrie to address the motion before the Chair, which is the timetable for the debate.

Mr Hulls — Democracy is all about parliamentary procedure, and information is power. The government wants to take away the power of the people and the power of the Parliament to appropriately debate legislation. The Parliament is not the Premier’s plaything. His taxpayer-funded pushbike might be his plaything but the Parliament is not. The opposition will not stand idly by and watch the Premier and his cronies on the other side quash democracy in this state. The people of Victoria have a right to proper debate in this place.

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

Mr Finn (Tullamarine) — During the past 15 hours the forms of the house have been abused in a way that would sicken — —

Mr Batchelor — On a point of order, Mr Acting Speaker, the honourable member for Tullamarine is referring to abuses that he alleges took place in the house in the past 15 hours.

Mrs Henderson interjected.

Mr Batchelor — Just don’t interrupt!

Honourable members interjecting.

The ACTING SPEAKER (Mr Cunningham) — Order! The honourable member for Thomastown will address the Chair.

Mr Batchelor — I would ask you, Mr Acting Speaker, to ask the Minister for Housing to not interrupt when I am making a point of order.

Honourable members interjecting.

Mr Batchelor — On the point of order, Mr Deputy Speaker, the motion before the house does not relate to the past 15 hours but to abuses that will take place over the next two days, during which time the government will ram the bill through the house. I ask that you bring the honourable member for Tullamarine back to that matter and not allow him to continue with his analysis of what has taken place in the past.

The DEPUTY SPEAKER — Order! The conduct of the house is in the hands of honourable members and how they apply themselves to the debate. I have been drawn out of my office and away from some important paperwork because of what I considered to be inappropriate behaviour in the house.

If honourable members continue to barrage each other with interjections across the chamber the debate will not progress and time will be wasted on a series of points of order. Honourable members need to understand that they must treat each other with the respect the parliamentary process is supposed to afford each honourable member. That responsibility rests on each honourable member.

Mr Reynolds interjected.

The DEPUTY SPEAKER — Order! The Minister for Sport will remain silent while the Chair is on his feet.

The honourable member for Tullamarine will continue his contribution and concentrate on the content of the
debate. He will desist from entering into areas that will only invite further interjections and therefore encourage disorderly debate. I do not uphold the point of order. I ask the honourable member for Tullamarine to proceed, with my counsel in mind.

Mr Finn — I am delighted to see, Sir, that you have injected a degree of commonsense and decency into the debate. What we have heard to date about the forms of this house, in particular from the honourable member for Thomastown — not so much from the honourable member for Essendon — could be best described as an example of double standards. The honourable member for Thomastown lectured government members about the traditions of the Westminster system. Given his record over many years — he is a self-professed liar, an unfortunate fact of life for him — it reflected no credit on the house or its members for him to get up in the manner he did and use the foul language he used earlier in the debate.

The bill is important to the government's effort in securing the Commonwealth Games for Melbourne. No-one has presented any legitimate argument against it. The government has the full support of the community in pushing ahead with the sorts of areas — —

Mr Reynolds interjected.

Mr Finn — As the Minister for Sport says, the honourable member for Dandenong has stated that he supports the bill. It is hard to understand why the honourable member for Thomastown would be so vitriolic in his attack on it. Perhaps the honourable members for Dandenong and Thomastown could get together and have a chat. I understand they are in the same Labor Party faction, although perhaps there has been a factional split there as well — —

Mr Hulls interjected.

Mr Finn — I would love to, but there is nothing to tell. All the government is attempting to do with the bill is serve the best interest of Victorians. All the opposition is attempting to do, as has been obvious over the past 15 or 16 hours of the sitting, is to obstruct — —

A government member interjected.

Mr Finn — Filibustering is somewhat of an understatement. It is sickening to see the feigned moral outrage of the honourable member for Thomastown, in particular. He has the runs on the board in that regard and his contempt for the Westminster system of government is well known.

It is time that the house got on with the bill. Let opposition members carry on if they will, but the issue is far too important for the sort of nonsense that has been heard from them this morning to delay the bill.

Mr Pandazopoulos (Dandenong) — The honourable member for Tullamarine likes to filibuster but he is no master at it — he is just being his usual self. The debate is not about the value of the bill. It is about how the government changes agreed programs. The preparation of a bill usually takes weeks or months and the issue involved has been going for eight years.

On Monday the Leader of the House and the opposition agreed on the program for this week of sitting, and it was agreed to by the house the following day. Despite that agreement the government has changed its mind and introduced something at the last minute. The government disregards the traditions of the Westminster system.

It is important to look at the precedents. At 1.00 p.m. the Commonwealth Parliamentary Association executive will meet. One of the great things about the CPA is that it has learned from other parliaments. Its members spend a lot of time and taxpayers' money on keeping themselves up to date on the traditions and practices of the Westminster system. All honourable members should be required to visit the Parliament of the United Kingdom. The government has ignored tradition by taking unprecedented action in respect of a bill which has been in preparation for weeks, if not months, which will have major implications because it will remove the rights of individuals and on which there has been no consultation or discussion.

My concern is not so much about the value of the bill — I am concerned about parts of it — but about whether the government will continue to treat Parliament and the traditions of the Westminster system with contempt. The government had the opportunity to bring on the bill earlier in the sitting and I do not know why it has waited until the second-last day to do so. Given that the Premier has said there will be no election in June or July there is no reason why honourable members cannot come back two weeks from now to consider this major issue. That would accord with the traditions of the house and allow a reasonable amount of time for the opposition to satisfy itself about whether it should support the bill.

The government is denying the opposition the opportunity of supporting the bill. Government members are saying: 'Trust us'. The opposition is being asked to trust a minister it cannot trust; she has bungled many other issues and this will be another bungle. It is
unreasonable to expect the opposition to blindly trust
the minister and the government.

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

House divided on motion:

Ayes, 52

Andrighetto, Mr
Ashley, Mr
Burke, Ms
Clark, Mr
Coleman, Mr
Cooper, Mr
Dean, Dr
Dixon, Mr (Teller)
Doyle, Mr
Elder, Mr
Elliot, Mrs
Finn, Mr
Gude, Mr
Henderson, Mrs
Honeywood, Mr
Jasper, Mr
Jenkins, Mr
John, Mr
Kilgour, Mr (Teller)
Lean, Mr
Leigh, Mr
Lupton, Mr
McArthur, Mr
McCull, Mr
McGill, Mrs
McGrath, Mr W. D.

Noes, 28

Andrianopoulos, Mr
Baker, Mr
Bachelor, Mr
Bracks, Mr
Brumby, Mr
Cameron, Mr (Teller)
Campbell, Ms
Carli, Mr
Cunningham, Mr
Davies, Ms
Delahunty, Ms
Garbutt, Ms
Gillett, Ms
Hamilton, Mr

The right to trial by jury for serious criminal offences is
fundamental to the criminal justice system in this state. Trial by
jury ensures that the determination of whether a person accused is
guilty is made by his or her peers. It is also important that parties to
Civil actions brought in the Supreme or County courts have the
opportunity to have issues determined by a jury. The jury system
enables the community to be directly involved in the
justice system. Participation by the community helps to ensure
that the justice system remains in touch with and accountable to all Victorians.

The government has conducted an extensive review of
the jury system in Victoria. This review considered both legal and administrative issues to determine how
the jury system could be improved. There have been three important sources of information.

In 1996 the Law Reform Committee tabled in Parliament its report on Jury Service in Victoria. This bill includes many of the Law Reform Committee’s recommendations. I thank the committee for the effort and dedication of its members in producing this excellent report.

In 1998, my department conducted a survey of ex-jurors. That survey provided valuable information concerning the experience of ex-jurors during their jury service and has formed the basis for many of the administrative reforms that will accompany the introduction of this bill.

I also wish to take this opportunity to thank Mr John Artup, Deputy Sheriff of the Supreme Court, who is currently responsible for jurors, who has provided his time and expertise and has made a significant contribution to the improvements delivered by this bill.

Survey of jurors

In July 1998, my department commissioned a survey of ex-jurors from both the Supreme and County courts. The survey sought the views of both jurors and those called for jury service who did not serve as jurors on a trial. The survey sought information about a range of topics including:

- experience of jury service;
- understanding of key features of the trial process;
- information provided to jurors; and
- facilities provided for jurors.

Key results of the survey were that:
95 per cent of jurors considered that their experience of jury service had been worthwhile;

75 per cent of jurors believed that the community had benefited from their jury service; and

following their jury service, approximately 75 per cent of jurors' views of jury service were at least as favourable, if not more so, than they had been prior to their jury service.

The information obtained from this survey has been of great assistance in developing this bill and in determining what is necessary to provide a better service for jurors. The government will now be able to provide better information to prospective jurors about jury service and will improve court facilities for jurors, in ways of most assistance to jurors.

**Increasing the representativeness of juries**

For a person to be tried by his or her peers, juries must be representative of the community at large. The Law Reform Committee's report focused on improving the composition and selection of juries. This bill makes significant changes to improve the representativeness of juries.

All persons on the electoral roll over the age of 18 — unless disqualified from or ineligible for jury service — may now be included on the jury roll. However, those living over 50 kilometres from Melbourne or over 60 kilometres from the court in the country may seek excusal. Under the 1967 act any person who lived more than 32 kilometres from the court could be excluded from the jury roll by the Electoral Commissioner.

The bill abolishes the right of many classes of persons to be automatically excused from jury service. Some of those persons will remain ineligible for jury service; however, the majority will now have to seek excusal for good reason — for example because jury service will cause substantial financial hardship or inconvenience to the public. The bill provides a new power to defer jury service for a short time. This will provide prospective jurors with the flexibility to defer jury service to a more appropriate time.

These initiatives will also spread the obligation of jury service more equitably amongst the community.

**Modernisation of procedures**

Currently the jury system is administered by a Deputy Sheriff of the Supreme Court. The bill creates the office of Juries Commissioner, who will be responsible for the administration of the jury system. His or her responsibilities will include the summoning of jurors and the provision of juries for both the Supreme and County courts.

The bill overhauls the procedures relating to both the administration of the jury system and the conduct of jury trials. Various procedures have been modernised to enable the timely adoption of new technology — for example the electronic service of documents and computerised selection processes. This will enable the development of more streamlined procedures.

From the survey of jurors, it was apparent that the vast majority of jurors found their jury service to be a rewarding experience. However, juries today are sometimes called upon to consider cases which are very distressing. The surveyed jurors indicated that they considered that counselling should be available following jury service. The bill will enable jurors confronted with disturbing facts and circumstances to receive counselling or treatment from a medical practitioner or psychologist.

**Protecting the integrity of the jury system**

The bill re-enacts existing offences but the penalty levels have been increased where necessary to reflect the need to protect the jury system. The bill contains several new offences including:

- intentionally making a false statement at any stage of the selection process;
- failing to inform the officer responsible for summoning jurors if disqualified or ineligible for service; and
- offences directed against employers who terminate or prejudice the employment of an employee because of an employee's performance of jury service. The courts will have the ability to order an employer to re-instate an employee in these circumstances.

**Majority verdicts in murder and treason trials**

In 1993, this government introduced majority verdicts for all offences other than murder and treason. Majority verdicts have proved to be a very successful component of our jury system. As a result, the bill provides that majority verdicts will now be available for the offences of murder and treason.

**Miscellaneous amendments**

The bill clarifies the powers of the courts relating to juries — for instance the powers to:
grant an exemption from further jury service where a person has served on a jury;

excuse persons from jury service;

discharge a single juror in certain circumstances;

order that two extra jurors be empanelled in a civil trial where this is necessary; and

order that jurors be referred to by number rather than name during the selection process and thereafter where this is necessary for security or other good reason.

Conclusion

Jury service enables all Victorians to participate in our system of justice. It is an important right and obligation. We need a jury system that effectively meets the needs of those undertaking jury service, those responsible for the administration of the system, the courts and the parties in jury trials. These reforms address these needs.

I commend the bill to the house.

Debate adjourned on motion of Mr HULLS (Niddrie).

Debate adjourned until Thursday, 10 June.

COMMONWEALTH PLACES (MIRROR TAXES ADMINISTRATION) BILL

Second reading

Debate resumed from 6 May; motion of Mr STOCKDALE (Treasurer).

Mr MILDENHALL (Footscray) — I will make some brief and supportive comments on the Commonwealth Places (Mirror Taxes Administration) Bill. The bill, the detail in which is relatively minor, seeks to implement an arrangement of powers between the commonwealth and the state to allow Victoria to continue to collect taxes in airports and buildings acquired or owned by the commonwealth for public purposes.

Some interesting arrangements have had to be put in place to enable that to occur. In practice, Victoria has been able to impose stamp duties and other taxes in airports and buildings owned by the commonwealth. That occurred in a reasonably uninterrupted way until the 1996 High Court case of Allders International v. Commissioner of State Revenue (Vic). In that case Allders International sought to obtain an exemption from stamp duty on a shop lease at Tullamarine airport.

The High Court found that the stamp duty was invalid due to the commonwealth’s exclusive power under section 52(i) of the constitution to make laws with respect to commonwealth places. That is an exclusive power and therefore after consideration of the extensive ruling it was found to be invalid. The federal Treasurer announced shortly thereafter that agreement had been reached between the commonwealth and the state to rectify the situation and thus avert the risk of further exemptions being granted and a flow of prospective duties fleeing the grasp of the Victorian Treasurer who, with the commonwealth’s agreement, has quite rightly sought to put new arrangements in place.

I am advised that some $30 million of duties may have been affected had this loophole not been plugged. An outbreak of cases may have been brought before the courts to achieve the same ruling — that the collection of such stamp duties was indeed invalid.

Without professing a great knowledge of the law in this area one could see the principle applying to matters other than leases. This case was confined to the stamp duty on a lease, but one could logically see the principle extending to transactions other than lease payments and other forms of state taxes as they apply to activities conducted on commonwealth property. This is an example of cooperation, successful negotiation and agreement at a national level to draw up the legislation and have it enacted in all jurisdictions to enable states to continue to collect taxes from airports and buildings acquired by the commonwealth, and to neutralise the impact of the High Court decision.

An analogy of the legislation is that tax laws are like a long wire fence, and those who seek to avoid or reduce their tax liability run along beside the fence until they find a gap or a bit of soft soil to get underneath or around it. The role of bodies like the State Revenue Office is to try to keep up to speed with the people running alongside the fence and to repair the hole as quickly as it appears, or to anticipate the weak spot in the fence and reinforce it before the taxation laws are breached.

The legislation makes the state taxation laws that operate in airports and commonwealth-owned buildings that are acquired for public purpose commonwealth laws. At the state and commonwealth level it is possible to legislate to make a state law a commonwealth law and therefore bring it into conformity with section 52(i) of the federal constitution.

It is an interesting set of transactions that are required as a result of the legislation, and one can understand why observers are sometimes bemused at the way
transactions are conducted between state and federal authorities. In a scenario that could be seen in Yes Minister, the legislation provides for the State Revenue Office to collect the tax then credit the revenue back to the commonwealth, which will in turn grant the equivalent back to the state. It is a boomerang tax: the state collects it, sends it off to the commonwealth, and the commonwealth grants it back to the state. It is an effective rather than appropriate arrangement. It will achieve the purpose for which it is designed, but it is an arrangement where one asks oneself the logical question of why the body that collects the revenue cannot keep it if that is the intent of the legislation.

One must be cognisant of the relative responsibilities and powers in the legislation in both spheres of government, particularly the specific provisions of the Australian constitution which, as we all appreciate, is not easily amended. It would probably not be appropriate to do it in this case, anyway. The principle of the commonwealth having exclusive power to collect taxes on its own, or to make laws with respect to airports and buildings, is one that we would adhere to.

It is interesting to consider the agreement between the states and the commonwealth on these taxation measures. Given that the federal Treasurer announced details of the agreement in October 1997, the bill has taken some time to appear. Despite that announcement being 19 months ago, there appear to be no significant qualifications to the agreement between the state and federal governments. So it appears the agreement was achieved in a relatively straightforward way.

Many things can impact on and interfere with successful negotiations over revenue sharing between the state and federal governments. I note that as late as today, in his negotiations with the Leader of the Australian Democrats, there is a prospect that the Prime Minister might deal away the agreement to remove financial institutions duty (FID) taxes from the range of taxes collected. That is particularly disappointing.

There is an explicit agreement between the state and the commonwealth that with the introduction of a goods and service tax the FID tax, which is a tax on banking transactions, would be abolished.

However, I suppose the most disappointing thing, particularly for Victoria, is that those discussions are taking place without it — one of the major beneficiaries that has a major interest in the outcome of the discussions — being cut into the discussions. Victorians could end up with new revenue collection arrangements in contrast to the straightforward proposals provided in this bill. We could end up with a debacle in revenue collection and sharing arrangements.

The community and certainly people at the state government level had hoped the vast majority of state taxes would be removed or made redundant by a new tax regime, but payroll tax and some aspects of stamp duty will remain — and it appears even FID taxes will remain. One wonders from the perspective of business in particular whether the new tax proposals have many redeeming features at all. If you cannot replace the regressive job-killing indirect taxes with a simpler tax, albeit a larger and regressive one, I wonder what the whole point is, particularly since the Prime Minister seems intent on and obsessed with maintaining his level of tax cuts to high-income earners.

Simple agreements have been entered into between the state and the commonwealth over revenue sharing and tax collecting powers and responsibilities. But there are also more difficult issues. I fear that we are about to witness the unravelling of a golden opportunity to simplify and clarify revenue collection and sharing arrangements and to place state revenues on a much firmer footing than has been the case until now.

As I said, the opposition does not have any difficulty with the purpose of the bill. The Commonwealth Places (Mirror Taxes Administration) Bill is important. It implements and activates a very significant agreement. It reduces the risk of a leakage of state taxation revenues, and it clarifies powers. It may result in less work for the High Court to do, particularly given the amount of work that I note went into the High Court ruling, the enormous number of authorities that are drawn on and the large number of cases to which it refers. It contains an extraordinary level of detail. The technical complexity of taxation law never ceases to amaze me — for example, how what appear to be reasonably simple matters are taken to an extraordinary level of argument to rule on cases like Alders International v. Commissioner of State Revenue (Vic).

I suppose part of our role as parliamentarians is to pass straightforward and clear legislation to set in place the arrangements between the state and the commonwealth over the collection of revenue payable to the state on commonwealth-owned buildings that are used or acquired for public purposes. I commend the bill to the house. It is probably fair to say that the opposition goes a little further than not opposing it — in fact, it supports the bill and wishes it a speedy passage through the house.

**Mr CLARK** (Box Hill) — The opposition's support for the bill is welcome. There is nothing in what I have
heard the honourable member for Footscray say about the bill with which I would take issue. Between his remarks and those of the Treasurer when he moved the second-reading motion, the bill's provisions have been fully canvassed.

I shall make two very brief observations on the remarks of the honourable member for Footscray about issues arising from the bill. The first is that the bill is a further illustration of the importance of the reform of federal-state relations in this country. It is unsatisfactory that we have to go through the rather convoluted measures in this bill in order to provide anything approaching a decent revenue base for the states. Former Prime Minister Hawke appeared to be moving towards broader tax reform in the period of the previous federal Labor government, but when he ceased to be Prime Minister those efforts also ceased. With the commonwealth's goods and services tax and tax reform package we are now perhaps back on track. The best the honourable member for Footscray could do to address the concerns he expressed is to urge his federal counterparts to support the commonwealth government's tax reform package. In the meantime, the opposition's support for the bill is welcome.

Motion agreed to.

Read second time.

Remaining stages

Passed remaining stages.

Sitting suspended 1.01 p.m. until 2.04 p.m.

QUESTIONS WITHOUT NOTICE

Auditor-General: prisons

Mr BRACKS (Leader of the Opposition) — I refer the Premier to the Auditor-General's special report on prisons, in which he states that he has requested new legislation to allow him to report on financial deals in secret government contracts. I ask the Premier whether he will give a commitment to introduce this legislation or whether he will continue, as the Auditor-General stated, to deny the Parliament and the community the right to — I will quote from the report:

... be fully informed ... on matters inherently linked to the expenditure of taxpayers' funds.

Mr KENNETT (Premier) — As I indicated yesterday in response to a question on the Auditor-General's report that was tabled yesterday, this

Auditor-General's report is a good report on two of the findings of the Auditor-General.

The first finding concerns the tendering processes. The Auditor-General actually congratulates the government on the way the tender process was conducted. The second area where the Auditor-General found good work was being done is the way the Department of Justice administers the whole prison portfolio. Therefore, I believe the public can have continuing confidence not only in the government but also in the bureaucracy in the way they are meeting their responsibilities to the community.

One area that is consistent between yesterday's report and today's report is the Auditor-General's view that it is desirable for some contracts to be made available to the public. As I indicated yesterday to the house there are reasons why the government has not done that. Unlike the way governments were administered 10 to 15 years ago, a much greater reliance and dependency is now placed upon the private sector, and the people who tender for work in Victoria will not only tender for other work in Victoria but will also tender for work in other parts of Australia. If the information were made available to the public it might severely disadvantage tenderers in their ability to compete.

I also indicated that the government is looking at whether there are ways it can make some of the contracts and tender documents more available to the public. We are considering a number of options, one of which is whether the document could become public after a certain period and the awarding of the tender.

Mr Hulls interjected.

The SPEAKER — Order! The honourable member for Niddrie!

Mr KENNETT — You have not learnt at all, have you? You are so terribly out of touch!

Whether that is an acceptable method of doing it, and whether the time frame should be 5 or 10 years, I have no idea. It is one of the options that has to be looked at.

The other question, Mr Speaker, is whether the government might, as part of the tendering process, make the fundamental tender documents and contracts available with some of the more explicitly confidential material eliminated in the interests of ongoing work with the private sector. Those are things that we are prepared to have a look at, although they do raise some real questions of confidentiality.
Mr Haermeyer interjected.

The SPEAKER — Order! The honourable member for Yan Yean!

Mr KENNETT — This government, or any government, should be very cautious about how it proceeds from here and about whether the steps it takes might disadvantage Victorians and Australians. We are happy to have a look at those ideas, and I hope when we reassemble in September we will be able to — — 

Opposition members interjecting.

Mr KENNETT — What are they laughing at?

Opposition members interjecting.

Mr KENNETT — That went right over my head.

I hope when we come back in September we may have completed that process and be able to make some further announcements to the house.

Water: rural infrastructure

Mr MAUGHAN (Rodney) — I ask the Minister for Agriculture and Resources whether he can advise the house of recently completed infrastructure developments that provide rural and regional towns with facilities that are approved by the Environment Protection Authority and meet world health standards for waste water and drinking water.

Mr McNAMARA (Minister for Agriculture and Resources) — I thank the honourable member for Rodney for an important question that is vital for the future of regional Victoria. Last week I had the opportunity to open a number of water treatment plants throughout regional Victoria including plants at Camperdown, Orbost and Mortlake. The plants have a total value of more than $25 million.

An Auditor-General’s report referred to a lack of good quality drinking water in country Victoria and included the comment that only 60 per cent of people in country Victoria had drinking water up to world health standards — and obviously that 40 per cent did not. It is worth making the point that until three or four years ago only 27 per cent of people in country Victoria had drinking water up to world health standards, and almost 75 per cent — —

Mr Bracks interjected.

Mr McNAMARA — They have never had it so good. That is your attitude, is it?

It was a disaster for country Victoria. If we are going to get investment, particularly in the food processing sector, all the factories will need good quality water going into their pipes and the ability to deal with waste water that goes out.

The government is engaged in a program to invest $1 billion across regional Victoria to bring water treatment plants up to standard. The program will ensure that 270 country towns across the state share in the benefits of 320 investment projects. There is barely a country town anywhere that is not getting either a new water treatment plant or a sewage treatment plant. Some are getting both.

Coupled with that program, which is achievable as a result of the $450 million invested by the government in country water authorities, the government is also putting a new water treatment plant in every country town in the state while at the same time reducing water rates by 18 per cent. That is a marvellous achievement.

In Mortlake, for example, as the Treasurer will be well aware, the government has invested some $5.6 million in a new sewage treatment plant. Mortlake, which has a population of 1100 people, now has a sewage treatment plant that guarantees its community a future. I commend the honourable member for Warrnambool for the way he went into bat for that community. The Clarkes Pies factory now employs 200 of the total of about 400 in the community’s work force. If the government had not sewered the town of Mortlake those workers would undoubtedly have left the town. There are plenty more such examples across the state.

In Donald a biscuit manufacturer has invested in the town since the government put in treated water. It employs about 15 members of the Donald community. In my own home town too, for example, the government put in treated water, and as a result a company called Eatmore Poultry has invested $10 million and will create 55 jobs in Nagambie. The government is providing work on the ground and giving real, long-term benefits and a future to rural Victoria. I hope future Auditor-General’s reports will recognise the real value of the government’s efforts in this area.

Auditor-General: ministerial portfolios

Mr BRACKS (Leader of the Opposition) — I refer the Premier to a letter from the Auditor-General to the chairman of the Public Accounts and Estimates Committee dated 21 December last year which states that the Minister for Finance has given him an undertaking to introduce legislation in this autumn...
session of Parliament to give the Auditor-General power to report to Parliament on the financial details of secret government contracts.

Has the government reneged on this commitment in order to prevent the Auditor-General from doing his job and thereby revealing yet more mismanagement, more secret deals and more corruption in privatisation deals in this state?

Mr KENNETT (Premier) — The question is riveting! I am unaware of the letter written by the Auditor-General to, I think, the Leader of the Opposition said, the Minister for Finance. I am attempting to clarify the question, Mr Speaker. Was the letter addressed to the Minister for Finance? He is silent now. To whom was the letter addressed? I am not sure who, in asking his question, the Leader of the Opposition said the letter was addressed to.

Honourable members interjecting.

Mr KENNETT — Will the Leader of the Opposition repeat his question? I am sorry, Mr Speaker, I do not know to whom the letter was addressed.

Education Week

Mr PHILLIPS (Eltham) — Will the Minister for Education inform the house of the highlights of Education Week and in particular give details of the visit to Victoria by the British Minister for School Standards?

Mr GUDGE (Minister for Education) — The honourable member for Eltham, like all honourable members on this side, is actively involved in educational circles as part of his electorate duties.

Education Week has been fabulous and successful. As is traditional, schools have opened their doors to the public and, unlike in past years, have been able to display their world-class facilities as a consequence of the $1 billion spent by the Kennett government on upgrading schools over the past three years. School community members and visitors now take great pride in those facilities. During the week the outstanding achievements of students, teachers, parents and school leaders will be on display.

In celebrating Education Week we have been joined by a delegation from the United Kingdom led by Estelle Morris, the British Minister for School Standards. Joining her are 25 principals from schools right across Britain, who have met with principals of Victoria's self-governing schools.

Also visiting Victoria for Education Week are Sir Cyril Taylor, the chairman of the Technology Colleges Trust, and Anthea Millett, the head of the British Teacher Training Agency. There has been a fabulous interface between Victoria's top principals and the 25 principals from the United Kingdom. Stronger interaction between those two groups will flow from the visit, and several Victorian principals will attend the 20–20 Conference in the United Kingdom early next year.

As a consequence of the interface a liaison has developed between the Victorian Education Trust and the Technology Colleges Trust in the United Kingdom. Estelle Morris and I were privileged to attend the signing today of a memorandum of understanding for further cooperation between those two trusts. I am confident that in the not-too-distant future the Georgia Partnership, which is another education trust I recently visited in the United States, will join with us to make a quality, tripartite relationship.

Many exciting events are occurring during Education Week. The efforts of 21 school councillors who have between them given almost 400 years voluntary service to their school communities have been recognised. I refer to the mums and dads who give up their time to actively work in their school communities. The government recognises their contribution and celebrates the service they provide.

Two travel scholarships for outstanding science teachers will be awarded. Forty-nine recipients will be presented with their 40-year teaching service awards at a celebratory dinner this evening. One of the most exciting parts of the week will be the announcement of the inaugural winner of the $50 000 Lindsay Thompson Fellowship, which is awarded to an outstanding government school teacher. Lindsay Thompson will present the award, which is an acknowledgment of the esteem in which he is held in school communities. In addition, 10 community members who have made valuable contributions to schools will also be recognised.

Family maths days have been held this week. The parliamentary secretary recently attended the Melbourne Cricket Ground, where 700 youngsters participated in clinics conducted by professional sports people who work with students on a daily basis. The government is proud of its achievement in putting pride and integrity back into our schools. The improved education standards in our schools have been reflected in a fine way during the course of Education Week. A range of activities has brought a focus to education that makes every decent Victorian proud.
Port Phillip Prison: performance

Mr HAERMeyer (Yan Yean) — I refer the Minister for Corrections to the revelations in the Auditor-General’s report that the minister’s own task force found that the operators of Port Phillip Prison ‘were not and are not able to deliver to a satisfactory standard a range of contracted correctional activities’ and I ask why the minister covered up the task force report and why he failed to protect public safety by not cancelling the contract of this breathtakingly incompetent private prison?

Mr W. D. McGrath (Minister for Corrections) — One thing you can say about the honourable member for Yan Yean and the opposition is that they have a constant vendetta against privatisation. They have no respect or consideration for the private sector at all. They have a great hatred for it, regardless of what form it takes.

In line with what the Premier has already outlined in the past couple of days, I appreciate the findings of the Auditor-General on the correctional system because his report is fair and balanced. The report that was tabled earlier today is interesting in light of developments in Victoria’s correctional system. The system has moved from being totally a public sector system to a balanced combination of private and public operation. Currently 45 per cent of prison beds are under private sector management and 55 per cent are under public sector management. Both are producing good outcomes as prison populations continue to build.

Before addressing the core of the honourable member for Yan Yean’s question, it is worth while quoting some key points from the Auditor-General’s report. He states:

It is pleasing for audit to report that the bidding and selection process was undertaken in a manner consistent with the government’s infrastructure investment policy for Victoria and significant attention was directed to probity issues.

He further states:

There is no doubt that the prison service agreements with the private prison contractors provide ample means of ensuring accountability.

The honourable member for Yan Yean has attempted to tie in with the Auditor-General’s report some connotation of mismanagement with regard to the Kirby report. The Kirby report was released by the government either last week or the week before only after the various due processes were completed. Many of the recommendations are already being implemented. The first meeting of the Corrections Health Board has already taken place. It is a good board and I am confident that significant outcomes will ensue as the government follows through on the recommendations outlined in the report.

If proper, fair and due consideration is given to the Kirby report on the one hand and to the Auditor-General’s report on the other hand it will be found that they dovetail. The Auditor-General provides positive direction and the Kirby report explains the positive things the government can do to ensure that Victoria continues to have the best correctional system of any jurisdiction in Australia.

Smith Family

Mr McArthur (Monbulk) — I am sure all honourable members are aware of the excellent work carried out by the Smith Family, an organisation that helps thousands of Victorians each year — —

The SPEAKER — Order! The honourable member for Monbulk cannot give a commercial first, he must come to his question.

Mr McArthur — Will the Minister for Youth and Community Services inform the house of the government’s recent contribution to the Smith Family?

