PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

9 October 2001

(extract from Book 4)

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

By authority of the Victorian Government Printer

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Lady SOUTHEY, AM

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FIFTY-FOURTH PARLIAMENT — FIRST SESSION

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TUESDAY, 9 OCTOBER 2001

Tuesday, 9 October 2001

The PRESIDENT (Hon. B. A. Chamberlain) took the chair at 2.03 p.m. and read the prayer.

ROYAL ASSENT

Message read advising royal assent on 2 October to:

Agriculture Legislation (Amendment) Act
Transport (Further Amendment) Act

GENE TECHNOLOGY BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. M. M. GOULD (Minister for Industrial Relations).

QUESTIONS WITHOUT NOTICE

Electricity: brown coal leases

Hon. PHILIP DAVIS (Gippsland) — Last week the Minister for Energy and Resources claimed that the government's brown coal tender process would lead to 'massive new investment and job opportunity in the Latrobe Valley'. Given that industry experts have subsequently urged caution and suggested that 'raising hopes of large-scale job creation is a cruel hoax', is it a fact that the minister's claims are misleading?

Hon. C. C. BROAD (Minister for Energy and Resources) — I welcome the opportunity provided by the shadow minister to draw attention to the announcement I made in the Latrobe Valley last week.

It is the government's view that the opportunities for tendering for the coal leases present an important opportunity for future development and jobs in the state. Eighty-five per cent of the energy use in the state is supplied by electricity that comes from brown coal in the Latrobe Valley, and while the government is strongly supportive of investment in renewable energy and energy conservation to reduce the amount of energy used, Victoria will be reliant on fossil fuel sources for its energy for some time to come.

That being the case the government is investing in opportunities for improving the use of brown coal in terms of its environmental impact. It is already doing it through the cooperative research centre into cleaner use of brown coal. It is also taking this important opportunity of exploration leases to drive further investment in new technology. The government has made it clear that it is looking not just for world best practice but the development of new technology to allow the continued use of brown coal in a way which deals with its greenhouse impact.

It is the government's view, and I absolutely stand by my statements in this regard, that both the investment in research and the ultimate further development of brown coal in a way which is environmentally acceptable will provide substantial job and investment opportunities importantly for Gippsland, rural and regional Victoria and the whole of the state.

Foundation for Sustainable Economic Development

Hon. R. F. SMITH (Chelsea) — The Minister for Industrial Relations has previously advised the house about the Bracks government's funding and support for the Foundation for Sustainable Economic Development and its projects. Will the minister advise of the progress of these projects?

Hon. M. M. GOULD (Minister for Industrial Relations) — As I advised the house last year, the Foundation for Sustainable Economic Development was established in October 2000 with a significant contribution from the Bracks government. As honourable members may recall, the key role of the foundation is to research and promote progressive and cooperative workplace practices. This can then contribute to the economic competitiveness of companies.

Last year I also informed the house about the research being undertaken by the foundation. In particular I drew the attention of the house to the industrial relations strategies used in respect of the Sydney 2000 Olympic Games and Paralympic Games. Today I am pleased to announce the completion of the study. It was conducted by Tony Webb and he has published a book entitled *The Collaborative Games*. Yesterday it was launched in Sydney and this afternoon it will be launched in Melbourne.

There are several reasons why it was important for the Victorian government to support such a study. The Sydney Olympics represented a major project of almost unparalleled size and complexity. It was also very successful from an industrial relations perspective. The detailed case study will provide a unique insight into cooperative workplace practices that will be of interest and benefit to many Victorian organisations. Commentary about the Sydney success has often

ignored the carefully crafted industrial relations arrangements and the incredible level of commitment, cooperation and innovation in the presentation of those games.

The central theme of the book — the benefits of collaboration — echoes the Bracks government's core industrial relations philosophy of partnership and cooperation. This philosophy, and the work we do to encourage others to adopt it, is a marked change from the divisive policies of the previous government. This partnership approach is also a critical tool to ensure we continue to grow the whole of the state and continue to turn the state around.

Consumer affairs: *Stuff*

Hon. A. P. OLEXANDER (Silvan) — I refer the Minister for Consumer Affairs to issue No. 2, 2001, of the youth magazine *Stuff*, which is being distributed by her department to secondary schools and years 10, 11 and 12 students throughout Victoria. Does the minister condone the advice in the publication on how persons under suspicion of indictable offences can frustrate criminal investigations by police and in particular the specific advice it provides on how to evade responding to police questioning?

Hon. M. R. THOMSON (Minister for Consumer Affairs) — The *Stuff* magazine provides a great deal of useful information to year 12 students who will embark on their lives as adults at the end of their VCE year. What is included is advice to them as consumers, what they need to look out for in buying a car and a whole lot of information in relation to issues that will confront them. It gives advice in relation to their legal rights.

The magazine has been well received over the years. Last year it was renamed in a competition undertaken by students in the secondary school system. It was called *Get a Life* when produced by the previous government. The kind of information included in the magazine has not changed in substance. It still includes information in relation to a young person's rights and entitlements.

Snowy River

Hon. E. C. CARBINES (Geelong) — Can the Minister for Energy and Resources inform the house of further progress made by the Bracks government in the implementation of increased flows to the Snowy River and the corporatisation of the Snowy Mountains Hydro-electric Authority?

Hon. C. C. BROAD (Minister for Energy and Resources) — I am pleased to advise the house of another major advance towards implementation of increased flows in the Snowy River and the corporatisation of the Snowy Mountains Hydro-electric Authority.

On Friday, 5 October, the Victorian, New South Wales, commonwealth and South Australian ministers, through the Murray-Darling Basin Ministerial Council, supported amendments to the Murray-Darling Basin agreement. The leadership shown by the Bracks government over the past two years has been the key driver in delivering this outcome, including the commonwealth and South Australian ministers. The government has worked cooperatively with the commonwealth, South Australian and New South Wales ministers in what has been at times a frustrating process, particularly in the case of South Australia.

I have had a number of discussions with the South Australian Minister for Water Resources, Minister Brindal, and urged him to sign that agreement. The minister's decision to sign on to the Murray Darling Basin Amending Agreement is a large step towards implementing increased flows to the Snowy River. It also implements the Victorian government's commitment to not adversely impact on irrigation rights or on the health of the Murray River. The amending agreement sets in place relevant water management arrangements to follow corporatisation, and importantly it will also facilitate the allocation of 70 gigalitres of increased environmental flows to the River Murray.

I congratulate the ministerial council on its decision. The Murray Darling Basin Amending Agreement, which was supported by the council on Friday, now requires the signature of first ministers and to be passed by the relevant parliaments. The Premier of Victoria stands ready to sign the amending agreement and the Victorian government stands ready to present it to the Parliament. The Victorian government is now waiting on the Prime Minister and the premiers of the other states to sign the agreement in order that the Parliament can then proceed to deal with it.

Last Saturday was the first anniversary of the historic announcement of 6 October 2000 by Premier Bracks and Premier Carr to restore 28 per cent of the original flows to the Snowy River. I confirm to the house that the Bracks government is acting on its commitment to return environmental flows to the Snowy River.

Fishing: quotas

Hon. P. R. HALL (Gippsland) — My question is also to the Minister for Energy and Resources. Given that 15 November is the date set by the government for

the commencement of quota management in the rock lobster and giant crab fisheries, I ask the minister whether the regulations for quota management have been finalised and whether new quota orders have been issued.

Hon. C. C. BROAD (Minister for Energy and Resources) — The change to quota management for the rock lobster fishery is on track to commence from 15 November. I am pleased to advise the house that as we have progressed through the process, including the buyback being managed by the Rural Finance Corporation, there has been an increasing acceptance of the government's decision to move to a new form of management which will ensure the sustainability of this fishery, and importantly the regional and rural communities that will depend on it into the future, which was not the case under the previous government.

The regulations are proceeding through the process. As I am sure the honourable member is aware in asking the question, some administrative changes, which do not change the substance or the impact of those regulations on fishers, have had to be made to those orders. They are purely administrative changes. Those regulations will be in place and quota management will commence from 15 November.

Yarra River

Hon. G. D. ROMANES (Melbourne) — I understand the Bracks government recently launched a report on tourist and recreational activities on the Yarra River. Will the Minister for Small Business inform the house of the details of this report and the potential benefits it will have for users of the Yarra River?