Dr Napthine (Minister for Youth and Community Services) — I thank the honourable member for Monbulk for his question and his ongoing representation of the interests and concerns of the disadvantaged in the community.

The Smith Family was founded in 1922. It is a non-government organisation with a proud record of helping those in need. As an agency it works in a positive partnership with the business community, the broader community and government. It is one of the organisations that works at the grassroots level in helping those in need. It helps in two ways. It provides direct and immediate assistance, particularly to families with young children. For example, to assist families through short-term crisis situations in a positive way it provides warm clothing and blankets during the winter months and food vouchers and food relief throughout the year.

Parents are also assisted to overcome problems caused by medium and longer-term crises; they are assisted in learning to help themselves, so they can improve their quality of life and provide a good environment for their children. The Smith Family has a strong commitment to family and financial counselling, and to what I would describe as life-skills education to help people develop...
the skills they need to live independent and fulfilling lives.

Recently the organisation moved from its old headquarters in rented premises and purchased a new building in Cambridge Street, Collingwood. The building is being renovated and it is expected the organisation will move into the building in the middle-to-later part of the year. The move will increase the organisation's capacity to assist people. The number of people assisted is expected to increase from the current level of about 36,000 individuals per annum to almost 100,000. An advantage of purchasing the building is that it will free up money that would otherwise have been spent on rent — $200,000 per annum — to provide direct assistance to the community.

The Smith Family approached the government through the Community Support Fund for assistance with the project. The government is pleased to provide a grant of $420,000 to assist with the refurbishment of the new premises. The money has been targeted to the provision of 12 interview rooms for family and financial counselling because the government believes such counselling is an important part of the organisation's work.

In addition to advising of the $420,000 grant from the Community Support Fund, I take this opportunity to wish the Smith Family well with its work and to congratulate its staff, its board of directors and its individual and corporate sponsors on the excellent work they do. I am sure honourable members from both sides of the house would support the people who support the organisation. The government is pleased to work in partnership with the Smith Family to assist it in the work it does for people in need in Victoria.

Political advertising

Mr HULLS (Niddrie) — I refer the Premier to the fact that using the questions on notice process the opposition has previously sought and been provided with information that enabled it to identify that the government has spent almost $158 million of taxpayer funds on party-political advertising and propaganda. I also refer the Premier to the fact that the government has now changed the rules and has this week refused to answer questions on notice about political advertising. Will the Premier admit that the gag is aimed at keeping secret the fact that political advertising has now skyrocketed in the lead-up to the next state election?

Mr KENNETT (Premier) — I thank the honourable member for his penetrating question. He has been making the claim for some time now that anything the government does in communicating government policies is party political. The government has denied that consistently. It continues to do it.

The government took its lead from the former Labor government. I remember that when we were in government leading up to 1982 I used to say to the premiers of the day, Hamer and Thompson, ‘For goodness sake, why don’t you spend more money, at least a quarter of 1 per cent, on telling the public what the government’s policies are?’, and so on. They said that was incorrect. The Labor government came to office in 1982, first under John Cain and subsequently under Joan Kirner. The state was then flooded with a new communications system, with green documents, blue documents, and so on. I must admit —

Mr Hamilton interjected.

Mr KENNETT — What, sorry? What was that?

Mr Hamilton interjected.

The SPEAKER — Order! The honourable member for Morwell.

Mr KENNETT — Keith, I was just about to say that. I am quite sure that if you go back through the records from my long period in opposition you might find me saying that I thought it was unfair and an abuse of the —

Mr Hamilton interjected.

Mr KENNETT — I think so. I cannot be 100 per cent sure, but I suspect I was probably a little bit aggrieved by it. This government learned from its period in opposition, unlike the current opposition. It thought the Labor Party under Cain and Kirner was probably quite right in letting the public know what it was on about. It is just unfortunate that it messed it up so appallingly; its delivery of good governance in no way matched the rhetoric it was putting out.

When the government came to office, it asked, ‘Is this a good thing or is this a bad thing?’. It thought, ‘It is of community interest and a tough question, but we’ll go with Cain and Kirner’. I will not often be found doing that. The government then centralised all the buying from all the units, because under the Cain and Kirner government every agency was doing its own thing independently and Victoria was not getting the benefits of the economies of scale.

Mr Thwaites interjected.
Mr KENNETT — It went out to tender and was won by a company that does a very good job indeed.

Mr Thwaites interjected.

Mr KENNETT — What is it?

Mr Thwaites — That’s not what the Auditor-General said.

Mr KENNETT — Oh dear! Come on, Johnny!

The SPEAKER — Order! I will not warn the Deputy Leader of the Opposition again. I am sick of him.

Mr KENNETT — No, don’t warn him, throw him out. Before I was rudely interrupted by the young Deputy Leader of the Opposition I was saying that the government put it out to tender, brought all the advertising together, and is getting much better rates from the television and radio — sorry, had enough?

Mr Hulls — Of you, blood oath!

The SPEAKER — Order! The honourable member for Niddrie, on a point of order.

Mr Hulls — Mr Speaker, my point of order relates to the fact that the Premier is debating the question. The question was specifically about why the government has now changed the rules for questions on notice.

The SPEAKER — Order! I do not uphold the point of order.

Mr KENNETT — No, Mr Speaker. It was a frivolous point of order, if I have ever heard one.

The government went about changing the situation in order to give the people of Victoria better value for their money. It is true to say that over the six-year period, as with most other things, the budget here has increased from $12 billion to $19 billion — that is probably the bottom line. That can be partly attributed to a different accounting system, the accrual system. There has also been an increase in the money spent on communications. The government thinks that is good value. The people of Victoria — not that everyone always agrees with every aspect of what the government does — are at least better informed about what the government is doing today than ever before. The honourable member for Niddrie also raised an issue about the government’s responding to questions on notice.

Mr Bracks — No response.

Mr KENNETT — No response? Zero response? There is good leadership coming from the other side today — great leadership. I can only say that the government answers the questions as best it can, depending on the amount of information required. Honourable members would understand when they look at the notice paper that literally hundreds of questions are now placed on it in the names of opposition members by the staff of those members. The government has to run the state and ensure that the people of Victoria are continually looked after, and we will continually try to process —

Mr Thwaites interjected.

QUESTIONS WITHOUT NOTICE

Political advertising

Questions resumed.
PERSONAL EXPLANATION

Mr KENNETT (Premier) — Mr Speaker, I was referring to the issue of questions on the notice paper. I can only say that the government has continually processed them as time allows, based on the information that is required. It will continue to do so. I do not know how many questions are on the notice paper at the moment. Let me look. In mine there are something like 470. They are consistently put on and they are consistently answered. The honourable member is not listening to the answer, so there is no point in me going on.

PERSONAL EXPLANATION

Mrs McGill (Oakleigh) — I wish to make a personal statement because I have been gravely misrepresented in the Labor minority report that accompanied the report of the Economic Development Committee on the effects of government-funded national broadcasting in Victoria.

The house will be aware that two minority reports were tabled with the main report to Parliament on Wednesday. The honourable member for Ballarat West and I fully support the main report and lodged our minority report simply to enlarge on specific issues relating to SBS and to offer and support a sensible suggestion to move SBS to Melbourne.

Our recommendations were clear and unambiguous. They read:

1. That the SBS head office be moved to Melbourne.
2. That SBS television be moved to Melbourne.
3. That the Federation Square project be used as an opportunity to relocate other departments and allied production operations of SBS television to Melbourne.

At no time in the committee or in my report have I supported having the SBS absorbed into the ABC. A perusal of the transcript of the Economic Development Committee hearing will attest to my claim that I have never advocated such absorption. I unequivocally believe in an independent and fair SBS — but one which is fully accessible to various groups in our state.

In mentioning me by name, the Labor Party report has made an unprecedented attack on an individual committee member, which maligns me. This misrepresentation can unfairly damage me, and that is why I have made this personal explanation to the house.

FREEDOM OF INFORMATION (AMENDMENT) BILL

Second reading

Debate resumed from 6 May; motion of Mrs WADE (Attorney-General).

Mr HULLS (Niddrie) — From time to time proposed legislation comes into this place that demands that people get passionate in their views about it. The Freedom of Information (Amendment) Bill is one such bill, and it epitomises what the government is all about. It is one of the most outrageous bills to come before the house. It can only be referred to as Wade’s white-anting of freedom of information legislation.

The bill is the government’s back-door way of virtually abolishing freedom of information (FOI) in Victoria. Honourable members who support the bill are really saying they are more than happy to put the nail in the coffin of democracy in Victoria and to go down the Bjelke-Petersen path of corruption. That is exactly what the bill will lead to. It is nothing more than another attempt by the Kennett government to tear down the basic democratic institutions that protect Victorians from dictatorship. There is a very fine line between democracy and dictatorship, and there are a number of institutions put up along the way to prevent democracy from turning into dictatorship. One of those roadblocks is freedom of information. When a government gets rid of freedom of information it is really saying, ‘We do not give a damn about democracy or about people participating in the democratic process’, and it will slip down the slide of corruption into a dictatorship.

I will quote, as shadow Attorney-General, a previous shadow Attorney-General who went to Melbourne University one day in 1981 to tell students why he thought Victoria should be the first place in Australia to introduce freedom of information legislation. In that speech John Cain quoted the former US President James Madison who in 1822 articulated an early case for freedom of information. President Madison said:

A popular government without popular information or the means of acquiring it is but a prologue to a farce or tragedy, or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives.
On achieving government John Cain was told by the public service that he should abandon his plan, that it would destroy his government and that freedom of information legislation would make a mockery of the public service.

However, John Cain showed true leadership. He ignored the advice of his senior bureaucrats in the public service at the time and many of his cabinet colleagues and went ahead and did it because he believed in it.

Mrs Wade interjected.

Mr HULLS — The Attorney-General says it was the Liberal Party that drafted the legislation. It never had the guts to pass it. It did not truly believe in it, and ever since the coalition has been dismantling freedom of information because it does not believe in honest, open and transparent government.

I have always regarded what John Cain did as demonstrating true leadership. Contrast that with the current Premier, who has used nurses at a Frankston Hospital as a tool to steal the right of ordinary Victorians to obtain information. The Premier scurries into this place with the Attorney-General with a disgraceful bill that the government thinks will keep the Premier, the Attorney-General and the government free from scrutiny and safe from the nasty people who want to question the rubbish the government peddles daily. That is not leadership, that is gutlessness and cowardice.

I find it offensive and astounding that someone like the honourable member for Doncaster would want to put his name to this sort of legislation. That is the sort of thing the opposition expects from the Attorney-General, given previous legislation she has introduced, such as that relating to victims of crime and the like, but it is not the sort of thing one would expect from somebody who has shown some honour in the past in relation to civil liberties. However, we shall wait and see. I know that in his heart of hearts the honourable member for Doncaster will find it very difficult to support the bill. He has a chance — as do other democrats on his side of the house and other people who believe in democracy — to stand up to the Premier and the Attorney-General and show Victorians by opposing the bill that they believe in democracy and that they are not prepared to allow the state to slide down the slippery slide to corruption. Those honourable members will join with the Labor opposition and oppose the bill.

Time will tell. There will be a division on the bill. It will either be later tonight or tomorrow, but that is when the honourable member for Doncaster will have his chance. I hope he does not go missing by locking himself in the toilet or hiding in his room or in the bar. I hope he shows some guts by coming into the house and supporting democracy.

The Freedom of Information Act was written at a time when most Australians had never heard of an act that gave them the right to view information held by the government.

The original act was based on a draft bill written by Mr Peter Willenski, who was appointed as a royal commissioner in New South Wales for the purpose of reviewing government administration in that state. The review focused on improving the openness and accountability of the New South Wales public service. The initial report included a detailed examination of the benefits of freedom of information, and a further report five years later insisted that the review was not complete without appropriate freedom of information legislation.

Mr Willenski’s report states:

I cannot place enough emphasis on the need for freedom of information legislation. There is no measure which would have a more widespread effect in improving the conduct of government and stimulating fair and rational behaviour in the administration.

In every major general review of government administration in Australia freedom of information legislation has been said to be paramount to good government and to ensuring an open, honest accountable democratic society. One only has to cast one’s mind back to the Fitzgerald inquiry into corruption in Queensland. When the Queensland Bjelke-Petersen government was wrapped in a web of corruption the Fitzgerald royal commission found that freedom of information was critical to prevent the retreat of governments back into the dark days of graft and corruption. That is how important a barrier of freedom of information is in preventing a democratic society from becoming corrupt.

The Fitzgerald report states:

The importance of the legislation lies in the principle it espouses, and its ability to provide information to the public and to the Parliament. It has already been used affectively for this purpose in other parliaments. Its potential to make administrators accountable and keep the voters and Parliament are well understood by supporters and enemies.

Last year the High Court went further in the decision of Egan v. Willis. Justices Gaudron, Gummow and Hayne found that freedom of information was a necessary component of representative democracy in Australia.
The High Court is the highest authority in Australia and it has made it crystal clear that freedom of information legislation is a necessary component of a representative democracy in Australia. The Victorian Labor Party has had the courage to stand by its convictions on freedom of information, and a Labor government introduced the state’s freedom of information legislation.

The Premier and the Attorney-General — at least until the next election — have been frightened of openness and transparency in government and they have done all within their power to close down freedom of information. It is not politically saleable to say to the community, ‘We as a government do not believe in openness, accountability and transparency. Therefore we will abolish freedom of information legislation’. It will not work. That message cannot be sold because Victorians are not stupid and they understand the importance of freedom of information legislation.

The second-best way to abolish freedom of information legislation is to slowly chip away at it — to slowly pull it apart piece by piece, clause by clause and word by word. That is exactly what the government has done since it came to office. From the start of the Kennett government’s term in office it decided that it did not want to be scrutinised by Victorians, Parliament or the opposition. The Kennett government has slowly ripped apart freedom of information.

In May 1993 the government introduced sweeping changes to the state’s freedom of information legislation. It threw accountability out the window, and with it the need to inform the public. Appropriate decision-making processes were also thrown out the window. In 1993 the government extended the definition of cabinet documents so far that if a document either quoted an issue that was discussed by cabinet or was physically attached to a cabinet paper, it qualified for a cabinet exemption and consequently would not be released under freedom of information. That extension of the cabinet exemption made documents that would otherwise have been freely released under the Freedom of Information Act not subject to release. What better way to hide the true facts of an issue than to put documents in a folder and take them to cabinet. Those documents immediately become exempt documents and the public cannot get access to them.

The government’s extension of the definition of cabinet documents has resulted in hundreds of documents — possibly thousands — that would previously have been made available, no longer being available.

The government also imposed a tax on the release of information. It amended the Freedom of Information Act to provide for a $20 lodgment fee on FOI requests, lifted the $100 ceiling on processing costs for requests and abolished the exemption from FOI charges for members of Parliament. Previously members of Parliament were able to lodge FOI applications with no charge. That was appropriate because it is the role of an opposition to keep the bastards honest, to adopt the motto of the Democrats.

Not content with taxing the right of an individual to seek information the Premier moved to exempt whole government bodies from the scope of the freedom of information legislation. The State-owned Enterprises Act, which was passed in November 1992, restricts the freedom of information legislation by excluding from its reach corporatised government instrumentalities such as the Treasury Corporation of Victoria and the former State Electricity Commission of Victoria.

The government further moved to exempt all documents relating to the purchase of government assets from FOI. For example, details of the sale of Victoria’s electricity and gas supplies, the public transport system and other government assets were placed under a cloak of secrecy. That is totally inappropriate action by a government that is driven philosophically to embrace privatisation and the selling of assets and essential services to the private sector. Enterprises that were formerly owned by all Victorians and were subject to the FOI process were handed over to the private sector — many at bargain-basement prices — and are no longer subject to FOI. The same essential services, such as electricity and gas, are still being supplied, but whereas previously Victorians had a right to know what was going on with those companies — that was appropriate because that is what democracy is all about — they are now exempted from FOI processes. That is inappropriate and breaches the spirit of the FOI legislation.

In 1994 the government moved on the independent appeals process. It saw an opportunity to increase costs at two levels as a significant deterrent to people who wanted to make FOI applications.

Application fees of $150 were introduced in early 1994 for the then Administrative Appeals Tribunal. The amount increased to $157 in 1995 and $165 in 1997. The government did not need legislation to increase the fees. It simply made regulations without exposing the increased fees to Parliament. However, what it really meant was that people who previously were able to access documents under the freedom of information legislation without charge were being hit with
enormous fees when they attempted to access documents via the independent AAT. If one knows one must pay $165 to go down to a tribunal to get documentation, it acts as a pretty significant deterrent to doing so.

The total cost of using the FOI legislation in Victoria has now spiralled beyond the reach of many members of the general public and various lobby groups. In fact, if the state opposition used freedom of information to the extent the coalition opposition did during the decade of Labor government in Victoria the cost would total not hundreds of thousands of dollars but close to $1 million or more.

It is interesting to note that the honourable member for Doncaster is in the chamber because when in opposition he had a reputation — he still has a reputation — as being a prolific user of the Freedom of Information Act. Indeed, he makes me look like a wuss and the Deputy Leader of the Opposition like a wimp when it comes to using freedom of information. This bloke knew how to use freedom of information! But with the new fees that are in place, if the opposition attempted to use freedom of information in the same way that the honourable member for Doncaster did in opposition the cost would total more than $1 million — and I have absolutely no doubt about that. The fees act as a huge disincentive. Indeed, the government is well aware of that, and that is why it has imposed these increased fees on users.

Nonetheless, the changes have not been enough to stop the release of certain information. The opposition has not been deterred, despite all those obstacles being put in its way. It has obtained the dough somehow; it has been able to raise the money. It has had to conduct chook raffles; it has had to beg and borrow, and it has been able to obtain donations from people who believe in democracy and who have said, 'The Kennett government is unfair and undemocratic and is trying to ensure it remains unaccountable. We are prepared to put money towards your freedom of information requests and to assist you in whatever way we can'.

As a result of freedom of information requests the opposition has obtained some very embarrassing information about the government. The government has continually been hurt by revelations the opposition has made arising from information obtained through FOI, such as long waiting lists, oversized classes, credit card abuse, casino corruption and conflicts of interest. Information has exposed members of Parliament, government members, ministers and bureaucrats who have misused funds or handed government contracts to mates. Despite the government's attempts to close down information, information has still come out as a result of FOI requests.

There have been instances like the Solicitor-General of this state overturning a Supreme Court decision to convict BHP of contempt at a time when he had secretly held over $1 million in BHP shares. Freedom of information helped to expose that. There was also the KNF affair, with the Premier having been caught out for awarding contracts to his personal family company. Again, freedom of information was able to be used. There was what we and the media described as the Atkinson affair, when an honourable member for Koonung Province in another place was found to have had several jobs as well as being a member of Parliament, including contracting with his own government for profit. Freedom of information was of assistance in that case also.

There was an instance of the Minister for Police and Emergency Services awarding his own company government contracts and building roads to his own business. Freedom of information was able to — —

Mr Perton interjected.

Mr HULLS — As the honourable member for Doncaster knows, the changes being made by this bill to the Freedom of Information Act will indeed stop these sorts of scandals being discovered.

Mr Perton — You're wrong.

Mr HULLS — The honourable member shakes his head. That is a matter of opinion, and no doubt he will attempt to rebut what I am saying on these matters. The fact is that the bill is quite clear, and freedom of information legislation will not be able to be used to the extent it has been used in the past to expose many such improprieties and improper practices.

The other point about freedom of information is that it exposes extravagance and waste. That will not be possible under this bill. For instance, some time ago a freedom of information request was made to the government relating to expenditure undertaken, supposedly on behalf of the taxpayer, to redecorate certain offices. I recall one that was called the pink heath room. Information obtained under the Freedom Information Act revealed that the Premier had spent tens of thousands of dollars on a bizarre room with antique tables for seemingly no official purpose.

The opposition could access that information only because it was able to obtain names of bureaucrats who were involved in the refurbishment of that room and
names of third parties who were not even bureaucrats — designers, architects and the like. As a result the opposition received documents that exposed the inappropriate use of public funds.

However, the changes to the legislation that are contained in this bill will make it impossible to get the names of those sorts of people and will make it impossible to properly scrutinise the use of taxpayer dollars. Just recently, for instance, the opposition was able to expose the relocation of the education department, which, as I said at the time, exposed the leather fetish of the Minister for Education. The opposition was able to obtain that information only because it received under FOI the names of bureaucrats and third parties who were involved in the refurbishment. This bill will stop that and close down that sort of scrutiny.

Indeed, the Intergraph affair, which the Auditor-General revealed, involved millions of dollars being stolen from taxpayers and left our ambulance system in crisis. Bureaucrats, third parties and officials were called down to the AAT to give evidence. Their names were revealed through FOI, and the scandal became public as a result. That simply will not be able to occur under this bill.

Information was revealed fairly recently about the Attorney-General handing out a government contract worth some $3000 a day to a former member of Parliament, Mr James Guest, without tender because he was supposedly a specialist — as though there were no other lawyers in Victoria that could have done the job on the Pathfinder matters.

Mrs Wade interjected.

Mr HULLS — The Attorney-General interjects and says, 'Probably not'. That really is a slap in the face to the legal profession, apart from anything else, if the Attorney-General honestly believes Mr James Guest has more expert knowledge in that field than other lawyers in this state. She is trying to kid Victorians by saying the only reason Mr Guest got the job was his expertise — I think I can see a pig flying past Parliament House right now! That is absolute nonsense. The fact is that the contract was handed out to a mate of the government.

That was able to be exposed by using the provisions of the freedom of information legislation because the opposition was able to ascertain the name of the person involved. However, under the bill if Mr Guest decided that he did not want any more infamy and refused the release of his name, the dirty deal would remain secret. That is what the bill is all about.

A recent case involved a member of Parliament who was the owner of a farm where a mass grave of puppies was found rotting in open ditches. Through freedom of information Dr Wells, a member of the upper house, was found to be the owner of the puppy farm, and as a result I believe he resigned. That was exposed — —

Mr Perton — On a point of order, Mr Acting Speaker, the honourable member for Niddrie is clearly flouting the rule against casting inappropriate aspersions against an honourable member of the upper house. The allegations are untrue, but that is neither here nor there. The honourable member for Niddrie is not entitled to make those sorts of statements about another member of Parliament, whether that person is a member of the upper house or the lower house, except by way of substantive motion. Both the standing orders and the precedents are quite clear on that, Mr Deputy Speaker.

Mr HULLS — On the point of order, Mr Acting Speaker, I am not casting any aspersions. If the honourable member for Doncaster had listened to what I said he would know that I simply said that the freedom of information legislation was used by the opposition to reveal — —

Mr Perton — It was not through freedom of information.

Mr HULLS — With due respect to the honourable member for Doncaster, freedom of information was used to expose the fact that an honourable member in another place was involved in a puppy farm. Whether that is right or wrong — —

Mr Perton interjected.

Mr HULLS — Nonsense. Whether that is right or wrong is a matter for debate. I am not casting any aspersions on the member. I simply said that freedom of information was used to reveal the fact.

The DEPUTY SPEAKER — Order! The point of explanation by the honourable member for Niddrie is that freedom of information was used to connect a member of another house in this Parliament to that issue. If that was the intention and no aspersions were made, I accept that. I will not uphold the point of order of the honourable member for Doncaster. However, the honourable member for Doncaster has made a good point. Debates on legislation of this type can lead to aspersions being made. The honourable member for Doncaster has provided a timely reminder that we
should be mindful that during debate imputations on honourable members in this place or the other place should not be made. However, I will not uphold the point of order at this time.

Mr HULLS — I understand your ruling, Mr Deputy Speaker. Freedom of information has been used, and it is still being used extensively to expose the use of taxpayer-funded credit cards by ministers and senior bureaucrats. The Auditor-General in a report I believe was released in May 1997 stated that some 4400 taxpayer-funded credit cards with a monthly credit limit of $23 million were in existence—that is an annual credit limit of around $276 million. The Auditor-General did not list the names of the credit-card holders, so the opposition sent requests under freedom of information to virtually all government departments to find out the names of the people who have taxpayer-funded credit cards. After receiving the names the opposition was able to ascertain further details about the use of credit cards. Obviously that sort of scrutiny is possible only if the names of the people who have credit cards are known.

The process involves forwarding to a department a freedom of information request for a list of the names of people who have taxpayer-funded credit cards. In some instances a list will come back, and it may contain 200 to 300 names. The procedure—and this may give away opposition tactics to some degree—-

Mr Leigh interjected.

Mr HULLS — It is something the honourable member for Mordialloc will no doubt want to use in his private life after he loses his seat to Robyn McLeod at the next election.

The tactic is to whack in a request asking for all the names of people who use taxpayer-funded credit, and once the list comes back a further request is put in seeking details about the individuals on the list. The bill will preclude that process occurring. The bill provides that the names of third parties will not be released as a right. A list of those names will be made available only by going through the Victorian Civil and Administrative Tribunal.

It is an absolute joke for the government and the Attorney-General to say that the bill is about protecting the names of the nurses at the Frankston Hospital instead of being about withholding information from the opposition. Absolute nonsense! It is all about blocking the work of the opposition, despite the fact that the government praised the opposition for its work in analysing corporate credit card use and abuse.

The opposition was able to ascertain that a secretary in the Premier’s office used a taxpayer-funded credit card at a Warburton health farm to go on shopping sprees only by using freedom of information. That was an inappropriate use of the card and a breach of the guidelines, but under the bill that would never have been revealed. Under the bill freedom of information requests will go in seeking details about a person’s use of a credit card and the government will simply write back and say, ‘No, you are not entitled to that information because we are not prepared to release the name of the person who has the card’.

What is the use of trying to ascertain how a corporate credit card has been used or abused when you don’t know the name of the person who has it? There is no point. All the work for which we have been praised in the past by the Premier—and implicitly by the Auditor-General—is now wasted.

The Attorney-General herself has been caught out and has received some publicity for her use of a taxpayer-funded credit card. The Attorney-General has said that she did nothing wrong. That is for the public to judge. She did, however, receive some publicity on the matter of some cushions, I believe, and I can understand why the Attorney-General is sensitive about that. The Minister for Conservation and Land Management was found to have used her taxpayer-funded credit card to attend Liberal Party fundraisers. The Minister for Finance used his to go to a show in Las Vegas, and the Minister for Police and Emergency Services used his to purchase some jewellery for his wife.

The director of the museum used his taxpayer-funded card to wine and dine around the world and become known as Sir Lunchalot. The directors of the Melbourne Marketing Authority used theirs to wine and dine themselves around Australia, becoming known as the men with appetites bigger than the Two Fat Ladies. The chief executive of the Workcover Authority was found to have used his taxpayer-funded card to travel around the world so much he made Marco Polo look like a homebody.

The Treasurer apparently used his taxpayer-funded card to dine on Saturday nights at an Indian restaurant around the corner from his home, and the staff of the Energy Projects Division, while they were selling off Victoria’s assets, believed it was important that they leave more than $1000 worth of tips at taxpayers’ expense using their cards. Some of the were more than $200.
A consultant whose identity could only have been revealed through freedom of information used his taxpayer-funded credit card to have a lunch costing $800 at a strip club in Asia, a club that did not even have a kitchen. What kind of lunch was that? The information was revealed only when the opposition learnt the name of the person, a Mr John Wiley I believe, through freedom of information. Maybe he and his mates had a liquid lunch, I don't know.

Those are just a few revelations of the abuse and misuse of taxpayer-funded credit cards made public through opposition FOI applications.

**Mr Perton** — And appropriately so.

**Mr HULLS** — I hope Hansard got that interjection. The honourable member for Doncaster does not believe the taxpayers' purse should be abused or that bureaucrats, ministers or anybody else with taxpayer-funded credit cards should use them to line their own pockets or give themselves a free line of credit at the expense of ordinary Victorians.

Having brought the honourable member for Doncaster that far, I hope we can convince him to take the next step, jump over the fence and oppose this legislation. If he is fair dinkum about his view that it is inappropriate for those cards to be used in that manner he must understand that the legislation before the house will stop the scrutiny of those abuses, or at least make it virtually impossible.

I have raised only a few of the many examples that arose out of opposition applications under FOI. During the period when those applications were being made the Premier began to take another tack. He realised he could not close FOI down so he decided, no doubt with the implicit approval of the Attorney-General, his chief law officer, to instruct all departments to delay responding to FOI applications in the hope that when the information finally came out it would be cold, old news. The departments then decided to use a handbook of tricks put together by people who call themselves FOI experts, actually no more than lackeys of the Attorney-General. To make it clear to anyone who is listening to the debate or who reads Hansard, I will describe her actions — that requests that were deemed inappropriate — some might use other words to describe her actions — that requests that were deemed to be refusals — that is, the department did not answer the request relates. That is, a department could say it would not even look at the documents because it was a voluminous request and there were too many documents resulting from the application. All of that sort of thing takes time. Departments are required to respond within a 45-day period, so after you whack in a request you have to wait 45 days.

What is happening now is that there is no response at all within 45 days. Under the old system if a department did not respond within 45 days the opposition could go straight to the Victorian Civil and Administrative Tribunal where that non-response would be deemed a refusal to supply the documents.

One could go straight to the tribunal and fight about whether the documents should be released. The Attorney-General has admitted that. The Attorney-General in a sly, underhanded, devious, inappropriate and some would say unethical way — —

**Mrs Wade** — On a point of order, Mr Deputy Speaker, I ask that the honourable member for Niddrie withdraw those remarks.

**The DEPUTY SPEAKER** — Order! The Attorney-General finds the remarks of the honourable member for Niddrie offensive, and I ask him to withdraw them.

**Mr HULLS** — Although I am happy to withdraw I seek clarification as to whether sly, unethical, devious, inappropriate — —

**The DEPUTY SPEAKER** — Order! I consider that to be an inappropriate response to the Chair's request to withdraw the remarks. The Chair appreciates that the honourable member for Niddrie has withdrawn the remarks, and I ask that he proceed with the debate.

**Mr HULLS** — The Attorney-General then decided inappropriately — some might use other words to describe her actions — that requests that were deemed to be refusals — that is, the department did not answer and the opposition could apply to the Administrative Appeals Tribunal (AAT) for free — would now incur fees of $170.

Without wishing to become too technical, the amendment was included at the back of another bill, and it was drawn to the attention of the Attorney-General. To make it clear to anyone who is listening to the debate or who reads *Hansard*, I will...
take honourable members through the steps used by the government to close down freedom of information in Victoria.

Previously the opposition placed FOI requests for documents and the government had 45 days in which to respond. If the government did not respond the opposition could go to the AAT to acquire the documents. The government then decided that the opposition could still go to the AAT but it must pay a fee of $170 each time. As I said, the bill was introduced in a backdoor way in another piece of legislation, and was drawn to the Attorney-General's attention.

The events were along the following lines. I, as shadow Attorney-General intended approaching the Attorney-General to discuss the issue. I recall interjecting across the table and advising her that the imposition of a fee was outrageous. The Deputy Leader of the Opposition suggested that it might be more appropriate if he approached the Attorney-General because he believed he would be more conciliatory.