Hon. C. A. Furletti — On a point of order, Mr President, the report has been tabled. Why should the minister answer that question?

The PRESIDENT — Order! Is this information publicly available?

Hon. C. A. Furletti — Yes.

The PRESIDENT — Order! The honourable member will recall that under the rules of the house questions should not ask ministers for information that is available in accessible documents. The honourable member might like to reword the question.

Hon. G. D. ROMANES — I seek information from the minister on the impact of tourist and recreational activities on the Yarra River.

Hon. Bill Forwood — On a point of order, Mr President, standing order 69 says that questions should be put to ministers relating to public affairs with which they are officially connected. I put to you, Mr President, that this is an issue that belongs more properly with the Minister for Major Projects and Tourism in the other place.

Hon. M. R. Thomson — On the point of order, Mr President, the report was commissioned and undertaken by the Office of Regulation Reform, which is under my ministerial responsibility.

The PRESIDENT — Order! In that event I do not uphold the point of order. However, I suggest the honourable member take into account my previous ruling with regard to the amended form of the question.

Hon. M. R. THOMSON (Minister for Small Business) — The report on the Yarra River, which was released on 21 September, was compiled after a great deal of consultation with the business community and those who use the Yarra River, including the rowing clubs who use it for rowing regattas and the like, and also businesses along the Yarra River. An issue has been raised about ongoing safety on the river, and honourable members might recall that when I announced that a review would take place the Honourable Bill Forwood was very interested in the review and what would take place as a result of it. The final document has been released.

There has been an increase in activity on the Yarra River as a result of developments from Southgate to the Crown Casino complex to the Melbourne Exhibition Centre to the Melbourne Aquarium to Federation Square and the Riverside Park, and Docklands is to come on stream. These developments will see an increase in river usage. Residential developments are also taking place at the back of South Yarra.

The government believes the developments will see a 53 per cent increase in usage of the river in the future, and a great deal of detailed work is required in looking at that increase in usage and the best way of managing the Yarra between Punt Road and the Bolte Bridge.

Issues looked at included the licensing system, access to berths, river safety, recreational usage, dispute resolution mechanisms and river management. The report has come out with a comprehensive plan to ensure that customers are provided with an efficient and high standard river system, with public safety being of first concern.

In looking at this issue it is important to ensure a maximum capacity for small boat operators to also have

access to berthing and ticketing facilities along the Yarra River. The Department of Natural Resources and Environment will undertake to produce a regulatory impact statement that will look at the licensing arrangements along the river and consider how best to meet the needs and demands of the future. That regulatory impact statement will offer a number of alternatives in relation to licensing arrangements and will be put out for consultation and for comment from commercial boat passenger operators and the public.

The total package of reforms will see smaller commercial boat operators being given for the first time access to berthing rights and ticketing facilities. Also, as a number of small operators operate only part time or seasonally it is likely they will have reduced licensing fees as a result.

In light of the consultation that has been undertaken, and the thoroughness of that consultation, we will see a streamlining of the way the government deals with regulation on the Yarra River, which is another demonstration of the Bracks government being able to consult with the community to bring about the best results.

Building industry: royal commission

Hon. B. C. BOARDMAN (Chelsea) — Will the Minister for Industrial Relations advise the house whether her department will be making a submission to the commonwealth royal commission into the activities of the Construction, Forestry, Mining and Energy Union; and if so, when?

Hon. M. M. GOULD (Minister for Industrial Relations) — The Victorian government will be represented at the royal commission inquiring into the building industry as a whole-of-government approach under the auspices of the Premier. The government will be represented and at appropriate times will be given representation to the commission.

Insurance: sporting organisations

Hon. D. G. HADDEN (Ballarat) — In light of the previous comment to the house by the Minister for Sport and Recreation about the difficulties being faced by volunteer sports organisations, and in particular the ever-increasing cost of insurance for those organisations, what action has the minister taken to remedy the situation?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I thank the honourable member for her question. I inform the house, and honourable members should have appreciated this given my answers to the previous questions about this issue, that a number of recreational organisations have been confronted this year in particular by massive increases in public liability insurance. That issue has been exacerbated by the HIH Insurance collapse. It is possible that that may be further exacerbated by recent international events.