Mrs Wade — He was more polite.

Mr HULLS — The Attorney-General interjects that the Deputy Leader of the Opposition was more polite. I am not prepared to argue with that. The strategy was that the Deputy Leader of the Opposition would sit down with the Attorney-General and explain that the fee was inadvertent and, in the spirit of cooperation, ask whether she could change it.

The feedback I received was that the Attorney-General was prepared to look at it and that it was inadvertent — the Attorney-General is nodding. I was not involved in the conversation but as an aside I was told the Attorney-General stops being mean to me. I do not recall being mean to the Attorney-General, but I am more than happy to stop being mean to her. I was more than happy to stay away from her!

An honourable member interjected.

Mr HULLS — Wait until she starts on you! I said to the Deputy Leader of the Opposition, 'For how long must I back off?'. The reply was, 'Give it a week or 10 days'. In the interest of democracy I was more than happy to do so. After a week or 10 days the Deputy Leader of the Opposition advised me that he had had a further conversation with the Attorney-General. She had decided that the fee was to remain. The fee, which the Attorney-General admitted was inadvertent, and again she nods her head — —

Mrs Wade interjected.

Mr HULLS — The Attorney-General says 'Absolutely'. I hope the Hansard reporter heard that. The inadvertent fee remained despite the bipartisan approach taken by the opposition. One can only surmise that it was left in place because the Attorney-General turned dirty. The Attorney-General decided to be vindictive. She decided that this was a great way — —

Mrs Wade — On a point of order, Mr Deputy Speaker, I take objection to the description of my conduct put forward by the honourable member for Niddrie, and I ask him to withdraw.

Mr HULLS — On the point of order, Mr Deputy Speaker, I did not say the Attorney-General was vindictive. I said that one can only surmise the reason why the Attorney-General decided to leave the fee in place was that she turned dirty and that she had decided to be vindictive. I was saying that one could only surmise that was the reason. I do not know whether that was the reason; one can only surmise that that was the case.

The DEPUTY SPEAKER — Order! If honourable members refer to rulings I have made they will see that I have said honourable members should be mindful of their language. They also should be mindful that the chamber is for vigorous debate. God spare us that we ever get to the point where that is removed, because it does add something.

I say to all honourable members, and to the Attorney-General and the honourable member for Niddrie in particular, that there is a need for members to be mindful of the language they use and to be aware that the Chair has no alternative when requested by a member to ask another member to withdraw comments to do other than convey those comments. The Chair is concerned that if it continues to rule that words are unparliamentary the vocabulary used in the house will be restricted.

I will not uphold the point of order at this stage. However, I counsel the honourable member for Niddrie to proceed with my remarks on language in mind. The house needs to understand that the Attorney-General is within her rights, as are other members, in taking offence at words used, and the Chair would expect those words to be withdrawn if a request is made. I am asking for cooperation on the use of appropriate language.

Mr HULLS — I certainly understand, Mr Deputy Speaker, and will adhere to your ruling.
FREEDOM OF INFORMATION (AMENDMENT) BILL

Thursday, 27 May 1999 ASSEMBLY 1367

It seemed extraordinary that after admitting that this was an inadvertent fee, the Attorney-General nonetheless decided to leave it in place. It has acted as a huge deterrent to the making of FOI applications and the seeking of documents not just to the opposition — I keep referring to the opposition because I am relating my first-hand experience with FOI — but also to other members of the public, because what was once free now costs $170. As the election approaches there seems to be a mind-set among government departments to not answer FOI applications. There is no incentive for any government department to respond to an FOI request. Why would they respond when there is no penalty imposed on them for them not doing so. The penalty is imposed on the applicant. If an FOI request is not responded to one would think that the department concerned should suffer some sort of penalty.

Section 3 of the Freedom of Information Act sets out the objects of the act. It states:

(1) The object of this act is to extend as far as possible the right of the community to access to information in the possession of the government of Victoria and other bodies constituted under the law of Victoria for certain public purposes by —

(a) making available to the public information about the operations of agencies and, in particular, ensuring that rules and practices affecting members of the public in their dealings with agencies are readily available to persons affected by those rules and practices; and

(b) creating in general right of access to information in documentary form in the possession of ministers and agencies limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by agencies.

(2) It is the intention of the Parliament that the provisions of this act shall be interpreted so as to further the object set out in sub-section (1) and that any discretion conferred by this act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

The purpose of the act is to facilitate the disclosure of information at the lowest possible cost. By leaving the $170 fee in place the Attorney-General has imposed a penalty on persons who seek information. There is no incentive for departments to release information or to respond to an FOI request. Why would they bother, particularly as we near an election.

I have little doubt that instructions have gone out all over the place. Because an election could be held in June, July, August, September, or who knows when, departments have been told, 'Don’t release anything to Hulls! Don’t release anything to Thwaites! Don’t release anything to Bracks or Mildenhall or Kosky!

Don’t release anything to the opposition, let them simply pay the dough and take their chances at the 'VCAT'.

The clause that has been inadvertently left in place by the Attorney-General clearly breaches the spirit of the legislation.

Mrs Wade interjected.

Mr HULLS — The Attorney-General now says with a wry grin, 'I deliberately left it in place'. That is exactly what she did, and the opposition knew it. She is not kidding anyone. I understand your ruling, Mr Deputy Speaker, and I have no doubt the Attorney-General will get upset by this, but that shows the vindictive nature of that decision. At 20 minutes to 4 on the second-last day of the sitting before an election the truth about the freedom of information legislation has been revealed. The Attorney-General previously said she had inadvertently included the clause in the bill. Now she is saying that she deliberately left it in place.

The honourable member for Doncaster has moved on to the front bench. I notice he is getting closer and closer to the Attorney-General’s position. And he does not live too far from Kew, either. It will be interesting to see what occurs when the Attorney-General announces her retirement on Tuesday.

Mrs Wade interjected.

Mr HULLS — I never get excited when the Attorney-General is here, but it will be interesting to see what occurs when she hands in her resignation, throws her hands up in the air and admits defeat on Tuesday.

The government has used other dirty tricks with the scrutiny of the — —

Mrs Wade interjected.

Mr HULLS — This is right on the bill — the use of credit cards. One of my favourites was the Premier’s department’s refusing to release credit card documents for a year because it said it had to consult with all the companies from which purchases were made. For a year government representatives went around asking Safeway, shoe stores, health farms, stationery suppliers, computer shops, restaurants — a lot of restaurants! — international hotels, airlines and Greek stores that sell sunglasses whether or not they minded if the receipts could be released to the opposition. Most honourable members are laughing, but that is what occurred.
When the credit card scandal first came up the Premier continually said, ‘We have no problem releasing these documents. We congratulate the honourable member for Niddrie for scrutinising credit cards and credit card expenditure’. However, it has been 12 months in some cases to have released documents that the public had a right to see. One case has involved an inquiry by the Ombudsman that has gone on for almost two years. Surely under an open and transparent government members of the public are entitled to know how their money is being spent when ministers use credit cards. Instead the Premier’s department said, ‘No, we can’t release the stuff yet, because we have to consult with all the shops’. What nonsense!

The Attorney-General and the Premier now have a favourite trick — they appeal, even when the release of documents is ordered by a court. The government is spending even more taxpayers’ funds by appealing to the Court of Appeal in almost every case in which the VCAT orders the release of documents. I will cite a few examples. The casino tender process is still before the Court of Appeal. The matter has gone on for three years and the opposition has won on every single occasion it has appeared before the court. The government appeals to the Court of Appeal in an endeavour to continue to hide documents.

Mrs Wade interjected.

Mr HULLS — The Attorney-General interjected and said, ‘That’s why we have an appeal process’. I will respond shortly.

Mrs Wade interjected.

Mr HULLS — The Attorney-General again interjected and said, ‘That’s why there is an appeal process’. I will return to that.

Mr Perton — What’s wrong with that?

Mr HULLS — I will tell you what’s wrong with it in a minute.

Mr Perton — Do you want us to abolish it?

Mr HULLS — No, to use it in appropriate cases.

The government has appealed to the Court of Appeal on the Intergraph affair, the privatisation of the Latrobe hospital, the tender of the Bairnsdale Regional Health Service and the casino tender process. It appealed in all those cases, yet in the case which matters and which the legislation is all about — the case involving 51 nurses whose names were released to a convicted triple murderer at Frankston — it has done nothing. It rolled over and turned to jelly. Instead the Attorney-General said, ‘It was the hospital’s fault’, or, ‘It’s not worth appealing, let’s change the legislation instead’. That is a backdoor way of closing down freedom of information in Victoria. It is grossly hypocritical, inappropriate, improper and unethical for the government to use the 51 innocent nurses at the Frankston Hospital for political purposes.

Ms McCall interjected.

Mr HULLS — That is exactly what this is all about, and it is exactly what the honourable member for Frankston will be doing if she supports the legislation. She will be saying, ‘I am prepared to use 51 innocent nurses at the Frankston Hospital for political purposes’.

Ms McCall — How dare you.

Mr HULLS — The government should have appealed, but failed to do so. It is using the nurses for political purposes to close down FOI in Victoria. It is an outrage, improper, inappropriate and unethical. The opposition will not be a party to it, and I would hope that fair-minded government members will also not be party to it.

The appeals are not cheap. They cost hundreds of thousands of dollars of taxpayers’ funds. That was what occurred with the casino case. In that case Judge Wood of the VCAT said it was important that the casino documents be released. I refer to that case because it highlights the need for the names of public servants to be released. If this legislation had been in place at the time the opposition sought the casino tender documents under FOI, the opposition would not have got even this far, and the public would have been kept totally in the dark about the casino tender process. It was only because the opposition had released to it names of bureaucrats and third parties that it was able to get some information about the casino tender process.

Judge Wood said that the release of the documents would benefit the public because they would be:

... placed in a position whereby they are better informed and thus able to promote public debate on a matter that affects them.

He also found, given the position of Mr Ron Walker as federal Treasurer of the Liberal Party, the principal of Melbourne Major Events and a friend of the Premier, that:

... the public has a legitimate entitlement to be satisfied to a higher degree than perhaps would otherwise be the case that its interests were best served.
That was far too much for the Premier. He simply refused to concede that the public had any right to know what he and his mates were up to with the casino tender process. That is yet another reason why the bill is before the house.

The bill is nothing more than a backhanded attempt to shut down freedom of information. The bill is clear in its intention — that is, to establish a barrier to an applicant receiving documentation from a government agency in a timely fashion, as is provided for in the Freedom of Information Act. The bill will do that by placing a new blanket ban on information that identifies a public servant or a third party. It will make every public servant in the state a secret agent of the government. If the bill is passed every public servant in Victoria may as well wander around in a trench coat and a balaclava and use his or her shoe phone. It is Maxwell Smart legislation. It will turn bureaucrats and public servants into mini Maxwell Smarts.

The legislation is extraordinary and will affect every Victorian who wishes to access files via the act by making it impossible. The Attorney-General has virtually admitted that. She stated — —

Mrs Wade interjected.

Mr HULLS — An article by Sandra McKay entitled ‘Wade expects row on FOI change’ appeared recently in The Age. Unfortunately I do not know the date of the article, but it is incisive. It states:

Experts say proposed FOI changes will make the government less accountable.

The article then refers to the Attorney-General:

Mrs Wade said that it was a ‘very limited amendment’ but conceded it would make it ‘a little bit more difficult’ for the opposition to trawl for documents.

A little bit more difficult? Try impossible!

The Attorney-General has admitted the bill will shut down the opposition’s and the public’s scrutiny of the government. Not only will the bill make it more difficult for the opposition to access information, which is her plan, it will also make it more difficult for every Victorian who from time to time needs to access information. The Attorney-General has ignored that aspect of the bill. For instance, mental health centres use the act to advocate on behalf of clients with mental illnesses. One has to ask why the Attorney-General wants to pass a bill that will make it virtually impossible for people to argue on behalf of the most disadvantaged members of our community.

The Mental Health Legal Centre is appalled by the bill. In its submission to the government the centre states — —

Mr Perton interjected.

Mr HULLS — The honourable member for Doncaster interjects by saying ‘I do like them, but it was not a good submission’. He says it was not a good submission because he does not agree with it.

In its submission the Mental Health Legal Centre said the bill will have a detrimental impact on the:

... important individual rights to access health and other sorts of personal records.

As well as the clear detriment to public scrutiny of government, there are important individual rights which will be denied by the amendments to the Freedom of Information Act currently before Parliament.

For users of public health services, freedom of information goes some way to restoring the power imbalance between medical practitioners and service users. These changes will undermine that right.

The Villamanta Legal Service, which has a superb reputation in Victoria, represents people with severe intellectual disabilities in their interaction with government departments and agencies. The legal service, which works at the coalface in this area, describes the bill as follows:

It will not achieve the purpose it sets out to achieve.

It will be expensive to administer.

It will be time-consuming and labour-intensive for those who must administer it.

It disadvantages people with disabilities, especially those who have a mental impairment.

It renders most files of our constituents unintelligible.

People with disabilities who have a mental impairment will be denied by the amendments to the Freedom of Information Act currently before Parliament.

The burden of proof is unfairly onerous on the applicant.

What a damning indictment of the bill! The bill is so fiercely opposed by all organisations that use freedom of information because it sets up a fairytale process in the Victorian Civil and Administrative Tribunal for accessing information, including personal information. As a result, the VCAT will be inundated with applications by people wanting to obtain documents that contain personal details. The hearings will become farcical. They will involve many unrepresented
applicants having to prove that it is reasonable that they
have access to information in documents that they may
not have any knowledge of — and they may not be
aware of the subject of the document.

A submission will go something like this: ‘Look, there
is a document I know nothing about. I want to prove to
you that although I know nothing about it, I should
have access to the personal information in it, although I
do not know who it relates to and I do not know how it
came into being’.

The fact that the applicant has to prove anything at all is
an appalling reversal of the traditional onus on
respondents to establish why documents should not be
released. The government is saying, ‘Prove why you
should get access to any document’. The government is
fundamentally gutting the Freedom of Information Act.

The procedures in the bill are targeted directly at
preventing scrutiny of credit card abuse. When the
opposition or anyone else wants to find out who has
credit cards in a government agency such as Vicroads,
for instance, the traditional practice has been that
agencies have supplied lists from which names are
selected and documents sought. Under the bill, such a
list would not be released without a full VCAT appeal
and, most likely, a full hearing. That would occur only
after every single credit card holder had been personally
contacted to allow him or her to object to the release of
his or her name. In the case of Vicroads, that may
require hundreds of employees being contacted. The
process would delay for months, if not years, the
release of credit card documents that reveal where
taxpayers’ money had been spent. The truth may hurt
the Attorney-General, but that is the fact of the matter.
The bill specifically targets credit cards, and such lists
will no longer be provided.

The truth behind why the Premier, the
Attorney-General and the government have prepared
the bill was commented on by that renowned
freedom-of-information expert, Mr Rick Snell. He said
the Premier had seized:

... one incident — a little like the dictators in any
authoritarian regime — to serve as a justification to dismantle
one of the few remaining operational elements of civic
governance in Victoria.

The Premier’s rantings about the pale of decency to resolve to
scrap FOI, if necessary to protect the safety of Victorians left
on the public payroll, reek of political opportunism.

The bill represents the worst form of political
opportunism. It will have a lasting and devastating
impact on all Victorians because it steals from them a
basic democratic right. I suspect the bill is the final
blow to the Freedom of Information Act and to the right
of people to have the information they need to make
informed decisions about the performance of the
government.

I am sure the Minister for Youth and Community
Services will agree that to deny people information is to
steal from them their fundamental right to participate in
the democratic process.

Ms Mccall interjected.

Mr Hulls — The honourable member for
Frankston simply shakes her head. I suggest the
honourable member read the Fitzgerald report, because
that is what Fitzgerald clearly said — to deny people
information is to infringe on their democratic rights.

The opposition believes that to deny people information
is to steal from them their fundamental right to properly
participate in the democratic process. That is the worst
kind of theft that can be perpetrated on the citizens of a
supposedly democratic state. By supporting the bill the
Premier, the Attorney-General and members of the
government are aiding and abetting in the theft of a
sacred democratic right, which is the right to know.

Honourable members should cast their minds back to
what the Premier said when he opened Parliament for
the first time as Premier in 1992:

The state will have open, honest, accountable government.

He did not say that at the Comedy Festival, he said it at
the opening of Parliament in 1992. He misled the house
and the people of Victoria when he said those words,
and the bill is proof of that. The spirit of FOI has now
been snuffed out. Under the Kennett government FOI
means ‘frightened of investigation’. The opposition
opposes the bill.

Mr Perton (Doncaster) — I am pleased to join
the debate and will be glad to respond to the challenge
the honourable member for Niddrie threw out to me.
He spoke well and was entertaining but he spoke
without conviction. He lacked credibility. I am
informed that at the briefing he received on the bill
from the minister and her advisers the honourable
member asked one minor question and asked for no
legal interpretations. He made no suggestions for
reform of the bill.

An analysis of the honourable member’s speech will
reveal no legal interpretation because it was all
hyperbole and bluff. He made no suggestion for dealing
with a situation that caused community outrage. While
his contribution was entertaining and loud it
nevertheless added very little to the debate on FOI in Victoria.

Victorians are living in an information and knowledge age. The global information economy is transforming society and the economy and driving people’s lives and careers in new directions. I believe that in its broadest definition the Internet will change everything, including the way Victorians govern and are governed. As a result there needs to be an ongoing process of review of government institutions and legislation to ensure they maintain their relevance in the information age.

One of the effects is an increased need for ongoing review, and whenever freedom of information is debated it needs to be placed in the context of a clash of two fundamental values. The first is transparency of government. As much as is possible or practical the aim should be to have visible and transparent government decision-making. I am sure most members of the public are not interested in every piece of minutiae about government activity, but that does not mean we should not make information available to the public as much as is possible.

A second fundamental value of the modern age is personal privacy. As I look at the honourable member for Footscray and the Leader of the Opposition I do not believe that in their hearts either of those men would argue against the proposition that there needs to be great protection of privacy. There is no doubt that the provisions and practices of the Freedom of Information Act have come under fire from every Premier and cabinet since the act was introduced.

Following the recent case in which the names of state-employed nurses were released to a convicted murderer there has been outrage from large sections of the community. There is no doubt that better legislative or administrative safeguards are needed to prevent a repetition of that. I doubt that any opposition member would argue against that point. It is appalling that the honourable member for Niddrie provided no opposition to this.

What I have said is not merely my view or that of the Attorney-General. The Australian editorial 15 January headed ‘Tribunal’s decision is dangerous’ states:

The result of the review (into FOI) would be valuable if it helped resolve the problem of government accountability and its potential conflict with individual privacy.

The headline in the Herald Sun was ‘Outrage over killer’s list’. The headline article in the Australian stated, ‘Fury as killer given nurses names’. An article in the March edition of the Australian Law Journal, hardly a tabloid, states:

‘This decision, called by the Australian ‘the nurses’ names debacle’ sent shudders through the community as people realised that a single member tribunal without any notification to the people affected could shatter their privacy and security’.

Other articles fed the public fear. An article in the Herald Sun of 16 January was headed ‘Worst criminals exploit FOI laws’.

The Attorney-General’s second-reading speech states:

Existing Victorian case law has held — —

Mr Langdon — On a point of order, Mr Deputy Speaker, I am reluctant to interrupt the honourable member for Doncaster, but if he were reading notes in the way he is reading from his computer you, Mr Deputy Speaker, would probably bring him to order and rule either that he should not be reading notes or that he should table whatever document he was reading from. I am not sure what the rule is on reading from a computer.

Mr PERTON — I am happy to make the notes available to the honourable member.

The DEPUTY SPEAKER — Order! It is an appropriate time to refer to the use of computers in the chamber. Computers can be used as if they were copious notes. Provided the honourable member is able to use the computer as he would use copious notes and not be seen to be continually reading, the Chair will accept the use of the technology, particularly in the spirit of making information available. However, honourable members using computers to deliver their speeches by reading them will be ruled out of order.

I have been watching the honourable member for Doncaster very closely, partly because I am somewhat envious of his eyesight! Understanding his personal capacity to speak to copious notes, I have watched with great interest to see how he used the technology. He has been using the computer as he would copious notes. However, it is timely to advise honourable members that the technology must be used in an appropriate way. There is no point of order.

Mr PERTON — I am grateful to you, Mr Deputy Speaker, for the ruling as I think it is appropriate that the issue of the use of computer-based notes be determined.

The second-reading speech states:
Existing Victorian case law has held that a person's name or other identifying details do amount to personal information and so render a document containing that information exempt — that is, as I have said, releasable with the deletion of that information. In the past, departments have removed personal information from requested documents on this basis.

The honourable member for Footscray asked what was wrong with section 33. When I appeared at the tribunal — and the honourable member knows I appeared there many times — the interpretation of the definition of personal information was very wide.

The second-reading speech further states:

The recent Victorian Civil and Administrative Tribunal decision of Coulston, however, went against this line of authority. In that case, the tribunal ruled that a hospital roster showing the names of nursing staff on duty on a particular night did not contain the personal information of those nurses and was, as a result, releasable under the act.

The legal advice that I have taken since that time indicates that the lines of legal authority in New South Wales and Queensland were heading down that track. The decision demonstrated a changing understanding of the definition of personal information in that the tribunal started to adopt interstate authority rather than long-established Victorian tribunal interpretations.

An article by journalists Kristin Owen and Damon Johnston published in the Herald Sun of 23 April states:

The tightening of the law was prompted after the names of Frankston Hospital nurses were released to convicted triple murderer Ashley Mervyn Coulston in January.

An article in the Australian of 7 May correctly states:

The ban is designed to protect public servants from invasions of privacy and threats of harm, after the release of 51 nurses’ names to convicted triple murderer Ashley Mervyn Coulston late last year.

I have no doubt that the Frankston Hospital and its network management acted badly. In her commentary as reported in the Age of 15 January the Attorney-General stated it was unfortunate that the hospital had no legal representation at the case. The report further states:

... its failure to appeal against the decision meant that it would not be reviewed by the Supreme Court.

I am extremely annoyed by the attitude of Mr Robert Polk, who is identified in the article as the chairman of the Mornington Peninsula Health Care Network. Mr Polk is quoted as saying:

... on its earlier legal advice, the hospital had been 'supremely confident' of winning the case and had not bothered to send a lawyer to the hearing ... Jan Wade is entitled to say it was a pity, and maybe it was, but the decision (not to appeal to the Supreme Court) was made with the best available information at the time.

He should hang his head in shame. Quite clearly the government and the public were expected to do something about that sort of aberrant decision. The honourable member for Niddrie says it is a one-off aberrant decision. A case involving intoxication and criminal liability comes to mind. In the Nadruku case in Canberra a large rugby player assaulted two women but was subsequently found to be not guilty because he had drunk too much alcohol to form an intent.

The New South Wales Labor government introduced legislation within weeks after a similar incident and it totally changed the nature of New South Wales criminal law arising from one aberrant decision in that state.

There is no doubt that there is a need to get the balance right between privacy and transparency and it is a mixture of law and practice and procedure.

Mr Mildenhall — Are you praising Carr, then?

Mr PERTON — I believe Mr Carr is one of the worst villains in this case, and freedom of information legislation in New South Wales is much more narrow than it is here.

The Herald Sun editorial of 15 January is headed ‘An outrageous FOI gaffe’ and it agrees with the view that Mr Polk should hang his head in shame.

The issues involved in this debate are not black and white. There is always a balance to be struck between privacy and transparency, just as there is always a balance to be struck between freedom of speech and the law of defamation.

I am reminded again that legislation in Western Australia and the Commonwealth of Australia, the bill in the United Kingdom, and the legislation in the federal jurisdiction of the United States of America and in British Columbia all contain provisions seemingly aimed at protecting the privacy of individuals. It appears that, with the exception of Western Australia, names of third parties in these places are, at least prima facie, to be deleted from the documents prior to release under freedom of information legislation.

I do not know how many members have seen the Al Pacino film City Hall, in which Al Pacino's character, the mayor of New York, John Pappas, says:

Okay, Pappy. Think of it as colours. There's black and there's white, and in between there's mostly grey. That's us. Now grey is a tough colour. Because it's not as simple as black and
white. And for the media — certainly not as interesting. But — it's who we are.

If we consider the continuum between total transparency and total protection of privacy, the answer lies in the middle. If the opposition had been prepared to be a little more bipartisan, if it had been prepared to negotiate, and if the honourable member for Niddrie had attended the meeting with the minister's advisers and put up some suggestions for reform, perhaps this would have been a more bipartisan debate.

I believe there is feigned moral outrage by the opposition in this case. The honourable member for Niddrie is reported in the Age of 23 April as having said that the amendments:

... could well be a backdoor way of closing FOI.

I think he re-read that quote during his speech today. The editorial of the Age of 11 May rightly cuts him down to size:

Political parties traditionally love FOI until it is used against them. Even the Cain government, which introduced FOI laws in Victoria, sought to narrow the act's scope when it became a thorn in its side.

In the early 1980s FOI was transplanted from the United States and Scandinavian practice into our Westminster system to provide additional access to government documents. It was not at the core of the Westminster system before that, and the mother Parliament, the United Kingdom Parliament, received its first FOI bill only on Monday of this week — I shall refer to that bill further.

In the late 1990s I believe FOI is failing to live up to the purpose for which it was intended. It is also being superseded by new legislative and technical developments. It provides only one of several avenues by which citizens can gain access to government information and in this sense the current debate on FOI is rather narrowly focused. The principles underpinning FOI remain important. It is essential that government remain open and transparent, unless publication is against the interests of the public or the individual, as in the Frankston nurses case. In this respect the criticisms of the bill and members of the government are in full agreement on many issues.

A letter to the Age dated 27 January from Professor Marcia Neave and Bernard Bongiorno, QC, states:

The Freedom of Information Act helps to ensure the accountability of government. By giving people access to government-held documents, it contributes to the transparency of government decision making and allows people to obtain information for personal purposes including litigation.

The key word there is 'contributes'. It is only one of a large number of mechanisms.

Surprisingly, Ms Moira Rayner and I are in full agreement on her comment in an article in Eureka Street dated March this year:

Faith in justice, and open and accountable government, is the foundation of community ...

Further, the Lord Mayor of Melbourne, Peter Costigan, bought into the debate on 18 January in a Herald Sun article which makes interesting reading:

In threatening to abolish freedom of information laws should anybody get hurt after last week's stuff-up involving nurses, Premier Jeff Kennett should beware throwing out the baby with the bath.

I certainly think that is something the Premier and the Attorney-General have taken into account in the relatively minor amendments contained in the bill. I note the Minister for Planning and Local Government nodding in agreement. The article continues:

The fact that FOI could be used to appeal to the Victorian Civil and Administrative Tribunal after the hospital had twice rejected the murderer's request is a strong argument for reviewing and tightening the law, but not for abolishing it.

That is very important. It continues:

No FOI law proponents in the late 1970s and early 1980s ever envisaged FOI being used as part of the criminal law.

His comment has been followed up in a number of newspaper articles, and I think he is certainly right.

I turn now to other critics of the bill. The honourable member for Broadmeadows referred to me in the following terms on 6 May:

... the honourable member for Doncaster, who is an expert on freedom of information. As an opposition member he used freedom of information processes 1800 times.

I have nightmares about that. In this debate the honourable member for Niddrie was quite flattering when speaking of me, saying, 'This bloke really knew how to use FOI!'. Whether the honourable members are right or wrong, I have certainly had the opportunity to think about these issues over 20 years of professional interest in this area of policy.

The Victorian debate on freedom of information and transparency is echoed across the commonwealth — from India to Ghana and England. The Westminster parliamentary system, with its roots firmly entrenched in the 18th century, is now set within a very different era. Its treatment of information, knowledge and decision-making should come under serious review as
the information age creates new and often unprecedented issues — like international monopolies, pornography and taxation — which go well beyond the capacity of individual federal or state governments to deal with them.

In espousing this view I was recently quoted by the Age as saying:

Over the next 5 to 10 years you will see other developments that will probably render the 1960s, 1970s concept of the act redundant.

The Tasmanian FOI expert the honourable member for Niddrie relied on in his contribution is one Rick Snell, who writes in the February edition of the Freedom of Information Review in response to my comment:

Victor Perton is right. The relevance of freedom of information legislation does need to be questioned. However I believe any review or reconsideration of FOI ought to be designed to rejuvenate rather than bury this crucial part of our democracy. At least Victor Perton offers a critique, which can be sensibly examined and debated. He still shares the objective of the reformers of governmental practice and operation who saw FOI legislation as a necessity for citizens who wanted to be part of the democratic process. Victor Perton is merely questioning the efficacy of FOI to still perform these functions in the 1990s.

Further in the article he goes on to say:

So why do I think that Victor Perton has a point although disagreeing with his conclusion? First, the basic design principles of FOI legislation need to be revisited. Second, in light of a failure of political and bureaucratic leadership to ensure compliance with both the letter and spirit of the legislation there needs to be a rebirth of access legislation designed to nurture democracy into the first decades of the next century ...

Yet as Victor Perton points out, FOI is based on a mind-set designed to the 1960s and 1970s. More importantly FOI was designed on the assumption that the public service was indeed civil and would administer the act not only in compliance with the letter of the legislation but to advance the intent of the legislation.

While in opposition I was very much aware that the Labor bureaucrats had no intention of advancing the intent of the legislation. Mr Snell continues:

We need to reassess many aspects of FOI. The Australian Law Reform Commission and numerous other reform suggestions from organisations around Australia like the NSW Ombudsman, and the information commissioners of Western Australia and Queensland, have already done all the hard work.

Parliamentarians of vision, like Victor Perton, need to remember why they used FOI in opposition, why they would vote for its introduction if it was not already on the statute book and to remember how easily the fabric of democracy falls apart without the weave for openness and accountability.

I do not believe any honourable members would disagree with any of those assertions.

Mr Macellan interjected.

Mr PERTON — As the Minister for Planning and Local Government has rightly pointed out, and I think Mr Snell would agree with the minister’s interjection, that is so long as nurses’ names cannot be given to a convicted triple murderer serving a prison sentence.

I wish to talk about the future of freedom of information. As I said earlier, the rapid transition to the knowledge society is creating changes in economic and social activity. The government recognises the advantages of being a front-runner in this transition period and is now a world leader in the electronic delivery of information. It was the first government to appoint a minister for multimedia and it has actively encouraged the take-up of information technology, not only in government but also in business and within the wider community. Through the education system initiatives such as the Skillsnet program, computer training and the placement of Internet-connected computers in public libraries, all citizens are now able to gain access to Internet training facilities. In his most recent book Mr Bill Gates refers in glowing terms to the Victorian government’s delivery of electronic and education services.

The government is being transformed through the implementation of new technological tools. The government’s publication on the web — www.vic.gov.au — and its provision of laws on line — www.dms.dpc.vic.gov.au — are world best. Its electronic service delivery system — www.maxi.com.au — is designed to provide customer-focused services 24 hours a day, 7 days a week. The aim is to create the simple appearance of one face of government for all public transactions. The initiative has won numerous international awards and has been described as a world leader by Bill Gates and the G8 online committee. It is being used as a prototype by other governments including the Hong Kong government.

Governance is the issue. While most members of Parliament have embraced laptop computers and Lotus Notes, the Westminster parliamentary system has been slow to evolve and respond to the changes accompanying the information age. Last December the Commonwealth Parliamentary Association convened a Round Table conference in Cape Town to examine the interface between Westminster parliaments and executive governments. All the members of Parliament present, whether they were from India, Malta or New
Zealand, held the unanimous view that Westminster parliaments have become excessively adversarial. The one cause for optimism is the performance of policy-making parliamentary committees. All the backbench members present on this side of the house certainly participate in those committees.

The Westminster institutions, which had almost fully matured by the mid-18th century, are showing signs of stress as they prepare to enter the 21st century. While our economies, societies, corporations, education systems and executive governments are all moving from the industrial age to the information age, many of our parliamentary practices remain mired in the pre-industrial age. Surely in 1999 we are entitled to ask whether the trial by combat approach of the Middle Ages is appropriate for a knowledge-based economy. Truth is better found through collaboration than confrontation.

In the traditional Westminster model question time is the primary means of providing transparency. However, most of the media coverage of Australian politics is confrontational — it becomes 6 minutes of infotainment replayed shortly after 6.00 p.m. That exacerbates the adversarial nature of question time. Oppositions use it to grandstand before the media and governments use it as a convenient forum for ministerial announcements. Our elections, parliamentary processes and political dialogues take on boxing match auras because it is perceived that adversarial antics rate well.

There is almost universal public disgust about the antics of question time. In fact question time and questions on notice contribute little to government transparency. It is time for Parliament to improve its performance as a conduit of information between government and the governed. Given that members of Parliament are now able to gain access to the entire world via the Internet using laptop computers in the chamber, and the government is becoming increasingly open by including its own publications on the Web — www.vic.gov.au — it would seem to be a time for change. If the process does not change, in a few years when the Internet is in practically every household there will be an irresistible push for a high-tech Swiss model of direct democracy on public policy issues. The Independent candidate for the American presidency last election, Mr Ross Perot, scored almost 20 per cent of the vote on that platform alone.

Former Premier John Cain introduced the Freedom of Information Act to achieve two aims — to provide personal access to personal records held by government, and to enable public collaboration in policy making. However, over the years it has become predominantly a means to discover amusing and embarrassing details about government mistakes and cover-ups, particularly under Joan Kirner’s government; to provide florid exposes on expenses, such as those outlined by the honourable member for Niddrie is his contribution; and to occupy the time and resources of opposition tribunals in the public service.

In its aim of providing citizens with access to government-held personal data, the Freedom of Information Act has been successful. However, within 12 months those provisions will be superseded by the Data Protection Bill, which is on this week’s parliamentary agenda and which will provide better safeguards and access. Data protection statutes impose positive duties on government agencies, including ensuring that the data is accurate and up to date.

John Cain’s second aim of having freedom of information contribute to public policy debate was never met. It failed because the methodology is clumsy and opposition members and the media seldom make timely requests for documents for that purpose. Other mechanisms are now available that open up the policy-making process. The government is well served in being able to circulate its deliberations electronically and being able to collaborate with the widest possible circle of knowledgeable people. The boundaries between government and the private sector are increasingly blurred and there is a clear need for better collaboration. With the reduction in the size of the public service, governments around the world must increasingly rely on input from consultants, institutions and the public.

Parliamentary committees provide one means for consensus policy making and public input. That is an area where Parliament has led the way for decades and where we find some optimism for the future of our parliamentary institutions — www.parliament.vic.gov.au.

Victoria is regarded as one of the OECD’s best-practice models for public input in the making of regulations. I urge honourable members to look at the Law Reform Committee’s report on this matter, which can be found at www.lawreform.org.au/ref. The fundamental elements in making regulations include negotiated rule-making with interested parties, social and economic cost-benefit analysis, public consultation, parliamentary veto and sunsetting rules after 10 years of operation.

That approach has recently been extended to several bills. For instance, the development of draft legislation on data privacy and electronic commerce —
I conclude with some thoughts about the future of FOI. Documents are often sought under FOI for the purpose of embarrassing people in public life. As an opposition member I enjoyed reading policy documents but, like members of the Australian Labor Party of today, I used my access to embarrass government members. The act was and is a clumsy tool for government accountability. One has to be able to identify documents accurately, and as acknowledged by the honourable member for Niddrie both the applicant and the government face high processing costs.

FOI provides only one form of information flow. As we move to a more knowledge-based society it needs to be weighed against data protection and privacy needs and compared with other methods of ensuring that government is kept open to scrutiny and accountability.

The mechanisms available to the still-resolute Auditor-General and his robust system of examination of public accounts should be sufficient to establish whether illegal or immoral use of government funds takes place. However, until the public is satisfied that these mechanisms follow up legitimate suspicions, the role of FOI will remain important. I personally favour a model that reverses the current structure of the Freedom of Information Act. Free and open publication of documents is demonstrably in the interests of the community. Almost all documents are electronically produced, and as the government is committed to Lotus Notes, documents will become continually easier and cheaper to publish.

There is an informed view that documents which disclose cabinet deliberations, which are crucial to the economic and negotiating positions of the state or which contain sensitive personal or commercial information need to be protected. The question of where the limits to this protection ought to lie is open to debate and litigation. The government’s role is changing, and the Kennett government is broadening its traditional consultative methods in the way it communicates both internally and with the wider community. In this context a review of our knowledge-sharing processes is well warranted.

In summary, Mr Acting Speaker, the critics of the bill acknowledge that there is a problem that needs to be solved. If opposition members were honest they would acknowledge that. The bill might not be perfect but it meets a need that arose as a result of a very bad decision. It meets the needs of the public and the scrutiny of the critics, so it will take us forward. We must continue as a community to review the way government shares its information with the public and harnesses public knowledge for the benefit of the state.

The ACTING SPEAKER (Mr Richardson) — Order! The www.ledgeroftheopposition.au.

Mr BRACKS (Leader of the Opposition) — Touché! Who said you don’t have a sense of humour!

The bill should not be considered in isolation but as another example, along with two other key government strategies of the past seven years, of how the government is closing down the flow of information to the Victorian public, including information that the Parliament receives and reports on. It is part of a strategy for making Victoria the secret state.

Freedom of information is fundamental. By employing both costs and hurdles, the government is using the Freedom of Information (Amendment) Bill as one instrument for making information much harder to obtain. Its second instrument, as we have learnt over the past couple of days — if we did not know it already — is the role of the Auditor-General. The reports by the current Auditor-General received yesterday and today are transitional reports because they act as a bridge between the old Audit Act and the new act. After 30 June we will no longer have an Auditor-General with the legislated right to audit in his own right. Indeed, it will be illegal for the Auditor-General to do so: he will have to contract the work to others. The generic report tabled yesterday, which ranges across many areas, is of a type unlikely to be seen again under the new Audit Act because audits will be contracted out. The Auditor-General will not be able to garner and receive information as he did in preparing yesterday’s report.

The government’s third instrument of secrecy is parliamentary sitting days. It uses that instrument to close down the availability of information to the Victorian public. The Victorian Parliament sits for fewer days than almost any other state Parliament in Australia. Last year it sat for 42 days, and if it goes full term this year it will sit for 35 days — outrageously few!

Freedom of information (FOI) needs to be placed in the context of those three instruments. The government is building a secret state. The Freedom of Information Act, as mentioned by the previous speaker, was introduced by the Cain Labor government because one
of its fundamental aims was to generate open and accountable government for Victoria. When that government introduced freedom of information legislation it did not do so in its own interests. The legislation was obviously going to work against the political interests of the government of the time, but it was seen as good for Victoria. Everyone must have the highest regard for a government that introduces such legislation with such motives. The Cain government put its money where its mouth was. It did not just talk about accountability; it did something about it by introducing appropriate legislation and making sure it was adhered to — and Victoria is the better for that.

Yes, it hurt. Freedom of information legislation will hurt any government. It may on occasion hurt this government, but is that not what democracy and good government are about? FOI ventilates and opens up democracy. If the decisions and actions of a government are good enough and its administrative procedures are appropriate, why should it not be subject to reasonable FOI laws? Good judgments and decisions should not be feared.

Freedom of information legislation has improved government accountability. The current Premier accepted that when he was in opposition. In those days he was a strong advocate of FOI legislation, and he brought that advocacy role with him into government when he first became Premier. On 1 October 1992 he stated in one of his initial speeches as the incoming Premier:

I hope you will be able to approach us —

he is talking about his new government —

and, except for cabinet documents, there should be no reason to hide from the public part of the decision-making process.

No reason to hide! How times have changed! Now the Premier is absolutely defensive about freedom of information. The incident at the Frankston Hospital was a godsend for the government. The Premier grabbed hold of it with both hands because it gave him the opportunity of changing the Freedom of Information Act. I note that the Premier has just waltzed through the house!

A culture of secrecy pervades the bureaucracy and the executive. In his final report on ministerial portfolios, which was tabled yesterday, the Auditor-General has this to say about Victoria under the Premier:

There appears to be a widely held belief, particularly prevalent among senior bureaucrats, that financial arrangements with the private sector should be shielded from parliamentary and taxpayer gaze.

Unless Parliament is provided with appropriate information, its capacity to exercise its constitutional right to monitor the operations of the executive will be restricted and accountability and good governance in Victoria will be irreparably harmed.

Those words are telling and stand as a warning because ministers’ attitudes to accountability are flowing down to senior bureaucrats. As I said, there is a culture of secrecy in Victoria. Given the opportunity senior bureaucrats would frame a tighter and more restrictive Freedom of Information Act to protect their interests — not the public’s — to ensure that their activities and those of ministers never saw the light of day. The Auditor-General’s strong warning should be heeded.

The opposition opposes the amendments for several reasons. Fundamentally the bill is a fraud. ‘Fraud’ is a strong word, but it is apt because the bill pretends to be something it is not — that is, legitimate. The government maintains the changes are a legitimate response to a serious problem involving the release of nurses’ names to a convicted murderer under freedom of information. But the bill is a fraud because the government has used the problem to its advantage and the advantage of the bureaucracy.

The bill was introduced on the pretext of protecting public servants. The outrageous incident I referred to should never have happened, and the government should have appealed the decision. Rather than sending legal counsel or instructing solicitors to argue the case the hospital sent a doctor. He could not answer the tribunal’s questions about certain clauses in the act. Given the context, of course the hospital lost the case. Because it had some responsibility in the matter, why did the government not appeal the decision?

Recently I was involved in a significant case involving the government’s failed bid to secure a third container terminal for the port of Melbourne and to attract OOCL, an international shipping line, to the port. I sought the documents that explained why the bid failed to ensure the reasons for the failure were exposed to the public. To fight the case the government hired an eminent QC and two instructing solicitors, who were there day after day. That is the importance the public places on matters in which it has a vested political interest. But it did not appeal in the Frankston Hospital case to ensure the tribunal decision was overturned, which would have been in the public interest.

One need only look at the decisions the government has appealed to see evidence of its duplicity. The Deputy Leader of the Opposition well knows about the tribunal decision that if ratified will force the government to
release information about the privatisation of the Austin Hospital. The government has appealed that decision despite legal advice given to the hospital that there are no grounds for appeal.

The government took no action in the Frankston nurses case because of the absence of any concern about being embarrassed by the release of documents. If it could be embarrassed, or if an issue has the potential to embarrass a minister or bureaucrat, the government will pay a silk thousands of dollars to represent it. But if it is a matter in the public interest, the government will not make the effort.

The Law Institute of Victoria says of the bill:

The bill is significant and pernicious. It introduces a new regime that is regressive, conceptually flawed, filled with practical difficulties and, ultimately, unnecessary.

I would have thought the government should have applied the same rigour to the Frankston Hospital decision as it applied to the Bairnsdale nursing home decision and the casino tender decision — and the government is refusing to rule out appealing the decision on the private prison contracts, which the VCAT has ordered to be released.

Victorian Labor is also opposed to the bill because it is designed to prevent scrutiny. It purports to do one thing but actually does something else. It is about shutting down some applications and delaying others for months.

To understand why the government has gone down this path it is necessary to examine what sort of information becomes the subject of FOI applications. As I said earlier, although from time to time all governments are embarrassed about freedom of information the former Cain government had the guts to bring it in and be accountable — it put its money where its mouth was and suffered some collateral damage as a result.

Honourable members interjecting.

Mr BRACKS — Of course they did, because damage came from it. That is what good government is about. Every time a little issue arises, whether it be the Auditor-General, parliamentary sittings or the deputy public prosecutor, the Kennett government becomes brittle and concerned and seeks to change legislation. The government changed the Audit Act to make sure the Auditor-General could not audit, and in the same way it is now seeking to restrict access under the Freedom of Information Act.

The Premier has attacked the opposition for making what he called trivial objections and applications under FOI. I ask the Premier to answer the following questions. What is trivial about documents concerning the nature of financial information received by the Premier or Treasurer in relation to bids for the casino licence? What is trivial about the opposition’s seeking details about the Fasco on automatic ticketing and the failed Onelink contract? What is trivial about the government’s plans to privatise hospitals around the state? What is trivial about documents concerning the government’s knowledge of serious child abuse cases in Victoria? What is trivial about secret government reports on the level of contamination of school sites? What is trivial about commercialisation of Wilson’s Promontory? What is trivial about the case in which I was involved and which I mentioned earlier about the need for competition in the port of Melbourne and about the failed bid to secure a third international container shipping company for the port of Melbourne?

It is only through FOI that the opposition has been able to reveal the truth about those matters, which are central to the interests of all Victorians. They are the revelations the Premier squirms about. His brittleness on the Auditor-General and on FOI provides the impetus for him to ensure he shuts them down. That is in contrast to what the Kennett opposition did prior to gaining government and what one current minister was quoted as saying in 1992. An article in the Age of 27 July 1992 quotes Mark Birrell, the Minister for Industry, Science and Technology in the other place, as saying:

I have never thought that a good public servant or a good minister has anything to hide from freedom of information … it has improved the bureaucracy tenfold and I look forward to FOI being expanded.

That is what one of the big users of freedom of information in opposition said when he came to government. The Kennett government has done everything possible to do exactly the opposite, and as happened in the case of the Auditor-General, government members have failed to take a stand against a Premier who disregards their views while he pursues his own personal agenda. If Minister Birrell still holds that view he should try to argue the case in cabinet.

Labor is opposed to the bill because it will make freedom of information unworkable. The bill is like an extract from a Yes, Minister episode. It sends applicants through FOI hoops and hurdles with the eventual hope that they will be worn down by attrition. It establishes an entirely new stage of the FOI process in a case where a document identifies a person. Most documents of interest held by the government mention persons. They might be in the form of a memo from one bureaucrat to another, from a bureaucrat to a minister or
from a consultant to a senior bureaucrat. It is nonsense to say you can have FOI working properly and eliminate names in the process. Even the list of documents that is received following the initial FOI request identifies the authors, and then you can select from that list which you wish to pursue. It is an efficient and effective way of doing it. Taking out the names would take out the real guts of FOI.

However, under the new arrangements it is very likely the applicant will be informed there is personal information in the document and it will not be released. It constitutes a new method of refusing access. In such cases the department is required to notify all persons named in the documents that an application is under way which if granted may lead to their names being revealed. That process is undertaken whether the person in question is a public servant or not. If the names of authors or consultants involved in preparing reports on important matters are mentioned in the documents it may not be possible to obtain those documents.

If the public servant or third party concerned objects to his or her name being released the matter goes to a Victorian Civil and Administrative Tribunal hearing to determine whether the name should be released. It is a bureaucratic intervention in the freedom of information process for applicants as a first step to have to go to the VCAT to argue at a preliminary hearing whether or not names should be withheld. It is an outrage.

In an extraordinary move the burden of proof has been reversed so that an applicant must prove that it is reasonable for a person to be identified when the applicant does not know who the person is. An applicant who does not have the document that is being sought, has not seen it and has no idea what it is about, must argue at the tribunal that a name in that document should be released. It would be ridiculous to try to mount such an argument at the tribunal. I can only imagine that it would be impossible for the tribunal to judge a matter when one of the parties could not identify the documents in question.

In an even stranger move the bill provides that irrespective of whether the person wants his or her personal privacy protected, the minister can protect it anyway. Even a decision by a bureaucrat to approve the release of his or her name can be overridden by the minister. The government will object to the release of names in such cases as a way of forcing applicants into another hearing, which will cost money, tie up resources and delay the eventual release of the documents.

At the end of the charade, if a name has been released but the document is still in dispute the applicant goes back to square one and must go through the VCAT procedures again. Just think how many months it would be before argument would start on the real case in the Victorian Civil and Administrative Appeals Tribunal.

The opposition opposes the legislation because of its impact not only on politicians and the media but also on ordinary Victorians. The Premier would like to categorise the debate as being about the use of freedom of information by the government and the opposition. However, there are bigger users of freedom of information legislation — that is, the legitimate users including people with disabilities, especially those with mental impairments, people seeking health records; wards of the state; public hospital patients; injured workers seeking medical records from the Victorian Workcover Authority; witnesses in police investigations; individuals seeking police records; individuals seeking Department of Education files relating to supervision and disciplinary proceedings; and public housing tenants.

Those users will be restricted because of the changes in the bill; those people will be the real victims of the legislation. The government did not think of them when it drafted the measure; its focus was merely on its own political interests. It did not matter to the government if people with disabilities, public housing tenants and many others were caught up in the net.

Honourable members should be aware of the concerns of disability advocate groups throughout Victoria about the legislation, and those concerns have been made quite clear. Many persons with disabilities have extensive files with the Department of Human Services that need to be accessed to ensure they receive the correct treatment. Under the bill, obtaining such files will be virtually impossible.

In its submission on behalf of disability groups, Villamanta Legal Service states, and this should be noted by all MPs:

If the applicant seeks personally identifying information the minister is expected to contact those persons who would be identified to consider their attitude to having their material revealed in the file.

Therefore, the process is an invasion of privacy. Villamanta Legal Service further states:

The work here is not trivial. Some human services files on clients who have been in their care are enormous.

In the first of seven files for one of our clients 62 different names were found. This was the smallest of the seven files. I
anticipate that this client’s file could contain over 1000 items of personal information.

Will the minister inspect and scrutinise 1000 different people? Of course not. The reality is that for those people with legitimate rights to freedom of information about themselves, their families and their connections, the legislation is almost unworkable. Furthermore, public servants should not be tied up with such matters. Is this the type of barrier the government wants to put in front of people with severe disabilities wishing to obtain their own files?

What about people wishing to obtain information about workplace injuries on Workcover claims? Does the government want to burden them with ridiculous processes because it wants to make it more difficult for the opposition?

The biggest recipients of freedom of information requests are the Victoria Police and the Department of Human Services. Such requests come from individuals and families, the people who will be caught up in the legislation. The bill disempowers ordinary Victorians; therefore, it should be thrown out and rewritten.

The final reason the opposition opposes the bill is that it has absolutely no community support. It is also opposed by the organisations having most to do with freedom of information requests — that is, the Victorian Law Institute, major metropolitan newspapers, Liberty Victoria, community legal centres, community agencies and experts in the field. The legislation does not say and will not do.

The bill restricts the opposition's access to freedom of information and catches in the net legitimate users, such as those seeking family and other details and those with injuries or disabilities. The government has taken a sledgehammer to a problem which could have been resolved through proper representation by government. Instead of appealing against decisions which have embarrassed it, the government should have appealed against the case involving the Frankston Hospital; then this legislation would not have been needed.

The bill is pernicious and it is wrong. The government has already placed restrictions on the Auditor-General and indulged in secrecy in closing down the Parliament. Now it is making further changes. The government will stop at nothing to restrict the flow of information and democracy in Victoria.

Dr DEAN (Berwick) — The reaction of the opposition is predictable. Of all the occasions on which the opposition has taken a political response to a piece of legislation, this really is the pinnacle. Anyone who had read the bill and understood what it will do and then was silly enough to spend time listening to the speech of the honourable member for Niddrie would realise that the response is totally unjustified and disproportionate. I asked myself why that would be the case. I sat listening to rubbish from across the table which was absolutely untrue. Anyone with the slightest degree of legal experience would realise what the legislation does not say and will not do.

The honourable member for Niddrie reminded me of a person drowning in quicksand — that is, thrashing around, yelling and taking whatever actions he or she thinks of in panic. The more the person yells and thrashes, the worse it becomes. The more the opposition makes bogus claims, shrilly proclaims dangers where there are none and continues to invent and exaggerate, the clearer it is that it is losing the respect of the Victorian community. The less it looks like a government, the less is its credibility and respect, and the more it drowns in the quicksand.

If not for the fact that opposition members deserve what they are getting from the public, I would feel sorry for them. As a consequence of their constantly taking the wrong approach to responsible legislation, they are sinking further and further into the quicksand.

After seven and a half years of its thrashing and panic reactions, the polls show the government is way ahead of the opposition. The opposition is panicking. And the first casualty of panic is commonsense. To a party whose motive is not the interests of the community but a desperate grab at getting back into power, truth is a casualty — and that has certainly been the case with some of the contributions tonight.

In their panic and thrashing around, opposition members have failed to grasp the central element of the legislation. They are completely ignoring the central point, and their argument makes them look like fools. The central point, of course, is an individual's right to privacy.

It is extraordinary that when legislation is introduced to give the worker, the underdog or the individual citizen some right to privacy or to enable him or her go to a tribunal and ask, 'Can I keep my name private?', the people who say they are the champions of the worker, the underdog and the individual citizen say no, there should be no such legislation. When individuals say, 'I do not think it is in the public interest that my name be
spread across the front pages of newspapers’, the opposition’s response is, ‘Get lost. We don’t believe there should be any legislation whatsoever to protect you’. That is an incredible stance for the opposition to take.

Never before has there been a greater need to face up to the issue of the privacy of the individual, in particular the protection of an individual’s identity. Given that an all-embracing media is becoming more orientated towards entertainment and increasingly intruding into people’s lives using technology that enables it to do so, some community response is needed. The extraordinary thing is that so far the response has come from the common-law courts. The courts are trying to push the boundaries of the existing remedies for trespass and breach of confidence to ensure some sort of mechanism is in place to protect individuals’ privacy.

The opposition has ignored the need for persons working in the public service to have the right to protect their identities. Recently I was reading through some of the case law on the issue. I was interested to see that some of the common-law cases relating to the protection of identity have been decided without the assistance of the legislation. The issue came up in the 1982 New South Wales Supreme Court decision in G. v. Day and Others — ‘G’ because the person’s identity was kept secret. A newspaper was threatening to reveal the identity of the plaintiff, who had been a witness in a court case. The matter was already in the public domain and whose names have not already been afforded. The identities of all those whose names are in that category, even those at managerial level up – there is no privacy to be afforded. The identities of all those whose names appear in the public service directory or a public telephone directory, name is already in the public domain – that is, in a government directory or a public telephone directory, or any other domain and whose names have not already been afforded. The identities of all those whose names appear in the public domain have no protection under the bill. The opposition did not mention that, did it?

In other words, the Supreme Court of New South Wales said — without any assistance from Parliament — that based on common law, or in that case, equity, individuals have the right to keep their identity private if by not keeping it private they will suffer some damage. That is all the bill does. To suggest that it does more is to attempt to mislead the public — and that attempt is associated with a panicking opposition’s decision to throw out the truth in an attempt to bolster its position.

Just because a person works for the public service does not mean he or she becomes public property. There is a balance to be achieved, and the scales that balance a person’s right to privacy and the public’s right to know are the scales of public interest. They are the scales that the VCAT and the courts use. There is a public interest issue involved in the public knowing all there is to know about government agencies. No-one disagrees with that, and the comments made by the opposition about freedom of information (FOI), suggesting that the government does not also hold dear the fact that — —

Mr Haermeyer interjected.

Dr DEAN — If you want to know who it was who first introduced FOI, I will tell you. It was the Honourable Haddon Storey, who prior to 1982 introduced the first FOI bill in the upper house. The Cain government was not the first to introduce FOI, it was a Liberal government! The opposition’s allegations about the coalition not having a commitment to FOI are rubbish. I and other government speakers are here to tell the house that we have a commitment to FOI — and we also have a commitment to individual privacy. The coalition government will not back away from those commitments no matter what the political score is.

How does one go about ensuring a balance between the public’s right to know and the rights of individuals to retain their privacy? It is not easy, but the answer is not the one that has come from the opposition, which is to do nothing. The answer is to ensure that a judicial authority weighs up the merits of the competing interests and reaches independent and objective decisions. That is how the bill will work. People will never find out how the bill works if they listen to the opposition, because it is not in its interests to tell them.

The bill will work as follows. Firstly, if a person’s name is already in the public domain — that is, in a government directory or a public telephone directory, which means virtually all public servants from the managerial level up — there is no privacy to be afforded. The identities of all those whose names appear in the public domain have no protection under the bill. The opposition did not mention that, did it?

Secondly, for those people who are not in the public domain and whose names have not already been published, the response to FOI applications starts with protection. The reason it starts with protection is that
once confidentiality is broken, it cannot be reversed. The response cannot be, 'We will release the name. Oops, now we have decided to take it back'. There is no alternative but to start by saying, 'We will not release the name'. The house should think about that for a moment. In 90 per cent of the situations in which the names of people who are not in the public domain are not released in documents, the persons requiring the documents will not ask for those names to be published. Most applications under FOI are not politically motivated. They are made by people wanting information about treatment they were given, personal information that may be on file, or information about other matters. Most of those people could not give a tinker's cuss about the names of the individuals who may be involved.

There will be no objection to most applications, but if there is — if somebody says, 'I want to know those names' — the agency must advise the people concerned, and that is crucial. Those people can then lodge an objection with the VCAT. On the other hand, they can say, 'We don't care'; and if they do not lodge any objection within the specific time, their names are released. Not only are their names released, but any application fee paid by the applicant is refunded. In those circumstances there is no cost whatsoever. Were we told that by the opposition? Not a word.

We then get to the situation where the people object. These are private individuals whose names are not in the public domain, and they say, 'We don't want our names released'. So, what happens then? The matter goes to the VCAT and it, as a judicial body, weighs the public interest, which was the point I made originally, and says, 'We understand there is a public interest in your privacy and we understand there is a public interest in the people's right to know. We will make the decision'. That decision is made by the judiciary, and any appeal from the decision is made by the judiciary. It is always a judicial body that decides whether the names will be released.

It is a scandal that members of the opposition would get up here and say, 'We will deny the rights of people who work for the public service whose names are not in the public domain and who have a right to their privacy. We will deny them not only the right to say their names will not be included, but the right to go to a judge and ask, "Can you please decide?"'.

What a disgrace that opposition members would say those people will not be given the right to go to a court. They are the people who point the finger at us and say we are interfering with the rights of people in the courts and with the judiciary, yet the same opposition says it will not allow those people to go to the courts. That very neatly exposes the position opposition members are in. They do not care about the rights of these people — and why? Opposition members have a bigger picture and a bigger aim. Their aim is to try to score political points. The second priority is the people involved, and if there is a conflict opposition members will misrepresent the legislation; they will fail to tell people what is in the bill without contemplating the other side of the argument and they will create a political furore to score political points.

Opposition members have been doing that for seven and a half years. If you want to know how well they are going and what the constituents of this state think when they see them doing that, just look at the polls.

Ms KOSKY (Altona) — The honourable member for Berwick treats the public with disdain. He is leaving the chamber because he is not interested in listening to anyone else, including his constituents. If he believes the ALP can misrepresent the bill to the Law Institute of Victoria, the media, the Villamanta Legal Service and a number of other legal organisations he is fooling himself. They are sensible organisations that are capable of reading the bill and understanding it for what it is.

The opposition knows that the legislation is designed to tie-up the freedom of information (FOI) system and confuse applicants so that it becomes unworkable. The honourable member for Niddrie previously went through the history of FOI legislation in the state, and it is interesting to note that the honourable member for Berwick mentioned that the original legislation was introduced by the Honourable Haddon Storey in another place.

If the coalition government had been committed to FOI legislation when it was previously in government it would not just have introduced the legislation; it would have implemented it. It was the Cain government that brought the legislation into being. The FOI legislation provides the public with the opportunity to tell the government when government policy or actions are wrong or bad. The government does not want to listen to that message. Good government is prepared to listen, although sometimes it is uncomfortable. Bad government will use its absolute power not to learn from those its policies harm. It will shut down all FOI legislation or make it unworkable, as this legislation does.

It is with great regret that I speak on the bill because I had hoped the government would not try to undermine FOI legislation in Victoria to this extent. The changes
will make the FOI legislation unworkable. The great benefits of FOI legislation are that it improves the conduct of government by making government decisions transparent, making government accountable for its actions, and by providing information to the public. It is paramount to good government. It provides an open, democratic and accountable society.

It is also critical in preventing corruption, looking after mates, and covering up. FOI legislation has been of great benefit to the Victorian public since it was introduced in the early 1980s. One has only to look at the government’s attempts to make secret its actions and decisions to see that this is so.

Earlier today a question was asked in the house about unanswered questions on notice concerning taxpayers’ money. The government does not want to respond to questions on notice. That is a form of the house that is designed to provide information to the opposition. The government thumbs its nose at that form. During question time today the Premier sat down because he did not want to answer a question. He was again thumbing his nose at another form of the house.

The Auditor-General was nobbled and the legislation changed so that government actions and spending cannot be transparent, accountable and audited by an independent authority. If the government wants to reduce or shut down the capacity of not only the opposition but also the public to view and assess what it is doing, it has gone a long way towards achieving it — that is, by shutting down FOI, nobbling the Auditor-General and getting rid of anyone who dares criticise the government or provide alternative advice.

That is exactly what the government has done, and one must ask why a government would want to do that. Why would a government want to make the FOI legislation unworkable rather than fixing up the problem, as the government is suggesting it is trying to do? Opposition members know why the government wants to do that; we know why the government has nobbled the Auditor-General and why it will not respond to questions on notice. It is because it has a great deal to hide and does not want information getting out into the public arena so it can be judged.

The government has made a number of efforts to water down FOI legislation to make it difficult to access. Those processes began in 1993 when the government extended the definition of cabinet documents and introduced a charge on FOI. In 1994 it raised the cost of FOI applications to $150 — a significant deterrent for many people who wished to access information that the government was not prepared to hand over. It was necessary to go through the FOI process to gain access to that information.

In 1998 the change mentioned by the honourable member for Niddrie was introduced — the paying for an appeal where government does not respond after 45 days. It has made it very difficult for applicants to gain information that the government does not want to provide. A number of barriers are put in the opposition’s way, but also in the way of a whole range of other organisations. If the government does not want to hand over the documents after a VCAT decision, it appeals and lengthens the process substantially, and of course increases the cost significantly.

If the government were really concerned about the identity of the 51 nurses in Frankston it could have appealed against the decision. Instead, the government altered the legislation to achieve what it really wanted to achieve — that is, the watering down of the FOI legislation.