Some of those community organisations have experienced increases in the order of 200 per cent or more. Honourable members would appreciate that as community not-for-profit organisations they have found it difficult to meet the extra costs. Some local councils have also experienced huge increases in costs to cover their activities. In addition, those costs have been passed on to a number of those community organisations on a user-pays basis.

I am pleased that the task force into the cost of delivering sport, led by Vicsport, found that rising insurance costs are certainly a major impediment to sporting activities. The government is now considering issues related to that task force.

Recently I approved funding to Vicsport to undertake an audit of insurance held by state sporting organisations on behalf of themselves and their affiliated clubs. That data for the project is being collected at the moment; part of that process is under way. Sport and Recreation Victoria and the Australian Sports Commission are leading a national review of sporting organisations insurance.

The review will examine the availability of insurance products for sport and sporting organisations, because only a limited range of those products is available. Also, they will consider risk management strategies for sports bodies, which is very much aimed at reducing costs and at producing best practice and a guide to managing those insurance issues.

The work is being undertaken currently by the law firm Rigby Cooke and should be completed early in 2002. I emphasise that it is a national issue, and we have accordingly brought it to the federal government's attention. I hope it will be handled more effectively than other sporting issues of recent times have been handled by Jackie Kelly, the federal Minister for Sport and Tourism.

During September Victoria hosted a forum for peak sporting bodies, and a number of the options to tackle current problems were discussed, including group purchasing arrangements. Vicsport represented the sports sector at that meeting.

The Department of State and Regional Development is working closely with the relevant industry bodies and

also on behalf of a number of respective ministers, because this is a cross-government issue. We will focus on these issues to find the best solutions following that meeting.

World Athletics Championships

Hon. I. J. COVER (Geelong) — As the Minister for Sport and Recreation is no doubt aware, the 2005 World Athletics Championships appear unlikely to be held in London. As a result what action has the minister taken to attract the 2005 championships to Melbourne, or will this be another opportunity lost by the Bracks Labor government?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am pleased to hear the question asked by the shadow Minister for Sport and Recreation. The government has an ongoing policy of sourcing the best possible events, and no doubt that may well be one of the events that we are currently investigating.

Hon. Bill Forwood — You didn't even know about it!

Hon. J. M. MADDEN — For the one bright light on the other side of the house — the one retiring — it is common practice for the government not to announce which events it is investigating at any time, because as has been mentioned in this house before, it would not want to get into a bidding war in relation to any of these events with any other countries that might also be interested in them. What is interesting about this issue is the reason why we have and will continue to attract major events to this state, which is the fantastic work we do in building sporting facilities that are world class and viable in the long term.

Recently when I was in London — and that may come as a surprise to the opposition — prior to visiting Manchester a whole range of issues were discussed. One of the issues of greatest significance that left a lasting impression on the British government was our ability to deliver sports and major events through the outstanding facilities we have in this state.

Consumer affairs: *Victorian Homebuyers Magazine*

Hon. S. M. NGUYEN (Melbourne West) — Will the Minister for Consumer Affairs outline to the house the recent success of the *Victorian Homebuyers Magazine*?

Hon. M. R. THOMSON (Minister for Consumer Affairs) — For honourable members who have not seen the magazine, I have in my hand the *Victorian Homebuyers Magazine*, which includes the *Victorian Building and Renovating Magazine*. It may not be earth shattering, but the greatest investment of their personal expenditure that an individual or a couple may make is in a home, whether through building or renovating.

The magazine gives useful, impartial information to home buyers or renovators. We know the traps that are out there for anyone who may be building or renovating their home. The magazine gives them useful advice on how to avoid those traps, how to plan for their financial requirements in relation to repayments, and how to check for loans. It is a useful magazine that has been widely accepted and applauded by the community and by the organisations that advise. It also has the endorsement of the Master Builders Association and the Housing Industry Association.

Some 450 000 copies of the magazine have been distributed throughout Victoria to consumers, and we are now in the fourth print run of another 150 000 copies. It is a hugely successful magazine that has been welcomed by consumers, and is another demonstration of the government ensuring that information gets to consumers in a timely and appropriate way before they make mistakes and need to resort to the legal forums.