The government is driven by secrecy, and a whole range of legislative changes that have been introduced into the house demonstrate that fact.

The bill creates an entirely new system of processing FOI applications where a document discloses the personal identity of public servants or a third party. Applicants who wish to obtain those names must appeal to the VCAT. In the event that that occurs the department must notify the public servants or third parties of the application and they then have 21 days in which to respond on whether they want their names to be released. If they fail to respond it is assumed they do not want their names released. I suggest the process could have been the other way around: if they did not want their names to be released they should have to respond. That would put the onus on the person whose name is on the document to make an active decision not to have his or her name released. Irrespective of whether they want their names released, the department can still object to the release. The onus is then on the applicant to demonstrate why the name should be released.

The government will attempt to argue that the opposition is capable of doing that, but I suggest there are groups other than the opposition that make major use of FOI legislation. It is really those people about whom I wish to speak in the time remaining available to me. They are people who have previously been clients of the government or its various departments or who have been users of particular government services and want to access information about their past.
FREEDOM OF INFORMATION (AMENDMENT) BILL

In a previous life I worked with the former Community Services Victoria and was involved in a number of cases of people who had lodged FOI applications. They were wards of the state who wanted to know their previous history and what had happened to them, because often they were too young to know what was happening at the time. They wanted detailed information — not just what was done, but who was responsible for the decisions. The bill will rub out the ability to find out the ‘who’.

People with disabilities want to know what has happened to them in the past and who made the decisions that have very much affected who they are today. Those who believe their children were adopted similarly want to know about decisions that may have been made when they were only 15, 16, or 17 years old. Kooris, the stolen generation, likewise want to know what decisions were made and who made the decisions that have affected them for the rest of their lives. When I worked with Community Services Victoria major changes to government policy resulted from the use of FOI in a number of cases.

FOI has exposed atrocious happenings, and a collective of individuals who have applied under the FOI legislation for information about their past has been able to achieve ground-breaking policy changes that affect future generations. I refer to the Caloola institute, which many in this house will know of, where disabled people were basically put out of sight. They were placed in the institution and some had a terrible time. Some were there for very minor disabilities — in fact some were there just because they did not quite fit in. They were put out of sight and were never released. They were kept there; some spent 40 years in the institution. Pleasant Creek is another example — a psychiatric institution where a number of clients were assaulted — —

Dr Napthine interjected.

Ms KOSKY — I apologise, it was an institution for intellectually disabled people, where a number of clients were sexually assaulted by staff. FOI has assisted those people to find out what happened to them and who was responsible for a range of actions. That matter was brought before the government to enable it to learn about what was happening in such institutions and make major changes. The former Labor government certainly made major changes: it deinstitutionalised a whole range of people with intellectual disabilities. It was able to do so because clear information was available about what had happened to those clients. It was the clients who fought the case, and the then government responded and made major changes.

Young women who were wards of the state were forced to take Depo-Provera, which reduced or restricted their opportunities to become pregnant. They did not decide to take the drug; others decided for them what should happen regarding their sexuality. Again, those women could access the information via FOI legislation.

The changes made by the bill will make it almost impossible for the sorts of people I have talked about to access that kind of information and take the action required to alter the experiences for future generations. I shall illustrate my point by referring to some examples that have been provided by the Villamanta Legal Service, which represents people with disabilities. I shall refer to what happens at present and then give an example of what would happen under the bill. A simple example is case notes. A note like:

Phoned Judith to arrange appointment with Dr Smith.

becomes:

Phoned [deleted] to arrange appointment with [deleted].

The removal of personally identifying material makes it impossible to understand what the appointment related to. It may be that the people in that case would be quite happy to have their names released, but if the person under consideration were someone who had assaulted a client that person probably would not be too keen to have that information released. Although the honourable member for Berwick said earlier that the applicant could appeal that sort of matter, if the applicants do not have the information it is very hard, particularly for people with disabilities or people who are not well educated, to trawl through and fight the system to gain the information to which they are entitled.

Another example of where the deletion of names makes things very difficult is:

Met with [deleted] and [deleted]. Joe has been quite good apart from his behaviour in the morning when he is very bossy to [deleted].

Discussed strategies.

[Deleted].

Apart from finding out that Joe is bossy in the morning we have learnt nothing. We do not know who was helping to work out strategies to deal with his behaviour. If Joe or his advocate wanted to discuss such strategies they would not know with whom to deal.
Another example is:

J has intellectual disability and has been a client of the Department of Human Services for over 50 years. I had grown up in an institution and was very dependent. Many years ago there were allegations of sexually inappropriate behaviour for which J has been kept in semi-locked up environment. No general service plan ... was done for many years. When a plan was requested, the file revealed who had been his case manager and what they had done (or failed to do) to assist J and made responsible to get things happening.

The bill will make it almost impossible — —

Mr A. F. Plowman — Why wouldn’t you appeal that?

Ms KOSKY — It may be possible for people with intellectual disabilities to have the capacity to organise legal representation to appeal that and ensure they are adequately legally represented, but it is doubtful whether they would be able to get through the system. It is also possible that the public servants questioned would mount a case for not having their names made obvious.

The bill will block people from gaining access to information or will make it incredibly tedious for them to do so.

I will refer to a matter that involved my gaining access to information under the freedom of information legislation. I was able to find out the names of builders who were involved in contracts with the Office of Housing who had not fulfilled their obligations under those contracts because they had gone broke. If I had been given a document that had all of the names deleted from it, it would have been impossible for me to go any further. The fact that their names were listed in the document meant I was able to use that information to get further information about one builder who had something like seven contracts with the Office of Housing. The builder had sworn inaccurate statutory declarations in order to gain money from the Office of Housing but he did not pass on the money he owed to the subcontractors he employed. I brought the matter to the attention of the Minister for Housing. I would not have been able to do that under the bill, and the subcontractors would have no recourse.

It is ironic that a community visitor can obtain permission to view a client file, including all the names contained in it, yet under the bill a client cannot do that. Clients are not being treated in the same way as community visitors, and they cannot even gain access to information on their own files. No other Victorian legislation would allow the individuals I have talked about to gain access to the details of their files, but the freedom of information legislation has allowed that to happen until now. Under the bill that will no longer happen.

The bill is mean spirited and designed to reduce the transparency of government activities. It also provides the potential for corruption. The government has used the excuse of what happened to the 51 nurses at the Frankston Hospital to reduce the benefits that freedom of information legislation can provide not only for the opposition but also for the public. It will be to the detriment of the government if it reduces the transparency and accountability of government activity.

Ms McCALL (Frankston) — My role as the member for Frankston is to put the record straight about the high degree of misinformation that has circulated both within the media and in the chamber. It is not my role to either condemn or condone the actions of the Frankston Hospital. The Frankston Hospital has accepted that it was ill advised about its course of action.

I take the honourable member for Doncaster to task over the supposed statement made by Mr Bob Polk, the chairman of the Peninsula Health Care Network. My understanding is that legal matters are pending about his being misquoted in the media.

I speak on behalf of the Frankston community, particularly the Frankston Hospital and its nurses, about the reaction of the community to the changes to freedom of information (FOI).

I do not consider the changes to be a knee-jerk reaction. I consider their introduction to be an action taken by a sensible government that recognised that in cases such as this the interests of the individual were being subsumed for the common good. It is important to put the record straight. The government did not appeal the decision of the Victorian Civil and Administrative Tribunal because, as the Attorney-General has quite rightly said, the government was unaware of the VCAT case until it was announced to the public on 21 December 1998. It was at that stage that the government stepped in and advised the hospital that it had been wrongly advised and poorly represented.

Some major lessons should be learnt from the experience of the Frankston Hospital. The Frankston Hospital has been quick to accept those lessons — there have been changes in staffing and it has recognised that the protection of the privacy and the rights of individual staff members must be paramount.

My contribution to the debate is in response to the community’s reaction to the fact that the freedom of information legislation has allowed that to happen until now. Under the bill that will no longer happen.

The bill is mean spirited and designed to reduce the transparency of government activities. It also provides the potential for corruption. The government has used the excuse of what happened to the 51 nurses at the Frankston Hospital to reduce the benefits that freedom of information legislation can provide not only for the opposition but also for the public. It will be to the detriment of the government if it reduces the transparency and accountability of government activity.
FREEDOM OF INFORMATION (AMENDMENT) BILL

It is significant that at both trials the judges considered that:

The circumstance that, after careful planning and of sound intellect, you invaded a private home and executed in cold blood three innocent young persons whom you did not know, highlights the heinousness of these matters.

Those are the words of Mr Justice O'Bryan as quoted in an article by Murray Mottram in the Age of 17 September 1995.

It was on that basis that the Frankston Hospital continued to resist releasing the names of the nurses who were on that shift and sought legal advice. It probably received inappropriate legal advice, but the hospital went through what it believed was the proper process. The Victorian Civil and Administrative Tribunal ruled in the end that the documents containing the names should be released, and they were released on 21 December 1998. Unfortunately the media picked up on the information and a number of less scrupulous individuals chose to make a cheap political football out of it.

Some of the nurses listed among the 51 worked under their maiden names. That is significant because it raises the question of how television crews knew enough to enable them to appear outside the nurses’ marital homes within 24 hours of the names being released.

Over the years Frankston has earned an unfair and undeserved reputation for having some difficulties: Sarah McDiarmid disappeared from Kananook railway station; and there was the difficult case of Paul Denyer being arrested in Frankston. It was understandable, therefore, that the people of Frankston became nervous when they heard that a convicted triple murderer had received the names of 51 of the nurses practising at Frankston Hospital. Most of the nurses live close to the hospital, so it is likely that their names appeared in the telephone book and were in other ways easily accessible to the public.

I have absolutely no difficulty in supporting the amending bill on behalf of the people of the Frankston community and in recognition of the problem that occurred last December. The bill is good legislation because it prefers the privacy of an individual to a perceived common good. I am happy to support the bill on behalf of the Frankston community.

Ms DELAHUNTY (Northcote) — I regard the matter as being of great importance to the Parliament.

It gives me no joy at all, Mr Acting Speaker, to have to rise and comment on this bill. What a doozy! It is a tragic testament to the lengths to which the government
will go to scurry away from scrutiny and hide from any form of debate or accountability.

This government is the master of the secret state, the spin, the marketing policy and the glossy brochure, but it is not accountable. History will judge this government very harshly — for this bill, for its attack on freedom of information (FOI), and for its enduring attack on freedom of speech in Victoria.

We will see the effect of the nobbling of the people’s watchdog, the Auditor-General. The Auditor-General must represent the people’s interest, through the Parliament, by watching the way governments spend their money.

We have seen the way teachers and school communities, for example, have been gagged. Freedom of information and freedom of speech are cornerstones of a healthy democracy. Democracy, however, is a dirty word in the corridors of this government.

Governments are not proprietors. The Kennett government thinks it can sell off everything that is not nailed down; but governments are not proprietors, they are caretakers of the public interest, the scaffolding of democracy and the democratic principles we hold so dear.

Freedom of information, as has been enunciated by previous speakers, is a proud and honourable tradition in this state. It was spawned on by the courage of John Cain, a former Labor Premier who knew the need for due process and principle. John Cain was a man of principle, sometimes to his own cost.

In the years since it was introduced — the opposition of the time made much use of it — the legislation has been systematically gutted by the Kennett government. The government has instituted increasing costs, greater complexity and longer waits for access, and FOI has become available only to those who can afford it.

But why should we be surprised that this government wants to gut FOI? We know Victoria is the secret state and that the government spends an inordinate amount of money and time keeping Victorians in the dark. We also know how much FOI has revealed in the past about government perfidy. We now also know, thanks to FOI, the continuing scandal of Intergraph — but the government will not acknowledge it and will not deal with it. The cost remains.

Thanks to FOI the public knows about the systematic abuse of credit cards that the government refuses to acknowledge and public money continues to be abused by public servants. Again thanks to FOI the public knows the real story about class sizes in the state’s education system. FOI has revealed the real story; not the spin or the marketing strategy or the public relations lines that have been pushed into schools by the Premier’s propaganda unit and the Department of Education. Schools are advised how to manage the government’s spin on class sizes so that the angst rightly felt by school communities is dealt with to achieve minimal negative impact on the government. Through the assiduous work of the former shadow Minister for Education the opposition discovered the real story about class sizes and it is not a pretty story. The opposition was charged $3200 to access information about class sizes.

The ACTING SPEAKER (Mr McArthur) — Order! I remind the honourable member for Northcote that the bill is narrow and that while the Chair has allowed a certain latitude to the lead speaker the same latitude does not apply to other speakers. The honourable member’s remarks should be directed to the bill and not to a general discussion of public policy or freedom of information.

Ms DELAHUNTY — The way FOI has been used but will not be able to be used if the act is proclaimed is central to the debate. Earlier speakers outlined the reasons the bill makes freedom of information totally unworkable. Issues the opposition has shared with the people of Victoria will no longer be explored and information will be denied to the people of Victoria. Information about class sizes cost the opposition $3200 to obtain but was given to the media for free — but again, it had the government’s spin.

The former shadow Minister for Education exposed the half-million-dollar man, Dr Kevin Donnelly, through freedom of information. With tremendous good luck and timing Dr Donnelly’s two companies attracted contracts amounting to some $540 000 in approximately three and a half years. That is not bad if you can get it!

An honourable member interjected.

Ms DELAHUNTY — Do you think he will be? He certainly does not have to worry about superannuation since he has earned a tidy sum from the Department of Education over the past three or four years — without tender, as the opposition discovered through freedom of information.

Surely Victoria’s poisonous playgrounds are a matter of acute public interest. Again, through FOI, the opposition learned that some 116 Victorian public schools endured drilling in their playgrounds because
the department was looking for poisons and contaminants. What damage could that have done to our precious young children? No explanation was given to the school communities. The government’s attitude was ‘Take the drills in and start banging away in the playground’. Whatever happened to the kids as this occurred was of no consequence to the government; it was all to happen in secret and no-one was to know even when it came to something as central as the students’ health. No wonder this miserable, manipulative government wants to close down a central avenue of information and accountability where citizens may learn what their government is doing.

What effect will the legislation have? The honourable member for Berwick says the ALP is in a bit of a tizz about it. A bit of a tizz about democracy! A bit of a tizz about information that is the lifeblood of any democratic discussion! The honourable member says the opposition has missed the point. According to the honourable member the point is that the bill will protect the individual’s right to privacy. That is news to most distinguished leaders in the field of freedom of information and accessibility to government. Community leaders and the legal profession in particular do not mention an individual’s right to privacy because they know that the individual’s right to privacy is already protected in the existing legislation.

The putative reason for the legislation is the unfortunate occurrence at Frankston Hospital with the 51 nurses. That could have been avoided if the hospital had chosen to protect the nurses’ legitimate rights to privacy. The honourable member for Frankston says the hospital mishandled the matter. The rights to privacy are already protected in the existing legislation. It is a furphy to say that protecting the rights to privacy is the reason for the legislation.

Honourable members do not have to take my word for it. What have the leaders in the field of FOI said about this tiny little amendment, which is how the Attorney-General referred to it? That experts were not consulted about the change indicates that the government wants to run from scrutiny.

Mr Rick Snell, a lecturer in administrative law at the University of Tasmania and national editor of FOI Review, has stated:

No other jurisdiction in Australia or overseas has even considered returning to such a dark age of public service cover-ups and secrecy.

The president of the Law Institute of Victoria, Mr Michael Gawler, said he was surprised and disappointed. He has stated:

Given there has been no demonstrated problem with the existing legislation —

I repeat, no demonstrated problem with the existing legislation —

these proposed changes can only be seen as a reduction of the accountability of the Victorian government.

Mr Gawler is spot on because that is what the legislation is about. Honourable members should be under no illusions about that.

Lawyers, academics, the nurses union and the press council have all accused the government of using the nurses case to justify dismantling FOI, yet personal exemptions that are provided for in the act were not used in that case. The bill is not about protecting nurses or protecting the right to privacy. It is about closing down accountability by the government. That is also the view held by leaders in the FOI field. If the experts in the field had been consulted perhaps the Attorney-General would have had the benefit of their advice.

The opposition knows the real reason for the bill — it is consistent with the government’s obsession with secrecy. History will treat the government harshly, as it should. Victoria will be called the secret state. It will be known as the state where everyone is kept in the dark. Good government is like good sex — it requires consent, trust and — — —

Ms Davies interjected.

Ms DELAHUNTY — It requires the communication of desires, as the honourable member for Gippsland West would know. But that is not happening because there is no information, debate, consent or accountability in Victoria.

On 8 May 1999 an article appeared in the Age entitled ‘How the Kennett government keeps Victorians in the dark’. The government has made keeping people in the dark an art form — something that I have taken a great interest in. The article states:

As the Kennett revolution rolled on, the state government found ever more subtle ways of keeping the public in the dark. It zipped the lips of thousands of state employees through employment contracts, regulations and service contract clauses that forbade people from speaking publicly.

The government has ensured there is no freedom of information and no freedom of speech. The article continues:

As privatisation has spread through the education, health, electricity and transport sectors, truckloads of information that
was previously publicly available was locked away in a corporate strongroom labelled 'commercial in confidence'.

Even the Brighton branch of the Liberal Party said that the mask of commercial in confidence posed a tremendous risk of corruption to the government.

The bill makes FOI unworkable — it makes it convoluted and contorted. It makes FOI unworkable not only for people who have a political responsibility to expose the government's misdemeanours and perfidy, but also for people who rely on access to information through FOI because they have no other avenues to find out about their own files, such as people with disabilities, wards of the state, some from the Koori community, and so on. Both the opposition and the government know those people will not be able to use FOI.

I conclude on this sad day with a quote from John Stuart Mill's seminal treatise *On Liberty*:

... a state which dawns its men, in order that they may be more docile instruments in its hands ... will find that with small men no great thing can really be accomplished.

I am ashamed to be a member of this Parliament on a day when it will pass legislation to make FOI unworkable and choke off the oxygen of the democratic state.

Mr PATERSON (South Barwon) — The introduction of the bill demonstrates a considered response by the government to what was an horrendous situation that resulted from the release under freedom of information (FOI) of information concerning the Frankston Hospital. The bill before the house is an excellent piece of legislation.

Before I respond to some specific issues that have been raised with me, it is worth while pointing out to the honourable member for Northcote that off its own bat the government referred certain issues of concern regarding the ambulance service to the fraud squad. On the issue of class sizes, the government published newspaper advertisements explaining class sizes around the state. Perhaps more attention to the truth would go a long way.

The Villamanta Legal Service in the electorate of Geelong, which is a neighbouring electorate to South Barwon, has raised concerns about the bill, and I will deal with some of those issues. Philip Grano has written to me and some other members of Parliament. Although I do not know him personally, I am informed by the honourable member for Doncaster, who knows Mr Grano personally, that he is a genuine chap, so I assume he has raised these issues in a genuine way.

The Villamanta Legal Service, which describes itself as a statewide disability legal service, has raised several concerns. It says the bill will lead to a substantial increase in the number of applications to the VCAT because personally identifying information is critical to understanding the files of mentally impaired people.

There is no evidence to suggest that the number of applications to the VCAT will increase once the bill is passed. That is because the bill will put the law in Victoria back to what it was prior to the Coulston decision — that is, that names, in effect, amount to personal information — when it was the practice of at least some government departments to remove names of third parties from FOI documents in any event.

Furthermore, personal information excludes information which the applicant either already knows or should know, and it is important to remember that. If the applicant would normally know the names of persons on his or her records — for example, treating health carers — but does not as a result of a mental impairment, the names would most likely amount to information which the applicant should know and so would not amount to removable personal information.

Villamanta believes it is unlikely that Victoria Legal Aid would cover the cost of further applications of mentally impaired people seeking the VCAT's intervention. As explained, I doubt whether there will be further applications to the VCAT, so it is unlikely that additional funding will be needed at that level.

Villamanta also gave some examples of where it thinks the bill might cause difficulties. It gave the example that 'J has contacted her local MP to complain' might become in an FOI application 'deleted has contacted her local (deleted) to complain'.

If J is the applicant, the information will not be deleted because personal information relates only to non-applicant identifying details. If J is not the applicant but rather, a third party, J may not wish the applicant to know her identity and might question why the information is kept in such records in any event. If there is good reason for the applicant to know who J is or who her local MP is, the VCAT would release the information.

Villamanta also suggests that the workload of FOI administrators could increase due to the need to remove names. Currently all documents released under FOI require careful scrutiny; FOI administrators must check them to ensure that they do not contain any exempt material, such as material relating to trade secrets. Such material must be deleted prior to release. The
documents must then be copied, and that can be a laborious process, especially with old files.

Departments and agencies should already be equipped to handle those procedures. The task of whitening out names of third parties will add little to the process. Victorian law, until Coulston — we heard about the Coulston issues in reasonable detail from the honourable member for Frankston — held that names of third parties amounted to their personal affairs and required them to be deleted where it was reasonable to do so. Accordingly, the new law should not change the practice of agencies and ministers’ offices.

Villamanta is concerned that a third party who intervenes in VCAT proceedings will be forced to release his or her own identity thus defeating the purpose of the bill. That will not be the case. It is envisaged that a third-party intervenor will be required to make a written submission to the VCAT, either directly or through representatives.

Villamanta is also concerned that the bill renders files on mentally impaired people useless. As I explained before, it is unlikely that information identifying the carer of an FOI applicant would be deleted as that is information the applicant already knows, or should know, thus rendering it non-removable. If someone else were to apply under the FOI act for the release of the files, the information would probably be deleted. If there were good reason to access it, that would have to be argued before the VCAT, and that is how it should be.

Villamanta believes the onus to prove reasonableness falling on the applicant is unnecessarily onerous. The majority of people who seek documents under FOI do not need or wish to access personal information relating to third parties. If they need or wish to do so, it is reasonable for them to demonstrate for what purpose they need the information. It should not be up to third parties to hold the burden of proof that the information should not be released. Villamanta states that people seeking documents are unsure of what ultimate use they will make of them but hope they may unlock some information through which they can move forward in their lives. That is too vague a reason to shift the burden of proof — which is a serious issue — to third parties.

Villamanta lists a number of other acts through which information held by users, and some providers, of health services may be accessed. It says that it is illogical and ironic that a community visitor can obtain permission to view a client file, while parts of it will be inaccessible to the actual client.

The bill deals with information provided under the Freedom of Information Act. It does not seek to restrict the availability of information through any other means. If a person may access similar information through those other means — for example, the Intellectually Disabled Persons Services Act — that might be the more suitable way of doing so. If provisions in that act prevent a person from seeing the whole of his or her file, there will undoubtedly be good reasons for so restricting them.

Those reasons do not relate to the bill. Villamanta also raised what it felt was a technical flaw in the drafting of the bill. The Attorney-General’s department has advised that the cross-reference in the bill is correct.

The Attorney-General and the Parliamentary Secretary, Justice, ought to be congratulated on bringing the bill to the Parliament.

Ms Davies (Gippsland West) — I feel sad about the need to speak on a bill like the Freedom of Information (Amendment) Bill. I keep hoping the government will stop tightening its hold on information and stop trying to control people’s rights to open and accountable government.

I received a briefing on the bill from officers of the Attorney-General’s department, who were at pains to reassure me of the government’s good intentions. One of the arguments they used in trying to reassure me was, ‘We included a right of appeal to the VCAT. We did not have to put that right of appeal in, so you can see we are honourable people’. They were at pains to reassure me that the aim of the bill was to protect the rights of people such as the nurses in question and that the changes were simple and limited. I am afraid they did not convince me.

The key to my concern about the bill is that the only excuse I have ever heard for the introduction of the bill is the one case in which some nurses’ names were released to convicted triple murderer Ashley Mervyn Coulston. I have no doubt at all that the release of those names to that individual was a bad thing. However, around that time the Premier was quoted in the Age of 15 January as saying that he had:

... had concerns about both VCAT and the Freedom of Information Act for some time —

that is, before the incident with the nurses. The next day, 16 January, he was quoted as saying:

Ever since FOI was introduced it has been consistently expanded and at times misused.
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In other words, it was not just the case of the nurses that motivated the Premier to start pushing for changes to the Freedom of Information Act. Given that he mentioned the Victorian Civil and Administrative Tribunal as one of the bodies he was concerned about, beware VCAT! I suggest the Premier’s concerns are based on the use of freedom of information (FOI) in the past few years to reveal the poor taste if not the illegal behaviour of government ministers and public servants who have used credit cards to indulge themselves in lifestyles my constituents have never seen the like of. Perhaps one of the other concerns the Premier has about the FOI legislation centres on the number of times he and his government have lost appeals against the release of information about the casino, ambulance services, school numbers and hospitals, et cetera.

I find the Premier’s use of the word ‘misused’ to describe FOI is ambiguous. I do not believe revealing what governments prefer to keep hidden constitutes misuse. Anyone arguing that the changes in the bill are the result of problems with the current legislation should be able to quote many more examples of misuse than have ever been quoted to me. I have not heard the Premier, the Attorney-General or justice department officers refer to anything other than the one instance involving the nurses as a justification for the bill.

Changing the legislation because of one unfortunate incident is rather peculiar, to say the least. All the people I have spoken to, including officers from the Attorney-General’s department, acknowledged that the nurses affected by that one instance of FOI being misused could have had their privacy protected if the legislation had been allowed to work as it should. The hospital could have been represented at the hearing, and the nurses could have appealed against the release of their names. That incident was bungled; it was not an inevitable result of the existing legislation. As I said, if the Freedom of Information Act is being misused, I would expect government members to be able to quote multiple examples of that misuse.

If the Attorney-General feels injured by the lack of public trust in the government’s good faith, I suggest she has no-one to blame but her government. I do not like living in a secret state. I grew up with notions of freedom of speech and my right to live in an open and representative parliamentary democracy. I accept there will always be a tension between a government’s wish to control and the public’s wish to know, but I genuinely believe the government keeps going too far. Its obsession with being commercially focused moves it too far away from the democratic model. Victorians are faced with employment contracts that keep individuals under control; commercial confidentiality provisions that remove our right to know about the deals the government is making; cabinet-in-confidence provisions that remove whole blocks of information from the public arena; and bullying behaviour by a Premier who denigrates, ridicules and silences people who do not agree with his point of view.

All those matters have changed our society, and changed it for the worst. I urge the Premier to read Brave New World. His exhortations to the populace to stop thinking and follow his vision sometimes remind me of the soma-induced haze and brainwashed population of Brave New World. This small alteration to the FOI legislation — as it has been described to me — must be treated with suspicion. I wonder that it has not caused considerable unease among people who describe themselves as traditional liberals.

The FOI legislation is not just used by people looking to correct the behaviour of government ministers and high-ranking officials. The previous speaker, the honourable member for South Barwon, referred to the Villamanta Legal Service, which has brought to the attention of members of Parliament other issues relevant to the users of FOI. The Freedom of Information (Amendment) Bill will further disadvantage people in our society who are already seriously disadvantaged. I quote from the submission of the Villamanta Legal Service, which talks about people who are disabled accessing their Human Services files:

Most Human Services files consist of notes of workers about what they have done for a client, whom they have contacted, what they have arranged, what has been said. The majority of information involves the written record of actions of persons who are identified.

For many clients these files constitute the accessible memory of a person’s life. Many clients will have forgotten what has happened to them and many will not be able to articulate what has happened. The files are crucial repositories of memory. Like memory, the files are a mixture of objective data and subjective interpretation. Like memory, the most important information concerns the people whose activities fill the pages.

The removal of personally identifying information from a client’s file will render it a less valuable instrument of memory, if not make it a wasted instrument.

It is not just those with intellectual disabilities who sometimes need to access files about themselves, to collect and gather important details of their own lives. I heard various groups mentioned today by the honourable member for Altona. Much information is rendered useless without the context of who, what and when. The addition of an onerous and extra time-consuming process of appeal where access to people’s names is required adds another layer of cost, difficulty and obstruction to the process, and it will
alienate, depress and discourage people from feeling they have a right to take control of their lives.

The change will make things more difficult for people in rural areas. There is a difference between being able to write an FOI request and posting it and having to go to a VCAT appeal, which will probably be held in the city at some later date. People will need the time, means and money to afford representation at an appeal, or they will represent themselves. People’s lives often get tangled up with bureaucracy and having the ability to take control of their lives by knowing what bureaucrats are writing about them is an important part of that control.

I accept that the government will pass the legislation, no matter what is said in the house. The government sows the seeds of its own destruction and its own future difficulties by enacting legislation such as this. I urge government members to remember that they have been in opposition previously and will be in opposition again, and that one day they will need to go hunting for information. Governments should never be so arrogant as to forget that reality. The government becomes ever more arrogant.

The bill is small piece of legislation. If I were to describe its effect I would say it is turning the screw just another half turn. I regret the government’s arrogance and blindness. I urge coalition members to hold their leaders in check. Small steps such as this can still lead governments in very dangerous directions. I urge honourable members to vote against the bill.

Mr THOMPSON (Sandringham) — I am pleased to join the debate. A number of opposition members were overtaken by hyperbole in expressing their perspective on what the bill relates to.

One need only go back to 1991–92 to see how freedom of information requests were dealt with by the previous Labor government. An article in the Age of 16 April 1992 refers to applications for information regarding a payout to a former adviser of the government and a $50 000 public opinion survey on the community’s attitudes to the government of the day’s financial management. It was stated that the former Administrative Appeals Tribunal had strongly criticised the Department of Premier and Cabinet for refusing to release the findings of the survey. The article reports the fine words of the honourable member for Doncaster:

The tribunal’s decisions were a ‘great victory’ for the public … He has been pursuing the documents for eight months.

An editorial relating to other documents and headed ‘Keeping the public free from knowing’ appeared in the Age of 19 July 1991. The middle paragraph of the editorial notes:

There have been too many cases in which ministers and public servants have dragged their feet on requests for information from the opposition, the media and others. The latest involves the Ministry of Transport … The statutory requirement is that a reply be given within 45 days.

In one case cited by the editor it took not 45 days but some 42 weeks to get a reply. I question whether speakers on the other side of the house had read the bill before they made their remarks in the chamber today.

There are some important points to be made about the bill. Firstly, the legislation is a response to circumstances that arose at a hospital in the southern part of Melbourne. A person who was incarcerated at the time sought personal particulars — names and addresses — of nurses who had worked at a hospital. Subsequently it was felt that the information was not appropriate to be disclosed to the world at large and the bill is a response to the need to protect members of the community from again being faced with that circumstance.

Although on its face the legislation may appear to lead to the non-disclosure of identifying information, if opposition members had taken time to read the bill they may have wended their way through to clause 27F(3). It states:

The tribunal cannot order that access be granted to a document to which this Part applies if, in the opinion of the Tribunal, the granting of access —

(a) would be contrary to the public interest; or

(b) would, or would be reasonably likely to, endanger the life or physical safety of any person.

Those requirements are not unfair or inappropriate in the circumstances. Non-disclosure can only be maintained if the disclosure would be contrary to the public interest or would be reasonably likely to endanger the life or physical safety of any person.

Opposition members have gone on an odyssey weighed down by hyperbole in speaking about the dark days of the end of democracy and cover-ups. Those remarks are not germane to the terminology in the bill. Early in the bill reference is made to personal information such as the information that was made available in the case of the nurses at the Frankston Hospital. The government, with the guidance of the Attorney-General and the assistance of the parliamentary counsel, has come up
with a methodology to ensure that such a case does not occur again.

Personal information is defined in the bill as relating to information that might identify any person or disclose his or her address or location. Clause 27A(b) states:

... from which any person's identity, address or location can reasonably be determined.

It is a constructive legislative response dealing with finite issues which protect the public interest in the longer term. If, for example, the public interest is not jeopardised by the disclosure of information, if the person whose identifying details have not been withheld does not object to the disclosure of the information or if the identification would not be likely to jeopardise the physical or personal welfare of the individual, the information is available and open to the public.

It is for those reasons that I fail to comprehend the journey taken by those on the other side of the house as they endeavoured to criticise a piece of legislation that on my reading recommends a constructive response to a given circumstance.

Sitting suspended 6.30 p.m. until 8.04 p.m.

Mr THWAITES (Albert Park) — The bill is another example of the government undermining the Freedom of Information Act and making it more difficult for members of the public to discover what is happening behind the closed doors of government. The government has introduced legislation year after year in an attempt to make it more difficult for the ordinary citizen to ensure that the government is held accountable for its actions and to discover the details about the way the government has treated Victorians. The government has claimed through the Attorney-General that the legislation merely restores the previous position. An article by the Attorney-General that appeared in the Age of 21 May states:

The government has reintroduced legislation year after year in an attempt to make it more difficult for the ordinary citizen to ensure that the government is held accountable for its actions and to discover the details about the way the government has treated Victorians. The government has claimed through the Attorney-General that the legislation merely restores the previous position.

If the bill merely restores a position that was generally regarded as appropriate, the opposition would not oppose the bill. However, the bill does much more than that. It destroys one of the basic principles of freedom of information — that is, that the onus ought to be on the government or the agency to exempt documents. The bill totally changes that and puts the onus on the applicant to prove that documents should be released.

The bill also proposes a fundamental restructuring of the Freedom of Information Act. In doing that it runs contrary to the philosophy underlying the act and should be opposed for that reason. The new provisions will apply to all documents because almost all documents contain the name of at least one person. Under the provisions of the act, any such document will bring it within the ambit of proposed section 27A. That section creates a completely different procedure for handling cases than has previously applied.

Previously a freedom of information officer would be able to determine whether an exemption applied and whether documents should be released — for example, if the exemption related to legal professional privilege the freedom of information officer would be able to determine whether legal professional privilege applied and then determine whether the particular agency wanted to claim that privilege and, if so, not release the document. Even if the agency and the affected person want to release the document, they will be unable to do that under the legislation. Even if all the parties want to ensure that the information is out in the public arena, they will be unable to do that.

The legislation will lead to a massive increase in the number of cases before the Victorian Civil and Administrative Tribunal. It will lead to a backlog of cases in a tribunal that already has very long delays. Agencies and applicants that are agreeable to information being released will be unable to release it. The only way that information can now be released is by a hearing or by an application to the VCAT. If there were no delays and the tribunal was operating in a speedy and fast way, such legislation could at least be countenanced. However, at a time when the VCAT is suffering from extremely long delays it is totally inappropriate to impose this legislation.

As I said, the bill will create a completely new and separate procedure that will apply to one type of exemption alone — that is, the exemption for personal documents. It is ironic that it will be much harder for an applicant to obtain information that might have the name of a public servant, even if that public servant agrees to its release, than to obtain information about legally privileged professional documents or documents concerning commercial confidentiality, or even documents that might threaten a criminal investigation.

It is extraordinary that one exemption category has been pulled out of all the other categories and had a whole different procedure attached to it.

Dr Napthine interjected.
Mr THWAITES — The Minister for Youth and Community Services suggests that we move some amendments to include all the other categories in that procedure. I am sure that will be in next year’s or next session’s bill because this government has an absolute obsession with secrecy. The bill is part of the government’s plan to impose a secret state on Victoria so that the public is unable to access information about the goings-on of government agencies.

The Attorney-General was recently reported in a press article as claiming that the bill would simply restore the previous position in Victoria. Certainly some questions have been raised about the role of the Coulston case and the way the names of public servants can be released following a freedom of information request.

Numerous decisions of the Victorian Civil and Administrative Tribunal — formerly the Administrative Appeals Tribunal of Victoria — have held that where personal names are requested, that is personal information and is therefore encompassed by the exemption under section 33 of the act. Therefore, there is no need for this proposed legislation. In the case of the nurses at Frankston the tribunal and the court could have ordered that the names be exempted, but they did not do that. Probably the main reason they did not do so is that the case was mishandled by the Peninsula Health Care Network.

However, even if there was an error in the way the tribunal handled the matter the legislation could easily be fixed without creating the huge obstacles that the Attorney-General has created in this bill. The legislation could have included a simple statement to the effect that “in section 33 of the Freedom of Information Act “personal information” shall include the names and addresses of public servants”. If that is what the Attorney-General wanted to achieve she could have done so quite simply, but instead she has completely changed the way freedom of information operates so that it will now be more expensive for applicants and the government — and therefore the taxpayer — and it will create a cumbersome procedure that will make it very hard for people to discover the truth about what is going on behind the closed doors of government.

If the government had simply wanted to restore the position that it believed applied previously it could have achieved that easily. However, it has not done so. It has introduced a new provision which changes not only the understanding of the term ‘personal information’ but also the onus of proof in freedom of information. The situation that has always applied has been quite clear. The government has always been required to prove why documents should not be released, and that has been the case for good reason: we all have a right to know what is in documentation that the government holds. That is not unreasonable. The provision is there for a purpose. A government that is open and forced to be accountable is more likely to be a good government; and a government that is able to hide behind legislation such as this is more likely to go down the path of incompetence, mismanagement or corruption.

The bill contains a number of provisions that I hope the Attorney-General will address. In particular I ask her to advise how the freedom of information officers who have to handle these cases will deal with the provision in the bill as to whether the applicant already knows the name of the public servants set out in documents. The bill states that if an applicant already knows or ought to know the personal information in the documents, the documents may be released. There is no way that the freedom of information officers will know whether an applicant knows the names of various public servants. Most applicants know very little at all. The provision represents just another hurdle that has been put in the way of people who want to discover what is happening under this government. It is a further obstacle.

The bill by itself does not destroy freedom of information, but it is yet another step down that track. It represents another brick being put in the wall between the people of Victoria and the activities of government behind closed doors. That is contrary to the objectives and the provisions of the legislation.

One of my main concerns is not so much the way the legislation will affect the opposition or the media but the way it will affect people with disabilities or those in the community who may wish to seek information about the way they have been treated in various institutions, by doctors or in hospitals. Under this bill anyone seeking such information will be confronted with a new provision that makes the whole document exempt. The applicant will then have to go off to the Victorian Civil and Administrative Tribunal, pay a $170 fee and wait for probably six to eight months — which is the current delay period — before gaining access to the full document.

The proceedings before the tribunal are sometimes complex and difficult to understand, and they are doubly so for someone with a disability. It will be a common occurrence that people with disabilities will simply give up. They will not bother trying to get the information that they deserve and need because either they will not be able to work their way through the complex process or, alternatively, they will not be able to afford it. The Villamanta Legal Service has provided
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However, it seems the real agenda of the Attorney-General and the government is not simply to keep the situation as it was before but to introduce an additional obstacle and expense to make it much more difficult for the public to obtain the information it has every right to obtain.

Mr E. R. Smith (Glen Waverley) — It is with pleasure that I contribute to debate on the important Freedom of Information (Amendment) Bill. It is a shame that throughout the debate the Labor Party has been out to deliberately mislead the public regarding what the bill is about. It is a simple bill, but the Labor Party has chosen to mislead the public because it is in its political interests to do so. As honourable members have previously mentioned, the bill follows on from the Frankston Hospital case, when nurses’ names were released to a convicted murderer. The bill introduces a monitoring system that will allow the release of names to be monitored fairly carefully.

Honourable members interjecting.

Mr E. R. Smith — No, we want to let the public know exactly what the bill is about. The aim of the bill is to give ordinary public servants, when their names appear in a freedom of information (FOI) release, the opportunity in advance to say, ‘No, I do not want my name to be released’. The aim of the legislation is not to allow a person of some prominence or a public servant whose name is on the list of government officials the right to hide behind the legislation. The legislation is there to provide a means of anonymity to people who would normally be embarrassed, as were those nurses.

Honourable members interjecting.

The Acting Speaker (Mrs Peulich) — Order! The level of audible conversation in the chamber is too high. I am finding it difficult to hear. I ask members to keep their voices down so the honourable member for Glen Waverley can be heard.

Mr E. R. Smith — The names of the nurses from Frankston Hospital were released to one of the most notorious murderers gaolled in the past few years, Ashley Mervyn Coulston. He needed the names for an appeal hearing in an attempt to have his sentence reduced. It is absolutely outrageous that those names were released.

The Attorney-General has attempted to give the little people in the public service the right to anonymity when they request it. The honourable member for Albert Park tonight merely set out to frighten people when there is no need to do so. The Attorney-General would agree there has been an incredible campaign.

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information to most members of Parliament which points out that the bill is flawed because it will make it very difficult for people with disabilities and others to obtain access to documents that in many cases are quite simple and ought to be released promptly.

It is ironic that the honourable member for Doncaster supports the bill because he was a great user of the freedom of information legislation when in opposition. In a number of cases he sought quite particularly the release of the names of public servants. In one case before the former AAT involving the then Department of Manufacturing and Industry Development he sought the release of the names of all public servants who were associated with a particular grant from the department. The tribunal held that those names should not necessarily be revealed and that it would be an unreasonable disclosure of information to reveal those names.

There is plenty of precedent for the tribunal to find that the names of public servants are exempt because they are personal information. The key point is that under the principal act the tribunal has always had the power to create a balance between, on the one hand, releasing the names in the interests of public scrutiny and, on the other hand, not releasing them in the interests of privacy. The tribunal will no longer be able to undertake the balancing process that it has previously undertaken. The power of the tribunal and that of the freedom of information officers has been removed and replaced by a cumbersome and expensive process.

The bill will not result in fewer hearings before the tribunal. I suggest it will result in probably hundreds if not thousands more hearings. I note from last year’s annual report on freedom of information that the exemption of personal privacy was claimed in more than a thousand cases. There is now a risk that the Victorian Civil and Administrative Tribunal will have to consider that matter in each of those cases. That will mean the number of cases before the tribunal will increase considerably, which will lead to longer delays.

I discussed this matter previously with the Attorney-General, who indicated that her aim was to try to keep the situation extant under the new legislation, as had been agreed previously. I would have thought there would be a way for the Attorney-General to achieve that. She could achieve it by making a simple amendment to the legislation to ensure the names and addresses of public servants are defined as personal information. This expensive and cumbersome mechanism the legislation entails does not need to be created.

However, it seems the real agenda of the Attorney-General and the government is not simply to keep the situation as it was before but to introduce an additional obstacle and expense to make it much more difficult for the public to obtain the information it has every right to obtain.

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Mr E. R. Smith — The names of the nurses from Frankston Hospital were released to one of the most notorious murderers gaolled in the past few years, Ashley Mervyn Coulston. He needed the names for an appeal hearing in an attempt to have his sentence reduced. It is absolutely outrageous that those names were released.

The Attorney-General has attempted to give the little people in the public service the right to anonymity when they request it. The honourable member for Albert Park tonight merely set out to frighten people when there is no need to do so. The Attorney-General would agree there has been an incredible campaign.
I have a long history of involvement in the FOI area. The honourable member for Niddrie said the Labor Party is there to represent the little people. I wonder how many times the honourable member for Niddrie or any other members have been personally involved in a Supreme Court case and worried about what decision would be reached. I took the Legge v. Williams, Winter and Higgs case to the Administrative Appeals Tribunal in 1988, and I won. The Premier of the day, John Cain, then Attorney-General Jim Kennan and the Director of Public Prosecutions took me on appeal to the Supreme Court.

When the case went before the Supreme Court I represented myself. On the side of those taking action against me on appeal were two QCs and a table full of barristers. The case went over two days. That complicated case — Legge v. Williams, Winter and Higgs — involved the solicitor John Gerard McArdle. I felt honoured to be allowed to go to the table. There were three learned judges of the time in the Supreme Court. The case went reasonably well; it was well prepared. But I was up against barristers of the calibre of Hartog Berkeley, QC, and Michael Black, QC — now His Honour — the head of the Federal Court. They were formidable opponents.

If I had lost the case I would have been paying the costs with my family home. The costs would have been enormous. The honourable member for Niddrie brushes it aside as a normal thing to go to the courts and win. If I had lost that case I would have lost my family home. As it turned out, when the case eventually went to court, I won and the documents were released to me under freedom of information. The pressure on our family was lifted. I took those steps because I believed in the case of Ronald Victor Legge, who I still believe was a victim. The case went as far as the grand jury, something that had never happened in Victoria in our generation — an extraordinary case.

It concerns me when members of the Labor Party such as the nurses in the Frankston Hospital case, in which information had been requested by the court, to have the option of having their names either used or not used — the option of anonymity. That is what the bill is about. The honourable member for Albert Park has had his go, so I hope he will listen carefully. He is probably at the forefront of this campaign of misinformation.

The bill gives the court the ability to ask individuals named — smaller individuals who do not have the notoriety of having their names published in the Victorian Government Directory or anything of the sort — whether they want their names to be used. It is as simple as that. The misleading information put about by the Labor Party is outrageous. If this campaign had involved honesty, as was initially intended, I believe misleading information would not have gone out to the public.

There is no monopoly on representing the little people. The Labor Party does not have that monopoly, and I congratulate the Attorney-General on having raised the status of freedom of information.

Many of us have been involved with freedom of information over the years with very little publicity but with a keen interest in looking after the interests of the little people such as Ronald Victor Legge. The government is looking after the little people. It is a shame that the intention of the campaign is to completely and utterly destroy the confidence of the little people in the freedom of information legislation being in place for its intended purpose. Many of us have used the freedom of information legislation. Some of us have taken our cases right to the top of the legal system, which may be a very worrying and fearsome experience.

I am pleased to support the Attorney-General in her attempt to improve freedom of information so that people in similar situations to the nurses at the Frankston Hospital will not be subjected to the same embarrassment and worry about personal security as the nurses experienced when their names were released to one of the most notorious murderers to pass through our legal system in the past 10 to 15 years.

Mr BRUMBY (Broadmeadows) — I confirm at the outset of my contribution to the debate that the opposition vigorously opposes the bill. I would also like to put the lie to the comments made by the honourable member for Glen Waverley, who attempted to assert — presumably on the basis of the propaganda provided to him by the Attorney-General — that the bill will
support the so-called little people. Nothing is further from the truth.

Let us look at some of the examples of the so-called little people who will be disadvantaged, set back and refused access to information as a result of the introduction of the bill. The parents of children at government schools who may want information about school records will be disadvantaged because of the bill. The parents of disabled children in institutions may want information about the care and treatment of their children, but they will be disadvantaged by the bill. The victims of industrial accidents who are on Workcover benefits may want to make freedom of information (FOI) applications to the Victorian Workcover Authority to find out the views of doctors and specialists and other professionals. Will those little people who will be on meagre and disgustingly low levels of benefits after the cuts made by the government be able to obtain that information? The answer is they will not.

What about the little people who earn $20 000 a year and want to learn about the fraudulent and flagrant abuses, the extravagance and the misuse of taxpayers' money by fat cat public servants, by staff members in the Premier's office and by people like some ministers of the Crown who buy gifts for their spouses and others on their credit cards? Will the little people be able to find out about those things? Will they be able to front up at the VCAT —

Honourable members interjecting.

The ACTING SPEAKER (Mrs Peulich) — Order! There is no point of order.

Mr Thwaites — On a point of order —

The ACTING SPEAKER (Mrs Peulich) — Order! There is absolutely no point of order.

Mr Thwaites — Madam Acting Speaker —

The ACTING SPEAKER (Mrs Peulich) — Order! The honourable member for Albert Park will sit down. There is absolutely no point of order. He has continued to interject in a disorderly fashion, which is against standing orders, and he has continued to flout the Chair.

Mr Thwaites — On a point of order, Madam Acting Speaker, I would like the Chair to clarify what standing order prohibits a member from raising a debating point in debate in this chamber.

The ACTING SPEAKER (Mrs Peulich) — Order! The honourable member for Broadmeadows was speaking across the chamber instead of through the Chair in a deliberate attempt to provoke a response. That is in contravention of standing orders. The Clerk can clarify which standing order covers that if the honourable member wishes. There is no point of order, and the honourable member for Broadmeadows will continue.

Mr BRUMBY — Madam Acting Speaker, it is not surprising that government members were shamed into leaving the chamber tonight because they know what a lie they have perpetrated in the debate. Despite the protestations of the honourable member for Glen Waverley and the other sycophants who spoke on the debate tonight, they know that the bill is designed to silence the critics, stifle democracy and stop ordinary Victorians from gaining access to public information, which is a vital part of democracy. It is no wonder the honourable member for Glen Waverley and the others have slunk out of the chamber with their tails between their legs because they know in their heart of hearts that the bill is appalling legislation.

The bill is a further nail in the coffin of basic democratic rights. It is a further step toward the creation of a secret state. It is a further step towards silencing the critics. It takes its place in a very long list of transgressions and attacks on the integrity of the Victorian freedom of information system.

The bill does not represent good government — it is cowardly government. It is gutless government. It is government of the lowest common denominator. It is...
not the sort of thing the Attorney-General should aspire to. It is government at its basest level.

The government is running away from the essential principles of open, honest and accountable government. The government is using the power of the state and the brute force of numbers instead of the power of debate, persuasion, logic, argument and merit. The government is using its majority to shut down debate and deny Victorians their basic rights to information under freedom of information legislation.

The bill should be put into perspective. It should be viewed in the context of a long line of attacks on freedom of information and on the basic rights of ordinary Victorians during the seven years the government has been in office. Make no mistake about it, the bill is about silencing the critics.

The background of the bill must be understood. I will list the critics who have been silenced, and more will be silenced by the bill. We all know what happened to the former equal opportunity commissioner. She spoke up about Fairlea prison and Northlands Secondary College and for her trouble the legislation was amended to provide for her effective dismissal.

What happened to the former Director of Public Prosecutions, Bernard Bongiorno? We all know what happened to Bernard Bongiorno, the secret telephone calls and the poisoned chalice — the glass of red wine in the Attorney-General’s living room. What happened to Bernard Bongiorno happened because he understood the importance of the separation of powers and had the courage to investigate and consider charging the Premier for contempt of court.

What happened to the judges of the Accident Compensation Commission? They were sacked. What happened to the Victorian Law Reform Commission? It was sacked. What happened to Greg Levine, the Chief Magistrate of the Children’s Court? He was sacked. What happened to a politically neutral public service? It has gone, it has disappeared, and we now have a public service where the Premier can hire and fire and pay handsome dividends to those who curry favour with a minister of the government of the day. What happened to teachers?

Mrs Wade interjected.

Mr BRUMBY — I won’t respond to the interjection by the Attorney-General; she might answer it.

The ACTING SPEAKER (Mrs Peulich) — Order! I am glad the honourable member will not do so because he would be in contravention of standing order 84. That is also for the information of the honourable member for Albert Park.

Mr BRUMBY — What happened to teachers? What happened to teachers in various positions on school councils, retired teachers on leave, when 10 000 teachers were taken out of the teaching force in this state? The government introduced teaching service order 140 to silence those teachers. What happened to community organisations, some of the welfare organisations that spoke out against cuts to child care, cuts to welfare, cuts to poverty assistance programs? What happened to them? The government introduced confidentiality agreements under which a community organisation — —

Mrs Wade — On a point of order, Madam Acting Speaker, I fail to see the relevance of the issues being raised by the honourable member for Broadmeadows. The bill is about freedom of information. At the moment he appears to be talking about matters relating to the teaching service and the ability of teachers to speak out on matters of public importance, an issue on which the opposition always appears to overlook section 95 of the constitution, which says that any person employed in any capacity by the state of Victoria should not publicly comment on the administration of any department of the state of Victoria. That provision has been in force ever since our constitution came into operation. I cannot see what that has to do with the bill before the house.

Mr BRUMBY — On the point of order, Madam Acting Speaker, this is obviously important legislation and people are going to have strong views about it. I am moving on to say what happened to the voice of disabled people in this state. As I said in my introductory remarks, they are the people most disadvantaged by this legislation. I will be moving on to talk about what happened to victims of crime.

It is again self-evident that if victims of crime want access to information about their treatment by government departments their rights will also be curtailed by the bill.

The ACTING SPEAKER (Mrs Peulich) — Order! The honourable member for Broadmeadows may not be entirely consistent in the viewpoint he is espousing; however, the themes are broadly relevant to the bill. I ask him to attempt to stick to it a little more rigidly, but there is no point of order at this time.

Mr BRUMBY — I thank the Acting Speaker for her guidance.
We need to ask the next question: what happened to the voice of disabled people? The funding for disability advocates was removed by this government, and again under this legislation disabled people, who are often unable because of their disability to express themselves fully, will be disadvantaged. They have not only had their advocates taken away, if they seek information under this legislation it will cost them more; they will have to pay for legal advice and they will wait more than a year after appeals to the VCAT.

What happened to the rights of victims of crime? We know their rights have been removed. Again, a victim of crime who wants to gain FOI access to his or her file with the Department of Justice to see how he or she has been treated and whether the relevant benefits were received will be disadvantaged under this legislation.

What happened to the Auditor-General in this state? We all know the story — the Auditor-General was nobbled and was hunted and hounded from office. What is the significance of that to this legislation? There are fewer watchdogs, fewer safeguards and fewer checks and balances, and the ordinary Victorian, the ordinary punter who wants to find out if one of the Premier's staff is abusing credit cards fraudulently, will find it much more difficult, if not impossible, to obtain that information under this legislation.

What has happened to the Parliament? That is relevant too. There are fewer sitting days, fewer questions and fewer ministerial statements. One of the only avenues available to the press and the opposition to find out about what the government is doing is freedom of information. Our capacity to do that will be curtailed under this legislation.

What happened to the rights of injured workers under Workcover? The withdrawal of common-law rights and cuts in basic benefits. If Workcover victims, work accident victims on Workcover, want to find out about their treatment and the medical assessments that have been made by Workcover in determining their benefits, they too will have their rights removed under this legislation.

Madam Acting Speaker, as I said at the beginning, this legislation is another in a very long list of attacks and transgressions on freedom of information in this state. In 1994 the definition of cabinet documents was extended, and more exemptions made it harder for the opposition, the media and the public to get information about cabinet documents. Public enterprise was taken out of the FOI system. It is a matter of eternal shame to this Parliament and this state that when Loy Yang B was sold under freedom of information amendments moved by this minister and this government it was impossible to find out the details of that contract. You could find out more information by getting on the Internet web site of the regulatory agencies in the United States of America than you could under freedom of information in Victoria.

In 1994 new fees were introduced that put up the cost of freedom of information applications. In 1995 new fees were again introduced and costs against the applicant were made possible, so you could take a case to the tribunal and if you lost costs would be awarded against you. Again, the lie was promulgated by the government that the little person would be better off. Nothing could be further from the truth. Imagine the average punter on $20 000 or $30 000 a year going to the VCAT, losing the case and being hit with costs for $1000, $2000 or $3000! It is nonsense to assert that that protected the little person. There was then a further change introducing deemed refusals after 45 days, so that in most cases there is a deemed refusal and you have to pay $170 to go to the tribunal. This legislation is the final nail in the coffin. We know what this is really about. It is about protecting the government from freedom of information relating to expenses, credit card abuses and fraud.

Honourable members interjecting.

Mr BRUMBY — Let me go through that. I have lost a few minutes tonight because of tenuous points of order that have been taken against me. The government says the opposition is exaggerating the impact of the bill, but I invite the honourable member interjecting from out of his place to go back and look at every amendment that was made to freedom of information legislation and the comments of the opposition at the time, and to judge them now against the reality. The reality is everything we said in those debates has been shown to be true. Let me pose the question this way, rhetorically, to the shadow Attorney-General: if this legislation had been in place over the past few years — —

Debate interrupted.

DISTINGUISHED VISITOR

The ACTING SPEAKER (Mrs Peulich) — Order! I apologise for interrupting the honourable member. However, I would like all honourable members to acknowledge the presence of His Royal Highness Prince Michael of Kent, who is in the gallery. We welcome him to the Victorian Parliament.

Honourable Members — Hear, hear!
FREEDOM OF INFORMATION (AMENDMENT) BILL
Second reading

Mr BRUMBY (Broadmeadows) — I am sorry there is not a fuller chamber for this wonderful address and for His Highness.

It is important that I ask these questions. The fact is that if this legislation had been in place over the past few years the public would not have been able to find out that the honourable member for Koonung in another place, who was formerly the parliamentary secretary for planning, also had several jobs as well as a contract with the Crown. History shows we would not have been able to find that out. He has now resigned from those positions.

Under the legislation we would not have been able to expose the massive waste and fraud associated with the Intergraph contracts. The extraordinary job done by the honourable member for Albert Park — in the public interest — revealed that $236 million of taxpayers' money had gone down the drain. Under this legislation we could not have obtained that information because we would not have been able to get the names of Grant Griffiths or Jack Firman. We would not have found out about the abuse of the credit cards. We would not have found out about the personal secretary of the Premier using her card at the Warburton Health Farm and going on shopping sprees. We would not have found out about the use of the Attorney-General helping herself to expensive cushions in a shop in Armadale. We would not have found out about the Premier using her card for the — —

Mr Hulls — Apologise!

The ACTING SPEAKER (Mrs Peulich) — Order! The honourable member for Niddrie is being disorderly. I am endeavouring to allow the honourable member for Broadmeadows to speak without interruption, and the honourable member for Niddrie is not assisting.

Mr BRUMBY — We would not have found out about the Minister for Finance heading off to a show in Las Vegas. We would not have found out about the Minister for Police and Emergency Services using his credit card to buy jewellery for his wife. We would not have found out about the misuse of public funds by consultants contracted to sell off Victoria's energy assets, about Troughton Swier. We would not have found out about the rorts and extravagant expenditure of the chairman of the Melbourne Marketing Authority, Sir Lunchalot Jeremy Gaylard — because this was no ordinary case of snout in the trough; this bloke was an aardvark — or the double dipping of travel allowances and daily fees for the bankrupted Shire of Moira.

In closing, I believe this is rotten legislation. It totally changes the onus of proof. It will lead to longer delays and will mean that the little person will find it harder to use the system. I am not worried about the opposition; I am worried about the little person. The opposition or the media who can have expensive legal advice either provided or paid for can probably find their way through some of this legislation, but the ordinary person will not be able to do that because it is more expensive and harder to get information. Everything will go to the VCAT, which we know already has delays of 14 months or longer.

The legislation will mean that applications that are put in today on sensitive matters involving third parties will wait well into the new millennium before the information is provided. It has already taken us four years to get information about the casino and four years to get information about Intergraph. The whole intent of this legislation is to make it even more difficult and time-consuming to do that, so we oppose it vigorously. History will show that the comments we have made about the bill will be borne out and that what we have said is accurate. This is rotten legislation, and it ought to be voted down.

Mr PANDAZOPOULOS (Dandenong) — It is not a pleasure to have to talk again about more watering down of freedom of information laws in this state. Certainly we on this side of the house are very proud of having introduced, when in government, the original freedom of information (FOI) laws which this government when in opposition massively abused. The then opposition did the right thing; it actually searched to scrutinise government. However, when elected to government it decided to change the way things were done and deny opportunities to others because it did not want public scrutiny.

This is a government that is about keeping things secret; that is the clear motive behind this bill. The government does not want the public to know what is going on. It does not want information about its activities or decisions that affect residents or citizens made available in the public arena.

Let us see what has happened in recent years. The government introduced an application fee, which is a burden for many people. In the past it was simple to
make an FOI request by writing to the head of the department concerned. Now an application fee must be paid. An administration fee was applied to what is now the Victorian Civil and Administrative Tribunal (VCAT), which again has added costs to the normal citizen who wants to know what is going on in his or her local area — for example, why local schools have been closed or why the local hospital has inadequate staffing. Those are the things local residents want to know about — local government-funded facilities and organisations.

Who will be affected by the legislation? It will be mainly members of the public and not, as the government thinks, the opposition. For example, as a local member I have been involved in situations where FOI has been very important in enabling members of the public to gain access to documents and identify which public servants had made recommendations or written reports relevant to them. Two or three years ago an elderly lady and her husband were visiting the Mornington Peninsula over the summer break as tourists. The lady, who had a history of heart problems, became ill and was taken by her husband to the Rosebud Hospital, which is part of the Peninsula Health Care Network. She was observed and then sent to the hospital in Frankston, another part of the network, by ambulance.

The lady was discharged and many months later received a bill from the ambulance service. It was discovered that because Rosebud Hospital is not an emergency hospital, anyone using an ambulance made available by Rosebud Hospital is in effect agreeing to pay the ambulance transport bill because it is not a service normally available at that hospital. My constituent wanted to know who made the decision, because she was never advised that if she took an ambulance from Rosebud Hospital to the Frankston Hospital she would have to pay the bill. She would not have known who made the decision to send her — —

An honourable member interjected.

Mr PANDAZOPOULOS — Yes, a migrant from my electorate. She would not have known who in the hospital made the decision to send her to Frankston in an ambulance. Why was it important for my constituent to know that? Obviously so she could make a claim against the hospital. She claims that had she been informed that there would be a charge for the use of the ambulance if she was required to attend the Frankston Hospital she would have gone there in the same way she got to Rosebud Hospital, by her husband driving her, and would not have had to pay an exorbitant fee to the ambulance service, which is also increasing its costs.

To give an example of where it is practical and important for members of the public in making FOI claims to know which civil servants are making decisions on behalf of the VCAT — —

Dr Dean interjected.

Mr PANDAZOPOULOS — Even the honourable member for Berwick — —

The ACTING SPEAKER (Mrs Peulich) — Order! The honourable member for Dandenong should ignore interjections and direct his comments through the Chair. The honourable for Berwick is disorderly and out of his place.

Mr PANDAZOPOULOS — As he normally is. Thank you very much, Madam Acting Speaker, for the guidance. Even though it is disorderly we have to take up interjections at times. The honourable member for Berwick said the names would have been made available by the VCAT. Why should members of the public have to go to the tribunal to get access to names?

Mrs Wade interjected.

Mr PANDAZOPOULOS — The Attorney-General asks why you need names. I have only been talking about that for 2 or 3 minutes.

Mrs Wade interjected.

Mr PANDAZOPOULOS — People need the names because they need to be able to put a case to the Mornington — —

Dr Dean interjected.