QUESTIONS ON NOTICE

Answers

Hon. M. M. GOULD (Minister for Industrial Relations) — I have answers to the following questions on notice: 1816, 1838, 1994, 2055, 2057, 2062, 2063, 2067, 2110, and 2126–38.

RETAIL TENANCIES REFORM (AMENDMENT) BILL

Introduction and first reading

Hon. M. R. THOMSON (Minister for Small Business), by leave, introduced a bill to amend the Retail Tenancies Reform Act 1998 with respect to the basis or formula on which a rent review may be made during the term of a retail premises lease.

Read first time.

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Alert Digest No. 11

Hon. A. P. OLEXANDER (Silvan) presented *Alert Digest* No. 11 of 2001, together with appendices.

Laid on table.

Ordered to be printed.

PAPERS

Laid on table by Clerk:

Border Groundwaters Agreement Review Committee — Report, 1999–2000.

Crown Land (Reserves) Act 1978 — Minister's order of 25 September 2001 giving approval to granting of a lease at Colac.

Emu Industry Development Committee — Minister for Agriculture's report of 26 September 2001 of receipt of the Final Report covering the period 1 July 1999 to 30 November 2000.

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

Bendigo — Greater Bendigo Planning Scheme — Amendment C14.

Boroondara Planning Scheme — Amendment C19.

Buloke Planning Scheme — Amendment C2.

Hobsons Bay Planning Scheme — Amendment C16.

Macedon Ranges Planning Scheme — Amendment C10.

Moonee Valley Planning Scheme — Amendment C16 Part 2.

Moreland Planning Scheme — Amendments C2 and C10 Part 3.

Murrindindi Planning Scheme — Amendment C5 Part 2.

Shepparton — Greater Shepparton Planning Scheme — Amendments C12 and C13.

Victoria Planning Provisions — Amendment VC13.

Wyndham Planning Scheme — Amendment C28.

Statutory Rules under the following Acts of Parliament:

Courts (Case Transfer) Act 1991 — No. 92.

Electricity Safety Act 1998 — No. 93.

Road Safety Act 1986 — Nos. 94 and 95.

Subordinate Legislation Act 1994 —

Ministers exception certificates under section 8(4) in respect of Statutory Rules Nos. 92, 94 and 95.

Ministers exemption certificates under section 9(6) in respect of Statutory Rules Nos. 93 and 94.

Proclamation of His Excellency the Governor in Council fixing an operative date in respect of the following Act:

Chinese Medicine Registration Act 2000 — Remaining provisions — 1 January 2002 *(Gazette No. G40, 4 October 2001).*

ESSENTIAL SERVICES COMMISSION BILL

Second reading

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

That this bill be now read a second time.

The purpose of this bill is to enable the establishment of an Essential Services Commission from 1 January 2002 as an economic regulator of Victorian utilities.

This bill fulfils a key government election commitment to establish an Essential Services Commission to ensure high-quality, reliable and safe provision of electricity, gas and water services for all Victorians. The establishment of the Essential Services Commission is a critical component of a suite of reforms made by this government to the essential services sector, including the establishment of an Energy and Water Ombudsman Victoria and a range of reforms arising out of the Security of Electricity Supply Taskforce report. The aim of these reforms is to protect the interests of all consumers in relation to reliable supplies of gas, water and electricity. In protecting the interests of all present and future consumers, the government recognises that the new regulatory arrangements must ensure optimal investment in essential services infrastructure. A well-planned, competitive, efficiently managed and regulated essential services sector delivers benefits to all Victorians.

The Essential Services Commission (ESC) will promote a certain and stable regulatory framework conducive to longer term investment and the financial viability of utility industries.

This important initiative will also ensure that regulation of utilities in Victoria is consistent with the government's key policy pillars, in that it:

fosters more accountable, transparent and inclusive decision making;

provides for affordable and reliable services that are available to all Victorians, including low-income and vulnerable groups;

provides for the whole of the state — that is urban, rural and regional users — to benefit from reforms in the regulation of essential services;

ensures that the ESC operates in a financially disciplined and responsible manner; and

protects the interests of utility consumers by enhancing customer advocacy arrangements.