Mr PANDAZOPOULOS — Second bite of the cherry for the honourable member for Berwick!

When you are sent a bill for an ambulance that you thought was made available to you free, you need to know who in the Peninsula Health Care Network made the decision on your behalf.

Mrs Wade interjected.

Mr PANDAZOPOULOS — The Attorney-General can comment in winding up the debate. FOI proved useful for my constituent.

A further example concerns a claim of medical negligence at Monash Medical Centre. The Attorney-General may want to ask why, but to me it is
obvious that in a medical negligence claim you would want to know exactly which employees and doctors made decisions on your behalf.

Mrs Wade interjected.

Mr PANDAZOPOULOS — The Attorney-General suggests by interjection that there are other ways of finding out. That is interesting news, and it is the next thing I intended talking about.

The constituent I am referring to wrote to the hospital and asked for all the relevant documents — the medical history, information about any problems and so on. Many months later the constituent felt there were problems with the service and wanted to see whether it was worth while taking legal action. Legal advice was sought, and the constituent was advised to obtain the documents by writing to Monash Medical Centre, which is part of the Southern Health Care Network.

What was the constituent told in reply? The hospital announced that the documents were not available and that a claim would need to be made under freedom of information. The government puts bureaucracy in the way of members of the public who wish to access their own files. The constituent was faced with an application fee and another bureaucratic hurdle to jump.

Mrs Wade interjected.

Mr PANDAZOPOULOS — The Attorney-General asks why you need names. One wonders why, after six and a half years as Attorney-General, she does not know the answer to her own simple question.

The people most affected will be ordinary members of the public. At least 70 or 80 per cent of the people the legislation will harm will be members of the public seeking information about what is going on. When it was in opposition the coalition rightly wanted to use freedom of information to check on the performance of the government and bureaucracy of the time. In those days it seemed to want democracy.

One example of the Labor opposition attempting to do the same thing was my application for information about government action to save Waverley Park. I notice the Premier has left the chamber. When I lodged an application under freedom of information a schedule of documents was made available to me under section 49 of the act. From that I discovered exactly which documents were relevant. The opposition was then able to identify two documents written by public servants that had been kept secret from the opposition.

An Opposition Member — I wonder why!

Mr PANDAZOPOULOS — I wonder why. I mentioned that during the adjournment debate on Tuesday night, but again the Premier did not take the opportunity to address the matter.

The opposition was forced to go to the tribunal, which increased our costs. We only wanted basic information, but until we knew the names of the public servants who were providing advice to the Premier we could not call them as witnesses. Trying to mount a case in the Victorian Civil and Administrative Tribunal without witnesses causes problems. How can you adequately present a case for a tribunal to consider and make a judgment on when there are no witnesses? We did not know which public servants in the Premier’s offices were providing the advice, so how could we get access to the basic documents?

The question becomes more important when the government of the day says one thing and does something totally different. In the case of the Waverley Park application we were out there trying to do something, but the government would not release the documents we needed. It was hiding them from members of the public. That is a good example of why you need public servants’ names on documents.

Another case concerns the Harness Racing Board. In his report on ministerial portfolios, which was tabled yesterday, the Auditor-General refers to a matter I have raised in this house on a number of occasions. The Harness Racing Board gave a $1.7 million computer contract to a company called Ernst and Young without tendering it out. A senior partner of that company was also the treasurer of the board. The Auditor-General ruled that the failure to tender out the contract gave rise to probity issues and recommended a completely new process. The opposition would not have uncovered that irregularity if not for a successful application under freedom of information and the concerns raised at the time by the board’s finance manager.

How can people pursue justice and defend themselves against improper practices in organisations such as the Harness Racing Board when they cannot know, for example, that a senior staff member of a contracted company was advising the board on contractual matters such as the way tenders should be assessed? That FOI application was also fruitful in revealing the existence of an additional document.

The amending legislation means that people will not necessarily be able to find out who is providing consultancy services to the government. In the case of the Harness Racing Board, another consultant was providing advice on exactly the same matter. It is
therefore essential to know the names of the people offering advice. The Auditor-General’s report supports that view.

Prior to 1996, when the government sacked the councils, I was responsible for Wastewatch. I took a case about the appointment of commissioners to the Local Government Commission. It was important for the opposition to know how the government had arranged to appoint cronies from the Liberal and National parties as commissioners all over the state. Few of the new commissioners were not members of the Liberal or National parties or in some way associated with them. However, we realised that unless we knew the names of the people involved in the decision-making process — the public servants who had received the names of applicants, vetted them and made recommendations to the minister — we could not call any of them to the witness box at the AAT so the truth could be revealed.

Many of them had clearly bypassed the processes recommended by the government’s senior public servants — and many of the appointed cronies had not even applied for the job! In the end, once we learned their names we were able to call the witnesses we needed to give gave evidence about the rorts that had gone on in appointing the local government commissioners.

It is for reasons of that kind that the opposition is opposed to the bill. This is just more of the same from a government with a vendetta against anyone who needs basic information. That information should be readily available to the public, just as it is in other Australian states and many other parts of the world. You can find it in letters of request on the Internet; and in other jurisdictions you can find it in departmental annual reports, in answers to questions on notice, and in honest answers from government ministers during question time. On the other hand, the Victorian government does not want to give the public any information. That can be seen in the government’s response to the Auditor-General’s reports tabled yesterday and today, claiming that everything is okay.

Governments have a fundamental responsibility to act on behalf of the people, to use taxpayers’ money to carry out the policies they are elected to carry out and to make information available. If that happens we can be assured of getting quality service and value for money. The government says it believes in those responsibilities, but it clearly does not.

Victoria is the secret state, an idea the opposition is utterly against. Shame on the government, and shame on all the government members with legal backgrounds, such as the honourable member for Berwick, who want to abuse the rights of the citizen that are due to all members of the public.

Mr MILDENHALL (Footscray) — What atrocious and appalling legislation. It would be amazing if a bill were introduced that made it easier to access information about the government, enhanced or improved people’s rights of access or made government more transparent and more accountable. A former Leader of the Opposition, the Honourable Jim Kennan, used the phrase ‘the disinfectant of sunlight’ when referring to the activities of government.

The bill is the typical Kennett government response. It is opportunistic and cynical. The Leader of the Opposition said the bill is the ‘frightened of investigation’ legislation rather than the ‘freedom of information’ legislation for this session. The legislation is unwarranted and unnecessary. It is part of an administrative, financial and political strategy to wind back transparency, to wind back scrutiny, and to make it more expensive and difficult to scrutinise and make government accountable. The legislation has an immediate political imperative as we approach an election, but it has a long-term aim, as part of the strategy so comprehensively outlined by the honourable member for Broadmeadows, of winding back the ability of critics of the government to obtain information about the government.

It is a classic case of using a sledgehammer to kill an ant. The fundamental question that should be asked is: why is it necessary? Why did the government not appeal the decision of the Coulston FOI case? The government is used to interfering in so many areas of the public sector, why did it not facilitate an appeal in this case? A number of government appeals are currently in progress and a significant appeal is before the Court of Appeal. Even if the government says that it was the responsibility of the health network to appeal, surely the government would have realised the sensitivity and dangers of this case and initiated an appeal before the period for appeals lapsed, particularly given its knee-jerk overreaction in introducing the legislation.

The honourable member for Doncaster said section 33 of the principal act does not provide adequate protection for the privacy of individuals identified, referred to or listed in FOI documents. Section 33(1) states:

A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of
information relating to the personal affairs of any person (including a deceased person).

Mr Perton — What is the definition of ‘personal affairs’?

Mr MILDENHALL — Many definitions come to mind. Surely section 33(1) provides sufficient protection for individuals involved in FOI applications.

Mr Perton interjected.

Mr MILDENHALL — The honourable member for Doncaster says it is losing its authority under the Victorian Civil and Administrative Tribunal interpretation. I would have thought if there were a difficulty with a VCAT interpretation the matter could be appealed. Surely the dilution of the authority set out in the act would be tested in a higher court before the government introduced legislation such as this.

The honourable member for Doncaster also referred to interstate examples. I do not understand how they are relevant to the legislation. It is incumbent upon the Attorney-General to explain why section 33(1) is insufficient in providing the necessary protection and why less intrusive, less cumbersome and less drastic measures were not contemplated if there was a difficulty with section 33(1). The government is cynically using the Frankston Hospital case as an opportunity to further dilute the power of the principal act. Every time there is an opportunity to amend the act the government dilutes its coverage, increases the cost of applications or introduces further administrative restrictions so that applications are more cumbersome and access to information becomes more difficult for ordinary Victorians. The issues involving the Frankston Hospital case did not necessitate the introduction of this legislation.

The honourable member for Doncaster said that hospital management mismanaged the application and that the head of the health network ought to hang his head in shame. The honourable member then proceeded to present a rationale for the amendments. Many alternatives were available to the government. The legislation is part of the government’s opportunistic strategy to further wind back the strength and significance of the principal act.

I have made many FOI requests and obtained documents in which, using section 33(1), the identity of public servants or any third party is deleted from the record. It is a widely used power and honourable members should be given a detailed explanation of why it is no longer satisfactory. The bill forms part of a concerted legislative strategy to wind back scrutiny of the government. The government’s record under FOI is well known. Amendments to the act widened the application of cabinet exemptions and exempted corporations and asset sales documents. Costs have increased. If the then opposition had been subject under the former Cain government to the current level of costs its activities under FOI would have amounted to some $1 million. Now even higher charges have been imposed on honourable members seeking information under FOI.

The proposal is extraordinary. The bill creates a new exemption for documents and exempts a whole document — not only a name in it — if it reveals the identity of a public servant or third party or information from which such an identity can be established. If applicants wish to obtain names they must appeal to the VCAT. In the event of that occurring the department must notify the public servant or third party of the application. That party has 21 days to respond to whether a name may be released. If the party fails to respond it is assumed that there is no objection. Irrespective of whether the person consents the department or minister can still object to the release of a document. The process is cumbersome and is designed to throw up procedural impediments to those wishing to access information.

In terms of procedural impediments and the fairness of the legislation, the Villamanta Legal Service has presented all honourable members with an eloquent outline of the difficulties that will be faced by disabled people. The bill is part of an administrative strategy to wind back transparency in government. The government has thrown enormous financial resources into delaying or preventing the procedures of the Freedom of Information Act from being followed — and it has used every power in the act to help it do so. Some of the extraordinary delaying tactics I have experienced include appeals and the use of section 25A(1) — that is, unreasonably diverting resources of an agency. I have had to go to the ombudsman many times to ask him to inform departments of their obligations. The delays and administrative trivia used to delay FOI applications is quite extraordinary.

As I said, the bill is part of a continuing political strategy to wind back political damage caused to the government by information gained under FOI. The excuses departments use to minimise the exposure of documents never cease to amaze me. One of the most extraordinary examples I have encountered was when the Department of Education sought to prevent my gaining access to documents defined under the Education Act as public documents on the ground that
they contained financial information about third parties — that is, about school councils. They are supposedly third parties and not part of the education system. The government has used unbelievable tactics and put unbelievable effort into minimising possible political damage. The case of Kevin Donnelly, which was mentioned in the Auditor-General's report tabled yesterday, is a case in point. Under the provisions of the bill no-one would ever know the identity of the rorter, in that case a person who is apparently so expert that he has no need to tender for government contracts but in four years can obtain 14 contracts totalling more than $500,000.

It is extraordinarily resource intensive to run FOI cases, as the government well knows. The government's well-known strategy is financial, administrative, political and legislative attack. The government should hang its head in shame at having the nerve to both use a flimsy excuse as an opportunity to introduce the legislation and try to pretend it is in any way justified overall or in the public interest. I strongly support the opposition's vehement opposition to the proposed legislation.

Ms CAMPBELL (Pascoe Vale) — FOI legislation should promote open government and should allow scrutiny of government decisions. The Freedom of Information (Amendment) Bill enshrines the secrecy that the Kennett government is so adamant about. The Victorian government should be able to face its citizens, but the legislation removes the opportunity for citizens to scrutinise government and for organisations such as the Coburg-Brunswick Community Legal and Financial Counselling Centre to examine exactly what is happening in government. It is essential that organisations such as the Coburg-Brunswick centre, residents in Verman and Lind streets in my electorate, people who have adoption records that they wish to discuss and examine and disability groups that often receive advocacy from the Villamanta Legal Service have the opportunity to examine what the Kennett government — or the Bracks Labor government after the next election — is doing. The public's acceptance of the work of government and the roles of officials depends upon trust and openness. The bill undermines that trust and further enshrines secrecy.

Today the annual report of inquiries into child deaths, protection and care for 1999 was presented to Parliament, by leave. The report and those preceding it have been presented to Parliament because the honourable member for Albert Park persisted in making application under freedom of information to examine what was going on in the state's child protection system.

I had intended to say a lot more, but as there is an agreement on time I am obliged to sit down at this point. Before I do I wish to place on record that concerns have been raised with me by my constituents about the sound barriers on the Tullamarine tollway, and by community services and women's affairs groups I have worked with. It is clear that the legislation will be counterproductive to having a good, open and honest government that is proud of and is openly accountable for its actions.

Debate adjourned on motion of Mr PERRIN (Bulleen).

Debate adjourned until later this day.

GAS INDUSTRY ACTS (FURTHER AMENDMENT) BILL

Government amendments circulated by Mr W. D. McGrath (Minister for Police and Emergency Services) pursuant to sessional orders.

Second reading

Debate resumed from 6 May; motion of Mr STOCKDALE (Treasurer).

The ACTING SPEAKER (Mr Seitz) — Order! As the required statement of intent has been made pursuant to the Constitution Act 1975, I am of the opinion that the second reading of this bill requires to be passed by an absolute majority of the house.

Mr LONEY (Geelong North) — The Gas Industry Acts (Further Amendment) Bill has been introduced as a result of the explosion and fire that occurred at Longford last September and the subsequent disruption to gas supplies. That tragic occurrence resulted in two workers losing their lives, in a number of other workers being injured and severe hardship and economic loss for Victorians.

As the minister said in his second-reading speech, the bill aims to do essentially two things: to prevent another disaster similar to the Longford explosion and to mitigate the consequences of any such disaster, should one occur. The opposition supports the legislation. It is necessary to ensure system security, particularly during emergencies. It represents at long last the government's response to the opposition's concerns about and suggestions for system security. It is a pleasant change for the government and opposition to be in total and harmonious agreement about provisions in a gas industry bill.

The legislation has been largely motivated by the embarrassment caused to the government through
publicity, particularly in the Sunday Herald Sun about so-called gas cheats walking away scot-free. Honourable members will remember the government’s response — some of it over the top — to the publicity. I think all honourable members would recall the Premier’s comments about his view of gas cheats — it included some fairly colourful language that I will not repeat here. Suffice it to say, I think no-one would wish any good to people who deliberately sought to undermine the way the rest of the Victorian community was trying to work together at a time of crisis.

The only conclusion that can be drawn from the Premier’s comments is that the introduction of the legislation is an acknowledgment by the government of the inadequacies of the existing legislation, particularly with regard to gas cheats. Furthermore, the government’s actions and the current legislation were contributing factors in the inconvenience and aftermath of the Longford disaster. There was certainly a failure to mitigate the consequences of the Longford disaster.

The bill endorses the position taken by the opposition at the Longford royal commission. During the course of the hearings and in its final submission the opposition argued that a major cause of the gas shortages that resulted from the Longford disaster was the deficiencies in the Victorian legislation. The opposition suggests that the bill is an eloquent endorsement of that position, despite the government’s attempt to prevent the commission from investigating that aspect by providing it with narrow terms of reference. It should be noted that little of the bill would have been required had it not been for the imposition of the Treasurer’s wild energy privatisation experiment on Victorians.

As was stated in the second-reading speech, the bill contains two classes of amendments. The first is amendments that are designed to enhance the effective operation of powers to protect system security in an emergency. The second is amendments to the competition aspects of the regulatory system. I will deal with those two aspects of the bill in turn.

Firstly, I turn to the response to the so-called gas cheats. Following the Longford disaster about 450 people were found to have cheated the system. In some cases meters were removed because people would not comply with directions that had been given to ensure system security. The bill puts in place the machinery necessary to stiffen up the way the government can act against such people in the future. The bill allows Vencorp to appoint inspectors to investigate breaches of section 16 of the Gas Industry Act. The section relates to directions given in relation to reliability, security of supply and safety of gas. There is also provision for the issuing of infringement notices where section 6A has been breached.

Further, the bill introduces new and substantially increased penalties for failure to comply with directions given by Vencorp. Corporations that cheat during a gas crisis will be liable to penalties of $1 million and individuals who cheat will be liable to penalties of $10 000. The bill gives Vencorp inspectors the power to enter and inspect properties and to gather information for prosecution purposes.

The bill contains sweeping provisions relating to emergencies. Although the opposition agrees that they are appropriate in that context — they are similar to provisions in other acts where similar enforcement regimes apply — they are the direct result of the government’s bungling of the legislation that led to the gas cheat debacle in the first place. Immediately after the disaster the government announced that individuals would suffer $10 000 fines for disobeying orders not to use gas. Later it was discovered that the legislation was inadequate because it did not contain provisions that would enable evidence to be gathered for the mounting of a prosecution. Consequently, the gas cheats walked away scot-free.

There is some understandable anger about that among the majority of Victorians who did the right thing and suffered for almost a fortnight without gas. Those who chose deliberately not to abide by the rules in the community interest escaped free of penalty, and there is no likelihood of them being prosecuted. Gas has an extremely high penetration rate in Victoria — among the highest in the world — and a great many households rely on gas for their cooking, heating and hot water. All of those services were curtailed during the gas crisis.

The bill represents the government’s attempt to fix up its own bungling. Considering the vast amount of money the government has spent on consultants to privatise the gas industry it is disappointing that it could not get it right — or more precisely, that the consultants who were paid $50 million could not get it right. That was a fair amount of money to pay to people to get it wrong, but given that the entire focus of both the government and the consultants was on asset sales, not on security, it is not surprising. The government did not require any more from the consultants it appointed.

The distinction between the government and the consultants is probably artificial. The Energy Projects Division of the Department of Treasury and Finance is basically run by the $24-million consultants, Troughton Swier and Associates. Consultants provided the advice,
drew up the model and templated the legislation — and at the end of the day they got it wrong. The Kennett government paid them enormous amounts of money and listened to them without question — it had blind faith in them. In many cases, as with Troughton Swier, there was no advertising or tender process involved. As the old song goes, ‘Nice work if you can get it’.

One would have hoped the consultants would have got it right, given the government’s faith in them and the money thrown at them, but the bill proves they did not. Even more disappointing was that the warning bells were ringing in June last year following the hydrate incident that caused gas supplies to be interrupted for two days. There was no response by the government or its Energy Projects Division between June and September. They did not look at security to see if there was some way they could mitigate problems when the supply was disrupted in that manner. The subsequent explosion at Longford resulted in Victoria being without gas for the best part of two weeks. The consultants had left gaps in the system, and tonight the house is being asked to plug the holes in the original legislation.

The bill provides for Vencorp inspectors to gather evidence to mount prosecutions for breach of instructions in emergency situations. The opposition endorses that, although it is remarkable that it was not thought necessary to include such a provision in the original legislation. The government’s excuse was that it was not included in previous legislation used by a number of governments over the past 30-odd years. However, the Kennett government changed the rules and went to a different model of the gas industry. It changed the whole way in which the gas industry operates in Victoria. It broke up the industry, disaggregated it and removed direct government control. In those circumstances it would have been appropriate to have set in place some mechanisms to enable lawful directions to be issued and enforced, but the government failed to do so.

The government wound up the security of supply unit of the old Gas and Fuel Corporation but did not think it was necessary to bring in any mechanism to mitigate the difficulties that would occur in the event of a failure of supply. It was predicated on the old it-can’t-happen-to-me principle.

Although the inspectors will carry out an important emergency role, they have no power to do anything of a preventive or proactive nature outside an emergency. That important function should be part of their role. Ensuring system security is not only about emergencies. It needs to be attended to every minute of every day. The inspectors will have no power to inspect the Longford facility to ensure that another Longford disaster does not occur or to ensure that supply is not interrupted again, as it was in September last year. The Longford explosion demonstrated that the government’s strategy of not requiring any regulatory body to supervise Esso has failed. While the bill addresses certain matters, it does nothing to change that situation. That glaring gap will remain following the passage of the bill.

It is no use saying to opposition members, ‘Wait for the recommendations of the Longford royal commission’, because the government ensured that it could not examine those issues by narrowing the commission’s terms of reference and arguing in the hearings that the commission should not do so.

In the future, as in the past, no regulatory body will be supervising Esso to ensure that it adequately maintains its plant to secure supply. Although Workcover may undertake some token inspections, risks to worker health and safety are not the same as risks to security of supply. In some instances interruption to supply is not a risk to worker health and safety, and Workcover is not involved or interested in those instances. The hydrate incident in June last year is one example of that. While the government is not maintaining regulatory oversight of the Longford facility it is effectively trying to wipe its hands of any responsibility for the secure delivery of gas to Victorians.

Esso, like other private providers of essential services, cannot be relied on to voluntarily invest in maintenance and upgrading plant to the level that might be required by a responsible government. The Longford royal commission has demonstrated that Esso will certainly not do so without adequate regulatory supervision. Esso will act in its perceived commercial interest; that is appropriate, as that is what it is there to do. The question is: who is acting in the public interest through all this? The answer should be: the government.

The lack of supervision of Esso by Vencorp was a key point in the opposition’s final submission to the royal commission:

It is contended that legislation governing Vencorp was inadequate to the extent that there was a failure on the part of government to ensure that Vencorp supervises Esso’s activities.

Vencorp has failed to adequately supervise Esso’s operations because they have not been given the legislative clout to do so. The lack of legislative clout results from a failure of the Kennett government to provide clear lines of responsibility for the system as a whole when it established the new model for the Victorian gas industry.
Given that the government has acted to fix up the gas-cheat flaws in the legislation, it is time for it to fundamentally rewrite the legislation to ensure that government regulatory bodies supervise the production and distribution of gas from wellhead to consumer. That is important because currently the section of supply from the wellhead to the transmission system is being left out of the supervisory regime, as Vencorp takes over from outside the Esso fence. It is time the government revised those regulatory arrangements to engender greater degree of public confidence in the regulation and security of supply. The government's supervisory role should not begin at the fence surrounding the Longford plant. That is why the government cannot guarantee that another Longford explosion will not happen. When it comes to knowing what goes on at the Longford site, the government has no choice but to trust Esso.

A major part of the bill deals with directions to be given in emergency situations. The bill proposes amendment of the gas supply emergency provisions which will clarify the power of the minister to give directions and provide for enforcement powers using the Office of Gas Safety and its inspectors. The opposition considers those amendments appropriate because they are aimed at ensuring that in future gas cheats will not be able to get away with cheating. However, the proposed changes are an example of shutting the gate after the horse has bolted. The bill contains no provisions to ensure that last September's gas cheats will face penalties. The Victorian community was led to believe from statements made by the Premier last September and again earlier this year after the Sunday Herald Sun story that action would be taken against those who undermined the rest of the community during the gas shortage. Under the bill none of those people will ever face a penalty.

Mr Steggall interjected.

Mr LONEY — It may well be that the government does not want to include retrospective penalty provisions in the bill. The opposition sympathises with that attitude. However, the government is essentially admitting that it bungled its original legislation and that those people will be able to walk away regardless of the over-the-top comments of the Premier last September and earlier this year.

None of the provisions of the bill will prevent another supply crisis occurring. The Office of Gas Safety inspectors, like the Vencorp inspectors, are not even allowed to inspect the Longford site. The Longford explosion and fire had the consequence of illustrating the total inadequacy of the legislative framework within which the post-privatisation gas industry has been operating. The government is so hell-bent on pursuing its ideological goals that it has been prepared to rush headlong into the privatisation experiment no matter what the social and economic consequences. The government's only interest in selling assets owned by all Victorians was to achieve the highest possible market price. As events have since proved, the government had no concern for the large range of consequences for safety and security that flowed from privatisation, and many more may yet emerge.

Apart from amendments to ensure that future gas cheats will be able to be investigated, prosecuted, fined, et cetera, some other provisions in the bill should be commented on. Clause 4 relates to the Longford experience and revolves around the current definition of the transmission system. The definition being operated under in the current legislation is the one the gas transmission corporation operated under in 1997. A few connections have been made to the system since then, and the bill will ensure that relevant additions to the system are considered to be part of the transmission system for the purpose of the minister giving directions for security.

That sensible provision is supported by the opposition. It would be somewhat silly, for example, for the New South Wales interconnect not to be part of the Victorian transmission system.

The ACTING SPEAKER (Mr Seitz) — Order! Under sessional orders the time has arrived for me to interrupt business.

Sitting continued on motion of Mr STOCKDALE (Treasurer).

Mr LONEY (Geelong North) — As I was saying, in those circumstances it would be silly if the New South Wales interconnect running from the border to Wollert were not regarded as part of the Victorian system and therefore in times of crisis or emergency connections to it could not be made. This sensible provision will prevent that from happening.

Clause 6 ensures that parties in the gas industry in Victoria that are not market participants — there are a number of them — are regarded as market participants for the purposes of giving directions only. That will ensure all Victorian players can have legally enforceable directions given to them.

Clause 7 clarifies that Generation Victoria is a contestable customer. I am not sure why there should have been any doubt about that. Clauses 10, 11 and 12 relate to the significant producer provisions of the
principal act and clarify appeal tribunal processes for significant producers. Various other provisions in the bill clarify the Victorian market and the extent of the authorisation of the system operational rules.

The opposition has been given a set of late amendments. There can be no greater indication of the way the government makes policy on the run with the gas and electricity industries than the fact that, even before it was debated, the government found it necessary to introduce additional amendments to this further amendment bill.

Before I move to the specifics of the amendments, I thank the parliamentary secretary for the government's courtesy in making the amendments available well in advance of the debate. That gave the opposition a chance to examine them. That is not always the custom, but it was done on this occasion.

Not only does the bill contain a vast number of consequential and drafting amendments, but, more importantly, it incorporates an entirely new clause to ensure offences by corporations will be heard in the Magistrates Court. Offences will be indictable. That is the major change proposed in the late amendments.

If we are trying to set up an enforcement system which is basically about, in the vernacular, imposing on-the-spot fines, this may not be the way to go; the provisions mention penalties of $1 million. The fines are huge. The opposition agrees with the government that this amendment is appropriate. Imposing fines of $1 million for indictable offences rather than on-the-spot fines will give offenders the opportunity to have a day in court. That provision seems sensible now; one wonders why it was not considered in the drafting of the original bill. However, I guess such oversights occur.

So far as I have been able to ascertain, the other amendments seem to correct typographical errors. I have discovered nothing in the late amendments that appears to substantially change the bill.

The privatisation of the gas industry has been aimed at the maximisation of a sale price. For that reason the Treasurer rejected the advice of the Collins Hill Group, a firm of consultants with an international reputation in analysing the gas industry, and instead preferred to accept the advice of Troughton Swier and Associates who, at the time they were employed, had virtually no experience with the management of the gas industry but had previously been involved in the squeezing up and selling off of the State Electricity Commission of Victoria. Recently we have been told that the firm of Troughton Swier is highly experienced in all areas. Of course it is — it has had substantial on-the-job training paid for rather generously by the Victorian taxpayers.

Collins Hill advised that Gascor had been performing well and recognised that further increases in efficiency could be achieved. The opposition would have agreed with that. However, after reviewing a wide range of options Collins Hill recommended strongly against the disaggregation of the existing distribution network. Unfortunately, when Troughton Swier was dragged in that was the way the government chose to go — against the advice of the experts. Collins Hill had pointed out that disaggregating Gascor was fraught with difficulty. It pointed out that the absence of directly relevant existing models of gas market reform either in Australia or overseas meant there was no clear precedent.

Collins Hill emphasised that any system balancing arrangements that rely on multiple gas suppliers or network operators have inherently less security of supply than is the case in the current situation, where the network is operating on an integrated basis and there is one supplier. The firm was clear that the assurance of supply must be placed on the network operator. However, that advice was rejected by the government, which was interested only in achieving a high sale price.

When a socially and economically responsible government is confronted with a natural monopoly it must recognise that nothing it or any other government can do will change the situation — that is, a natural monopoly will remain just that! However, it can make regulations to ensure the monopoly is operated to achieve different social and economic goals.

Unfortunately, the government surrounded itself with a small coterie of incredibly highly paid advisers, all of whom have had a vested interest in selling the state-owned asset for the highest possible price, no matter what the social or economic outcomes of the sale may be. That necessarily leads to a corruption of the advice given, so much so that the Auditor-General — who is shortly to retire and who has been a fine servant of the state — in commenting on an earlier sale of state-owned assets reported:

In April 1997 the [Treasury] department's advisers ... identified that their firms were likely to receive higher fees in the event that the transaction proceeded. As such, neither firm would qualify as an independent expert under the guidelines for independent expert reports in the relevant Australian Securities Commission practice note. However, notwithstanding this, neither of these advisers believed that their ability to provide an unbiased report to the state was compromised.
As Christine Keeler said, 'They would say that, wouldn’t they?'.

Honourable members interjecting.

Mr LONEY — It certainly is — I wore short pants at the time. Dr Troughton is the Treasurer’s favourite adviser and he has effectively planned the detail of the selling off of the gas and electricity industries. He was paid handsomely for that advice — millions of dollars — and did not have to tender for the position — it was served to him on a plate. Despite all that the bill is proof that he got it wrong.

Until the government stops listening solely to the advice of the economic rationalists — the driest of the dry of the now discredited Thatcherites — and starts to design public policy based on the public interests of Victorians the house will be required to continually revisit and fix the legislation. The bill illustrates that perfectly because it is a fix for a gap that should have been provided for in the original legislation. To that extent it is an appropriate fix, and the opposition supports it, but it does not hide the fact that there are still important gaps in the way the industry operates in Victoria.

There is no doubt that after it wins the election the incoming Labor government will have to do a proper fix to ensure the full security of supply issues that the government is too ideologically blind to address.

Mrs TEHAN (Minister for Conservation and Land Management) — In closing the debate I thank honourable members for their contributions on the bill.

As the honourable member for Geelong North indicated, the opposition does not oppose it. In the course of the debate the honourable member indicated the value he saw in the amendments and said he fully understood the need for the essential thrust of the bill — that is, the provision of severe fines for individuals and organisations that did not comply with the necessary directions during the gas shortages of last winter and those who do not comply with future directions. I thank the honourable member for his contribution.

The bill will ensure future compliance and provides for appropriate penalties in the absence of compliance. I wish it a speedy passage.

The ACTING SPEAKER (Mr A. F. Plowman) — Order! As the required statement of intention has been made pursuant to section 85(5)(c) of the Constitution Act, I am of the opinion that the second reading of the bill requires to be passed by an absolute majority.

Mr LONEY (Geelong North) — The bill seeks to amend both the Electricity Industry Act and the Electricity Safety Act. It also makes some amendments to the Gas Industry (Amendment) Act 1998. Essentially there are two parts to the bill: provisions that mirror the new provisions of the Gas Industry (Amendment) Act and the Gas Safety Act are designed to ensure system security in emergency situations; and a range of other amendments that I will address later in the debate. The first class of amendment seeks to address possible deficiencies in the current legislation, similar to those shown in the gas legislation during the gas supply crisis that followed the explosion at Esso's Longford gas facility.

The opposition does not oppose the bill. Its provisions are sensible and appropriate. To that extent the opposition has no problem in supporting them. It is amazing that supply failure was not considered a possibility and nothing was written into the original acts.

The bill is as much a response to the government's embarrassment about gas cheats as are the amendments to the Gas Industry Act which were dealt with earlier this evening. Similarly, it represents an admission by the Treasurer that neither he nor his highly paid
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consultants bothered to consider security of supply provisions at all in their so-called reform process. To put it simply, if they had we would not be here doing this tonight.

In considering those heady days of the sale of electricity assets, one remembers all the hype and excitement about price, about what they would sell for, about the new regime of competition and the new deregulated approaches. There was hype about how much less consumers would pay, but that has yet to be realised. We did not hear any hype about how much more secure the system would be. The opposition suggests the reason for that is simply that the government’s mind had not turned to that issue.

It was inbuilt into the system under the State Electricity Commission and the Gas and Fuel Corporation. It was a first-order priority for the SEC that security of supply would be dealt with basically on a daily basis. It would be planned. It would be on every agenda for meetings. In fact, former energy ministers say that is precisely what occurred when they sat down with their departmental heads and the head of the State Electricity Commission or the Gas and Fuel: the first item on the agenda was invariably the security of supply.

The first casualty of the changed arrangements was the minister — we no longer have an energy minister. Therefore, there was no ministerial direction over what was going on and, conversely, there was no accountability from what was then a publicly owned asset to a minister who was in turn responsible to Parliament and to the people of Victoria. Previously there was a clear sense of direction, so the public interest in having a secure and reliable electricity supply to all parts of the state was built into the system.

In the disaggregation of the electricity asset and its breaking down into various competing parts, the emphasis on security of supply was also broken down. It was, if you like, the gold plating that was so much maligned and derided by government members who maintained that we did not need it. That gold plating was about the security of the system. In breaking down, chipping away at or rubbing off the gold plating the government also weakened and rubbed away the system’s security.

If there is one fortunate thing about the set of electricity amendments before the house it is that we have not had to suffer another disaster of the tragic and far-reaching proportions of the Longford gas explosion before amending the electricity acts. I do not think anyone would wish another crisis of that nature on Victorians. That is certainly not the wish of opposition members, and I am sure it is not the wish of the government, but these things happen and they can happen with electricity as well as gas. The Auckland, New Zealand, experience shows these things can happen. However, when catastrophic failures of electricity supply occur the resulting problems are immense in social, economic and all other terms, and they take an enormous amount of coping with.

We need to be careful of the it-can’t-happen-here approach. We have to plan not that it will happen but for the possibility that it might happen. To date that has been the clear difference in approach to electricity supply between the former SEC and the current regime. The bill is moving some way towards redressing what the opposition considers to be an imbalance in that regard. It is restoring the position but only in terms of the emergency situation.

Opposition members believe the bill needs to go somewhat further. The second-reading speech talks of the need to protect the security of the electricity system and to ensure electrical safety. The opposition is in 100 per cent agreement with that aim. The security of the electricity system must be protected and electrical safety ensured. The government has a responsibility to ensure that is the situation.

The government must be proactive in meeting that responsibility. It is no use measures being implemented after the event. Where possible the event must be prevented from occurring. Unfortunately, the bill does not do that or, in the opposition’s opinion, even address the wider issues. It is almost entirely about emergency situations.

Yes, the opposition knows that currently there are inherent dangers in the electricity supply system. System security is endangered by future lack of capacity. Those problems are directly due to the policies of the government. There is no way of avoiding those responsibilities. That a 500-megawatt power station sitting just across the river has not come on-stream yet is evidence of the failure of the government’s policies. The broader aspect of system security still needs to be addressed and dealt with by the government.

The key provisions of the act relate to either the Electricity Industry Act or the Electricity Safety Act. The provisions relating to the Electricity Industry Act follow on from the Longford experience. What has been done in light of the Longford disaster, in which case the powers of authorities to make binding, enforceable directions for gas system security were found to be legislatively deficient? The bill changes the
electricity emergency provisions, almost precisely mirroring the changes made to the Gas Industry Act by the house a short while ago.

In particular the bill inserts a new part 3AA into the Electricity Industry Act to clarify the power of the minister to give directions and to whom the minister may give directions. That seems fairly simple, but unfortunately the original legislation did not make either of those points clear.

The bill will make the provisions in this bill consistent with the provisions of the Gas Industry Act. The bill also provides for the issuing of infringement notices and new penalties in the event of a contravention of those directions, so the penalty regime comes in behind. Those provisions are also identical to the new provisions of the Gas Industry Act. In the electricity industry the penalty for the misuse of electricity during an emergency will be increased to a maximum of $1 million for a corporation and $10 000 for an individual. There is no doubt those are significant penalties. Many corporations would probably not be able to carry a penalty of $1 million.

It is a significant penalty and it should act as a deterrent to antisocial activity and other activity that goes against the interests of the community. The opposition supports it because opposition members have no regard for people who abuse emergency situations, particularly those who do so to profit from the misfortunes of others. One story that came out of the Longford experience was that some businesses continued to trade and make a profit while other businesses that relied on gas had to close down. That is a sad example of how some people in our community — fortunately they are a very small minority — are prepared to gain an advantage from the misfortunes of others. No opposition member would support people who do those sorts of things because they attack the whole of the community.

Clause 8 provides for new powers of entry in enforcement procedures. The provisions are quite wide ranging and mirror the sorts of things we have seen in other bills. Under that clause enforcement officers are required to have reasonable grounds for suspecting that an offence has been committed before they can enter land or premises; occupiers must be given copies of consent in writing; search warrants must to be obtained before an enforcement officer may enter land or premises; enforcement officers can enter land or premises only after an announcement has been made that the enforcement officer is authorised by a warrant to do so; and copies of the warrants must be given to the occupier. In the opposition’s view those provisions are appropriate for emergency situations, which is what the bill is aimed at.

Other technical amendments are being made to the principal act. Clause 10 inserts proposed section 62AA into the principal act. Those provisions mirror Gas Industry Act provisions and concern the transfer and allocation of property upon the closure of the State Electricity Commission. The provisions are not extraordinary and are not of any great concern to the opposition.

Clause 13 contains an amendment to the principal act that reflects the current situation in Victoria. Under the Electricity Industry Act Victorian electricity participants are required to be incorporated in Victoria. This change will mean that they will still be required to be a corporation or a statutory authority but they will no longer need to be incorporated in Victoria. That clause reflects the status of some of the new entrants coming into the Victorian industry and recognises that the provision in the act is no longer needed to regulate participants in the electricity industry so long as they are registered corporations or statutory authorities. The provision also mirrors a similar provision in the Gas Industry Act.

Clause 12 varies section 85 of the Constitution Act to provide immunity for persons who have acted in good faith in providing emergency services.

It is important to emphasise three words in that part — in good faith. There must be the assumption that people are acting in good faith when they follow the directions and the enforcement provisions with prosecutions, and on the assumption people are acting in good faith they should then be immune from any actions resulting from having carried out those directions and essentially of having ensured that the Victorian community has reasonable levels of security of supply. They are very important words. The bill does not take an open-slather approach with immunity for everything. There is the presumption of acting in good faith, and I guess if somebody felt that was not the case it would be possible to test it on that ground.

The other thing that has been raised with the opposition is a concern that if the in-good-faith provisions, along with some of the provisions of the principal act, may mean that people who were not qualified or did not have sufficient experience to be doing what they were doing could be given immunity there may be an incentive to employ people who do not have the relevant qualifications or expertise to carry out the job because they may be cheaper to employ. It is hoped the provision will not be used in that way. The opposition
does not believe that is the intention, but it is something that should be watched.

The other set of amendments apply to the Electrical Safety Act. The bill provides for an extension of the powers of enforcement officers of the Office of the Chief Electrical Inspector to act under the emergency provisions of the Electricity Industry Act. It also clarifies the powers of the chief electrical inspector to give directions during a declared emergency and provides that where such powers are exercised they must be reported. That is important. It means that where these directions are used there is a requirement to report their use so that the public actually understands they have been used, why they have been used and what the direction were. Although it is a small clause it is quite important for public confidence.

There is also a set of amendments that relate to the Gas Industry Act. Clause 17 relates to the planning and augmentation powers under the Electricity Act and ensures that Vencorp, the successor to the Victorian Power Exchange, has the same powers as did the Victorian Power Exchange and must comply with the exchange’s licence conditions. That is reasonable too. It again reflects the change that has taken place in the industry, with Vencorp now carrying out those functions.

Four further pages of amendments have been made available since the second-reading speech was made. I again note that the opposition was given them by the parliamentary secretary a couple of days ago, and members of the opposition thank him for that courtesy. We are assured that although they are numerous they are generally of a technical nature and make no substantial alterations to the act.

The opposition notes that these amendments make an offence by a corporation under the new provisions an indictable offence, and as I said in debate on the Gas Industry Act amendments the opposition believes that is reasonable, given that such an offence will now carry a $1 million fine. It is also noted that new clause BB, headed ‘Correction of year 2000 figures in tariff order’ seems to be fixing up yet another bungle. I just make the comment that maybe this was done by the same person who did many of the budget table computations, which are simply not correct. In one table I looked at the calculation is out by around $800 million when you get to the final figure.

An Honourable Member — You’ve only got to be 80 per cent correct — it’s only 80 per cent.

Mr LONEY — I think it was $8.6 million.

New clause EE substitutes part 2A of the principal act. That essentially deals with the fact that the Victorian Power Exchange no longer exists and that Vencorp now carries out its functions, and a number of amendments deal with that. This matter was to have been fixed in the bill and the need for these amendments seems again to show the government’s slipshod approach to legislation dealing with the electricity and gas industries.

The opposition believes the provisions of the bill are appropriate for emergency situations but also points out that the government is still going to have to confront the much broader issue of the security of the system at all times, as it must in the gas industry. And the sooner it does that, the better for all Victorians.

Mr HAMILTON (Morwell) — I wish to make a short contribution to the debate on the Electricity Industry Acts (Further Amendment) Bill. I must first correct a horrible rumour going around. My stance against privatisation of any government services remains absolutely consistent. I am totally opposed to privatisation of any government services. I was quoted out of context.

The opposition supports the bill, which makes arrangements for security of supply during an emergency. However, the technology in the electricity industry is quite different from that in the gas industry, in that the electricity industry can isolate sections of a community or a region of Victoria and can do so section after section and very simply. It is not necessary to go round pulling out mains fuses to get people to comply with an order not to use their electricity improperly during an emergency. From the point of view of policing the directions from the government or from Vencorp, that is certainly a far better and easier way of doing it.

However, I would like to add that while the loss of gas to homes means cold showers, the loss of electricity supplies to families around Victoria creates a lot more distress. I doubt whether many homes in Victoria are not connected to the grid.

I support the notion, expressed by the honourable member for Geelong North, that there should be a legislative requirement to ensure a safe, stable, secure and continuous supply of electricity around the state. That would take a lot of forward planning. I am a keen reader of the monthly magazine produced by the Electricity Supply Association of Australia. The magazine records that a number of discussions are going on in the industry about the national grid and the vague claim of unfair competition from New South
Wales generators, which still happen to be in government hands. I have taken the opportunity of sending a press release to the magazine, because I take great joy in telling the privately owned generating companies how foolish they are to get involved in the Victorian pool when there is already an experienced organisation — the state government — that could operate within the same pool. A part of their financial dilemma has been caused by that foolishness.

Amendment 20 of the circulated amendments, which inserts proposed section 41A, provides in part that an additional function for Vencorp will be:

... to plan, and direct the augmentation of, the electricity transmission system.

It is common knowledge that the electricity industry will face serious problems if we have a very hot summer. Honourable members who are a little more experienced in this world remember the times when the electricity peak always occurred in the winter. The peak now occurs in the summer. It is not out of turn to suggest that the government should concentrate a lot more on encouraging energy efficiency in homes, offices and industrial enterprises. That would reduce demand on the system and be better for the environment.

Proposed section 41A also provides another function of Vencorp will be:

... to provide information and other services to facilitate decisions for investment and the use of resources in the electricity industry.

That creates a dilemma for the industry because the cheapest, but certainly not the best, way of creating extra generation capacity in the state is to use gas turbines. Given the possible restriction on gas supplies, however, that solution cannot be classed as reliable and is probably one of the most inefficient ways of generating electricity because it burns up premium fuel. These technical matters need to be considered.

Perhaps the biggest problem in the electricity industry is that the bean counters have taken over from the engineers. Bean counters can work from one financial year’s end to the next trying to understand engineering — let alone doing some planning and direction — but they will have great problems achieving anything. The need to get more engineers involved in what is fundamentally an engineering industry is urgent. Let the bean counters do their counting at the end of the day, not at the start.

I refer the house to proposed schedule 4 headed ‘Table substituted in tariff order’, which is on page 2 of the circulated amendments. The parliamentary secretary may care to advise the house what the figures in that table actually mean; they do not appear to have much rhyme or reason. The tariff orders for power stations as distinct as Loy Yang, which is a 2000 megawatt station, and Loy Yang B, a 1000 megawatt station, are very similar; and Yallourn W has a lower tariff order than Loy Yang B even though it is a larger station. The opposition would like an explanation of what ‘tariff order’ means — other than that it seems to mean $1000 million at the bottom of the table. That needs to be explained, and I would love a bean counter to explain it to me in terms that I can understand, being from an engineering background myself.

The opposition supports the bill. Opposition members who have alluded to a number of improvements that could be made to the bill look forward to the minister’s response.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until next day.

Remaining business postponed on motion of Mrs TEHAN (Minister for Conservation and Land Management).

ADJOURNMENT

Mrs TEHAN (Minister for Conservation and Land Management) — I move:

That the house do now adjourn.

Bendigo: Ansett Cup

Mr CAMERON (Bendigo West) — I raise with the Minister for Sport the possibility of playing in Bendigo Ansett Cup matches conducted by the Australian Football League. The minister would be aware that if Ansett Cup games were played in Bendigo there would need to be a significant improvement in the facilities at the excellent Queen Elizabeth II Oval. The AFL requires better facilities for Ansett Cup matches than it does for practice matches — for example, improved player amenities, media facilities, television camera positions, sponsorship exposure and hospitality areas.

I ask the minister to direct his department to undertake inquiries because Bendigo would like to host Ansett Cup matches next year. I also advise the house that Albury has been used as a site for Ansett Cup matches. More than 90 per cent of the sports money from the Community Support Fund has been used for facilities in Melbourne, essentially for one major project, and I believe this is an opportunity for some of the money to be used in country Victoria. It is an opportunity for the
department and the minister to show more balance in the allocation of funds. I ask the minister to take up the matter on behalf of the Bendigo community which would certainly appreciate financial assistance.

Knox community health service

Mr LUPTON (Knox) — Through the Attorney-General I raise with the Minister for Health in another place the $3 million budget allocation for the construction of the Knox community health service. Earlier this month I indicated the best site for the health service after I was advised that the bureaucrats were looking at a number of sites. The decision about the appropriate site has been dragging on for some time. I ask the minister whether a decision has been made about the location of the service.

The two sites being examined are the land behind the existing City of Knox offices, which I believe is no longer available, and the preferred site of the local Knox community health service committee, the former Shire of Ferntree Gully site located on Burwood Highway. This site is far more practical and is serviced by both train and bus services. The health service committee believes it is by far the better site. Discussions have been going on for some time and now that funds have been allocated I am keen for the service to have a home so that it can operate from a permanent base in a manner befitting the Knox community.

This is the first community health service we have ever had because under the previous government we were devoid of any sort of community health service and there was a definite need for it. I seek to have the site of the Knox community health service clarified so the committee can get down to the final plans and do the necessary work to establish the service.

If the 125-year-old former shire office on Burwood Highway were chosen, it could be incorporated into new buildings or the existing structure used for the Knox community health service. I ask the minister whether he has finally made a decision so we can pass it on to the community and commence the staffing.

Human Services: community education

Ms CAMPBELL (Pascoe Vale) — I ask the Minister for Youth and Community Services to continue to fund the community education workers in each Department of Human Services region. If he decides to continue funding the problem gambling community education workers, I ask that it be allocated on a triennial basis with the annual salary at least that of the current rate. I raise the matter of triennial funding because, as we are all only too well aware, the costs of tendering for small community service organisations is becoming prohibitive. Much of the organisation’s time is now going into preparing, writing up and consulting on tenders, which means that the tender costs of time and energy dollars — much of it unpaid overtime — divert many services from the workers’ very rationale, which is to provide services to clients.

The current community education workers are funded mostly through the Breakeven service. The workers have a range of innovative, comprehensive and effective programs designed to meet the needs of their local community. Sometimes they may visit markets; they may talk to community sports groups or citizens clubs or perhaps attend licensed premises and schools. This dedicated team of workers has been making quite an impact in the community. For example, partly as a result of their work in the Geelong area, an area well served by innovative programs, an additional 2000 people are seeking counselling services for problem gambling and G-line has had an increased number of clients contacting it.

I urge the minister to continue this community education program for problem gamblers. We do not want to see tenders going to expensive, exclusively media-orientated advertising campaigns that do not touch the community. As an example of what I mean I point out that after dinner tonight a few members were trying to recall advertisements that are shown regularly on TV but no-one could remember the words.

Point Nepean Road: traffic

Mr DIXON (Dromana) — Through the Attorney-General I raise for the attention of the Minister for Roads and Ports in another place a matter concerning traffic volumes on Point Nepean Road in Rye. In January the Mornington Peninsula Shire Council conducted a traffic survey and found an average of 28 500 vehicles were using that road in the summer months, and on some days that rose to a peak of 37 000. The Point Nepean Road has four lanes, no left-hand turn lanes, parallel parking, and a right-hand turn lane that is narrower than the width of a car. VicRoads investigates roads and has trouble with divided roads and arterial roads that carry up to 35 000 vehicles a day, so we have a narrow road peaking at 37 000 vehicles a day.

VicRoads also investigates roads that carry traffic volume of more than 50 per cent as through traffic. The morning average is 57 per cent and in the afternoon 69 per cent of traffic travelling on Point Nepean Road
at Rye is through traffic. Those figures were obtained during January and reflect the traffic volume in December and most summer weekends from November through to March, including Easter, so they are not for only one or two weeks.

The road is unsafe for pedestrians. One intersection half a block from the controlled pedestrian lights between the beach and the shops carries 50 per cent more pedestrian traffic and 100 per cent more vehicle traffic than a warrant for pedestrian lights. Much traffic congestion is caused and it is unsafe for pedestrians. The amenity of the shopping centre and the foreshore is spoiled, businesses are devalued and accidents are happening.

There are three possible solutions. One includes widening Point Nepean Road and another is the upgrade of the back roads, but the best solution is the extension of the southern peninsula freeway. I ask the minister to explore those three options as the traffic volume will increase with the increase in tourism in the area.

**Teachers: contracts**

Ms KOSKY (Altona) — I ask the Minister for Tertiary Education and Training to investigate the employment through labour hire companies of sessional teaching staff after they have received significant redundancy payments. I direct to the minister’s attention three former full-time long-term staff employed at the Moorabbin campus of the Chisholm College of TAFE who because of their length of service received significant redundancy packages. One staff member had been employed on the campus for more than 30 years.

They have been re-employed by a labour hire firm. They were previously paid $26 an hour for a day session and $39 an hour for a night session. Through the agency they receive $28 an hour for a day session and $41 an hour for an evening session — that is, an additional $2 an hour. The agency is paid $40 an hour for a day session and $50 an hour for a night session, so the agency receives a decent amount to engage the staff.

I have heard only good reports of the teaching expertise of the three staff in question. However, they have been re-employed to teach the same students and the same classes. Their positions, not the staff, were made redundant. If the positions had been declared redundant they would not have been filled, but that is not the case here. It is a waste of public money.

As I said, all three have now been re-employed on higher wages and an issue arises about a duty of care. Who covers their superannuation and Workcover? The college takes the view that the teachers are subcontracted and should organise their own insurance. However, they are expecting the labour hire company to sort out the insurance issue and the college is not informing the teachers of what is happening with the issue.

**Swing bridge, Sale**

Mr RYAN (Gippsland South) — I raise for the consideration of the Minister for Roads and Ports in another place a magnificent structure termed the swing bridge. The bridge was built in 1883 near the confluence of the Latrobe and Thomson rivers south of Sale.

Although it is a significant feature of the South Gippsland Highway, the difficulty with that beautiful facility is that it no longer serves the purpose for which it was designed. Its load limit constrains its use by heavy vehicles, and the traffic lights on it preclude two-way traffic crossing it. That has been highlighted since the Longford incident on 25 September 1998, because all sorts of heavy vehicles have had to travel across the bridge to move equipment back and forth so repairs can be undertaken at the gas plant. That is only one example of the heavy-vehicle traffic that accesses the South Gippsland highway via the bridge.

For some years a plan has been afoot to build a facility that serves the proper purpose of the bridge by adequately catering for the traffic that crosses at that important point. I ask the minister to initiate the procedures required to construct another bridge or bridges to replace the swing bridge. Infrastructure that meets the needs of today is essential to the region.

Ms DELAHUNTY (Northcote) — Thank you for that, Mr Acting Speaker; I will enjoy it! The matter I raise is for the attention of the Premier in his capacity as the Minister for the Arts. I seek urgent action to save part of Victoria’s proud artistic heritage, the Meat Market Craft Centre, which is on the site of the old
meat market in North Melbourne. I refer in particular to the Victorian state craft collection.

On 13 May in this place I asked the Premier to investigate why various craft guilds at the craft market had had their tenancies terminated. The very next day there was a lockout at the craft centre. The Metro Craft Management Co. went into voluntary liquidation, an administrator was appointed, the doors were locked, and the tenants and the public were denied access to the centre.

The Meat Market Craft Centre has been a centre of excellence for virtually 20 years. In November 1978 the craft market was opened by the then Liberal Premier, Rupert Hamer, a great patron of the arts. Today, 20 years later, the craft market is in crisis. The administrators, Carson McLellan PPB, have generously given the government, through Arts Victoria, more time to consider the future of the craft market, in particular, what it would like done with the craft equipment — the kilns, wheels, and so on — and, crucially, the Victorian state craft collection. The collection includes ceramics, fibre textiles, glass, leather, metal work, jewellery and wood. It is considered one of the premier craft collections in Australia, if not in the world.

I seek urgent action on the matter. The government must stop equivocating on the issue. It would be a tragedy if the state craft collection were sold off and lost to the public. The tenants need a home, particularly those craftspeople whose businesses, whether successful or not, have been frozen by the action — and many have been very successful. In that context I refer to the Victorian Woodworkers Association, which operates a model Arts Victoria would do well to emulate in rescuing the craft centre.

The association allows the centre management to deal with a single body rather than a variety of people. It operates in a cooperative environment and it protects both emerging wood artists and professionals.

Intravenous gammaglobulin

Mrs SHARDEY (Caulfield) — I raise for the attention of the Minister for Health in another place representations made to me by two neurologists regarding inadequate supplies of intravenous gammaglobulin, otherwise known as Intragam. Transfusions of the blood product are of proven benefit to people suffering neurological conditions, particularly Guillain-Barré syndrome and chronic inflammatory demyelinating polyneuropathy. It is a superior form of treatment and for most people it is very effective.

Over the past few years there has been an intermittent lack of supply of the product. However, a chronic shortage over the past six months has caused distress to patients who require the product. Under normal circumstances some people can walk almost normally following a transfusion of gammaglobulin but are wheelchair bound without it. People who need the product often have to resort to importing it from overseas at great cost. The lack of Intragam is not due to a lack of donors but that improved technology should enable a more efficient collection of it and that is not readily available.

I ask the minister to investigate the issue and perhaps speak with his federal counterpart, who is conducting a review into blood collection across the country.

Werrribee community health centre

Ms GILLETT (Werribee) — I ask the Attorney-General to raise with the Minister for Health in another place a promise to establish a $6 million integrated community health centre in the Werrribee district. The promise, which was made more than two years ago as part of the last state election campaign and has been restated since by the government and the department, seems to have evaporated during the past 12 months. I have made inquiries at the Department of Human Services but have been unable to ascertain the status of the commitment.

I ask the minister to ask his senior bureaucrats to advise whether that promise, which has been borne out by significant and detailed demographic studies, will be honoured. The Werrribee community is part of a growth corridor and has an enormous need for the sort of integrated health services that could be provided by such a centre. The centre would cater for a broad range of primary health service needs, including dental needs. Approximately 47 per cent of Werrribee’s population is aged between 14 and 24 and the area desperately needs the provision of such services. If the government breaks its promise the constituents of Werrribee will be devastated.

My phone calls to the Department of Human Services have not been returned. I would like the minister to assist me to work out whether the government’s promise to provide a community health centre at Werrribee will be honoured.

Moorabbin Airport: market site

Mr LEIGH (Mordialloc) — I raise with the Minister for Planning and Local Government a serious matter concerning the former Fairways Leisure Market
at Moorabbin Airport. It would appear that prior to the private airport corporation gaining access to the lease, an arrangement had been entered into to increase the market from 10,000 to 18,000 square metres, so almost doubling its size. There would appear to be no planning arrangements in place other than for the independent umpire who is involved to decide whether the project goes ahead.

The proposal is somewhat in conflict with the Moorabbin Airport master plan being established with the City of Kingston. No planning arrangements have been made about how to manage expansion of the site, unlike what happened at the Westfield site, for example. I have deep concerns about whether the facility will be of any advantage to the local community and about its effect on local retail arrangements.

The Fairways Leisure Market was not successful on the site. Arrangements for the use of the site have changed, and it seems that despite the master plan, the local community, the council and the state government do not have any control over what will take place on the site other than what an independent umpire decides comes within the scheme.

I ask the minister to investigate the proposal and advise what action, if any, can be taken to deal with the matter. It is a matter of concern to the community because it may affect existing retailing arrangements in the area.

**Banyule Community Health Service**

**Mr LANGDON** (Ivanhoe) — I ask the Attorney-General to raise with the Minister for Health in the other place the future of the Banyule Community Health Service, which is in the Olympic Village section of my electorate. There are doubts about whether the Banyule Community Health Service will remain where it is, and there is speculation fuelled mainly by my electorate colleague in the upper house and my opponent for the seat of Ivanhoe, who shall remain nameless, about whether the community health centre will remain at the Olympic Village site.

I ask the minister to indicate whether the Banyule Community Health Service will remain in its current location or move. The centre has been in the Olympic Village area since the 1970s, and is desperately needed where it is. Possible locations I have heard mentioned include the old Colosseum Hotel site, which is currently subject to a liquor licence appeal. It is owned by one of Mr Bruce Mathieson’s companies, and is the site where the police headquarters were supposed to be built. I believe the speculation is based mainly on information that comes from my upper house colleague in Templestowe Province, Mr Forwood.

Another possible location I have heard mentioned is Macleod. I would be most concerned if that were the case. I have heard through contacts at the local council, where my opponent for the seat of Ivanhoe is a councillor, that $3.5 million was allocated in the last budget for the possible relocation. As I said, the speculation is fuelled by my upper house colleagues and my opponent in the forthcoming election. I ask the Minister for Health to indicate whether the Banyule Community Health Service will be moved and, if so, where it will go, and how much funding has been allocated to it.

My major concern is that the community health centre is desperately needed in the Olympic Village in West Heidelberg. It services the area and the electorate very well, and it would be of major concern to me if it were to move. I suspect, however, that it may be relocated to the repatriation hospital campus of the Austin and Repatriation Medical Centre, which is possibly subject to major redevelopment by the government and is up for tender at the moment. All this is very vague comment and my constituents need clarification of the situation. I ask the Minister for Health to clarify it for them.

**Wodonga Learning, Education and Play Centre**

**Mr A. F. PLOWMAN** (Benambra) — I ask the Attorney-General to refer to the Minister for Youth and Community Services two issues relating to the Learning, Education and Play Centre, a voluntary service which provides early intervention training for children with special needs. The number of children from both Albury and Wodonga serviced by this voluntary service is 37.

The first issue is that currently government funding is directed through an independent body called the Upper Hume community health service, which takes 12 to 14 per cent by way of commission.

I ask the minister to review the arrangement so funding can be forwarded directly to the board, which can handle the administrative costs better and more quickly.

The second aspect is that the centre provides a service to New South Wales and Victorian children. It has been suggested that in the future the centre will not be available to New South Wales children. I ask the minister to review that possibility.
Responses

Mr MACLELLAN (Minister for Planning and Local Government) — The honourable member for Mordialloc raised the issue of Fairways Leisure Market increasing its trading area from 10 000 to 18 000 square metres, not in accordance with the master plan and, in his view, quite unfairly for other nearby retailers who have had to go through the proper planning process led by Kingston City Council.

I agree that one party obtaining an advantage not available to another simply because one site is on commonwealth land does not appear to be a proper process. I will see if the expansion is in accordance with the master plan. The honourable member asked what action I will take. I will have the matter investigated, seek a report and advise the honourable member of what action, if any, can be taken.

Mrs WADE (Attorney-General) — The honourable member for Benambra raised for the attention of the Minister for Youth and Community Services the issue of services for children with special needs in the Albury- Wodonga region, and the way in which funding is arranged for services in that region. I will pass his comments on to the minister.

The honourable member for Pascoe Vale raised for the attention of the Minister for Youth and Community Services the funding of community education workers in Department of Human Services regions. I will pass that matter on to the minister.

The honourable member for Dromana raised for the attention of the Minister for Roads and Ports the volume of traffic on the Point Nepean Road at Rye. Apparently the traffic volume figures are high and he believes there are a number of options for dealing with the traffic congestion that results from that traffic flow. The options include widening Point Nepean Road, upgrading other inland roads or extending the freeway.

The honourable member has asked me to investigate the matter and I will pass it on to the minister.

The honourable member for Gippsland South raised for the attention of the Minister for Roads and Ports in another place the issue of the swing bridge built near Sale in 1883, which no longer fulfils the purpose for which it was intended. The honourable member has suggested that the construction of another bridge or other bridges to replace the swing bridge is required. I will pass his comments on to the minister.

The honourable member for Northcote asked the Premier, as she has done in the past apparently, to intervene to save the Meat Market Craft Centre. Tenants are being denied access following the appointment of an administrator. The honourable member seeks urgent action but was unclear as to the type of action she thought would be appropriate. It might be a good idea for the honourable member to collect her thoughts and come up with some ideas.

The honourable member for Benambra raised for the attention of the Minister for Youth and Community Services the issue of services for children with special needs in the Albury- Wodonga region, and the way in which funding is arranged for services in that region. I will pass the matter on to the Minister for Youth and Community Services.

Motion agreed to.

House adjourned 11.33 p.m.