The proposal represents an important evolution in the regulatory framework for utility industries in Victoria. It builds on the strengths of the Office of the Regulator-General's existing regulatory framework, but proposes substantive improvements in order to ensure that Victoria benefits from an essential services regulatory system that is truly world class. Key features of the Essential Services Commission to ensure it delivers on this goal include:

a focus on achieving triple bottom-line outcomes through more effective integration of economic regulation with broader environmental and social objectives;

a regulatory approach that provides strong incentives for optimal long-term investment in infrastructure;

a requirement for memoranda of understanding to be developed and published by regulators;

more effective regulatory oversight over reliability of supply of essential services as they affect Victoria; and

enhanced accountability and transparency of regulatory decision making.

This bill will be complemented with new and improved arrangements for customer advocacy, involving the establishment of an independent customer advocacy body — the Consumer Utilities Advocacy Centre — to deliver effective consumer input to regulatory processes.

The centre will ensure a world-class centre of excellence in customer advocacy research and information dissemination and work with consumer and user groups to enhance consumer advocacy on behalf of all consumers.

This is a response to consumer groups' concerns that they do not have the resources to promote informed and effective representation. The government believes that well-informed and effective consumer advocates are important in ensuring consumers, particularly those who are disadvantaged, get the best deal from their utilities — particularly in the newly competitive retail environment.

The centre will provide an interface between consumers and the commission and other regulators and will be encouraged to enter into a memorandum of understanding with the ESC. In this way, the centre will ensure the voice of consumers and their advocates is heard loudly and clearly. It will also provide a forum where consumers and disadvantaged groups can come together to discuss and exchange grassroots information.

The Consumer Utilities Advocacy Centre will commence operating on 1 January 2002, coinciding with the establishment of the Essential Services Commission. To this end, the Minister for Consumer Affairs has commenced further stakeholder consultation on this important initiative.

The government has consulted widely on this important feature of the new regulatory arrangements and is grateful for the support shown by all stakeholders for this initiative.

I now turn to the development of this legislation. The Essential Services Commission Bill has been developed in close consultation with key stakeholders, commencing with the release of a public consultation paper on 28 July 2000. This reflected the government's desire to consult widely and to carefully analyse proposals for change to the regulatory system for essential utility services, given the complex issues involved and far-reaching implications for customers, businesses and the general community.

The paper drew 72 submissions from a broad cross-section of the community, including consumer and community groups, regulated businesses and industry associations, unions, regulatory and other government bodies, and individuals. These submissions demonstrated a high level of interest in, and understanding of, the range of complex regulatory issues concerning essential utility services. They also expressed strong support for the establishment of the commission with a range of features that are encapsulated in this bill.

Based on these consultations, the government developed detailed plans to implement the ESC and its related initiatives. These plans were outlined in a proposal paper, 'Implementation of the Essential

Services Commission', and an exposure draft of this bill, which were released for community comment on 7 June 2001.

The proposal paper and the exposure draft drew some 54 submissions from a broad cross-section of the community. The submissions provided a strong endorsement of the government proposals to establish the ESC and of its approach to maximise the involvement of the community in developing the new regulatory arrangements.

These submissions expressed support for the establishment of the commission with a range of features that are encapsulated in this bill. The government has also made some refinements to the draft legislation in light of responses received.

A further issue raised in the proposal paper concerned the commission's role in the regulation of export grain handling facilities built after 1995. The government considers that it is appropriate for this issue to be assessed by the ESC as part of a fundamental review of the regulation of grain handling facilities, to commence in 2002.

A key element of this proposal involves the Essential Services Commission becoming responsible for economic regulation of the water sector. The Office of the Regulator-General currently monitors Melbourne's three water retailers' compliance with their licence conditions. However, regulation of tariffs for these authorities, together with economic regulation of Melbourne Water and Victoria's non-metropolitan and rural water authorities, is the responsibility of the Minister for Environment and Conservation. On its establishment on 1 January 2002, the commission will initially take over the ORG's limited water regulation functions, before assuming full responsibility for economic regulation of the water sector from 1 January 2003. Before this can occur there needs to be a significant overhaul of the current regulatory arrangements for the water sector, which will need to be underpinned by new legislation.

This shift of water regulation responsibility to the commission will deliver significant benefits to Victoria. It will result in a more consistent, transparent and efficient approach to the economic regulation of essential service utilities. The move to independent regulatory oversight for water utilities also ensures that Victoria meets a key water reform commitment agreed by the Council of Australian Governments.

The commission will be co-funded by government and industry on an equitable and transparent basis, with ESC establishment costs to be funded by the government. The ESC will incur one-off costs of $5.2 million in 2001–02 for communication activities required for assisting consumers during the transition to full retail competition in electricity and gas markets. These costs are to be recovered from the licensed electricity and gas businesses.

Notwithstanding the role of the ESC in regulating water and sewerage from 1 January 2003, the government expects that the cost of ESC regulatory services will decline from 2002–03. This is because of a reduction in the overall cost of regulation and also because of the one-off nature of cost recovery for the implementation of full retail competition for electricity and gas. Therefore, the government expects that from 2002–03, the budget for the ESC will decline. As a consequence, there will be a reduction in the amount of money recouped from regulated businesses.

Before addressing the specific aspects of the bill, let me first summarise the key features of the commission.

Broad features of the Essential Services Commission are as follows:

the commission will be independent from government and subsume the Office of the Regulator-General (ORG);

it will become Victoria's economic regulator of electricity and gas distribution, certain ports and grain handling services, rail access and, from 1 January 2003, water and sewerage services;

it will also have an enhanced role in reliability of supply, including a capacity to conduct investigations into reliability of supply issues;

it will have an objective to protect the interests of Victorian consumers;

it will comprise a commission structure consisting of a chairperson and additional commissioners as required;

it will be required to be transparent in its decision making and undertake extensive stakeholder consultation;

it will also be required to formally interface with other regulators in order to achieve integrated decision making and avoid regulatory duplication;

it will be more accountable for its decisions, with greater scope for stakeholder involvement in appeals processes and longer time lines for hearing appeals; and

it will be empowered to seek to impose strong penalties on utilities that do not comply with determinations or meet licence requirements.

I will now provide an outline of the bill.

Part 1 of the bill contains preliminary information, including the purpose of the act, which is to establish the commission and to provide for an economic regulatory framework for regulated industries. 'Essential services' are defined to include services provided by the electricity, gas and water industries, the ports and grain handling industries, and the rail industry. Regulated industries are also defined and encompass those currently being regulated by the Office of the Regulator-General.

Public transport will not be included within the jurisdiction of the commission. These services are subject to contractual oversight by the Department of Infrastructure and it would not be commercially or legally appropriate — at this stage — to change these arrangements.

This part also describes how the Governor in Council may, by order, declare an industry to be regulated after having regard to the existence of significant and non-transitory market power, net benefits from regulation and the absence of similar regulatory functions being undertaken by another body.

Part 2 of the bill establishes the commission and details its objectives, functions, powers, relationship with government, corporate governance and staffing arrangements.

An essential prerequisite for effective economic regulation is that regulatory decisions are not influenced by the government of the day. Accordingly, the Essential Services Commission will be established as an independent economic regulator. The ESC's determinations, reports and inquiries will not be subject to ministerial direction or control. The minister will have the power to direct the ESC to conduct independent reviews of regulatory issues.

The commission's primary objective will be to protect the long-term interests of Victorian consumers with regard to the price, quality and reliability of essential services. In emphasising long-term interests, the government recognises that the interests of all present and future consumers are best served through regulatory arrangements that promote an optimal environment for investment in essential utility services infrastructure.

The government has also incorporated a number of facilitating objectives into the bill, which the commission will be required to have regard to in seeking to achieve its primary objective. Taken together, the primary and facilitating objectives will encourage a well-planned, competitive, efficiently managed and regulated essential services sector that delivers benefits to all Victorians. They will also ensure that, while the commission's regulatory decisions are investment focused, they fully reflect applicable environmental, safety, and social statutory requirements. These facilitating objectives are:

to facilitate efficiency in the regulated industries and the incentive for efficient long-term investment;

to facilitate the financial viability of regulated industries;

to ensure that the misuse of monopoly or non-transitory market power is prevented;

to facilitate effective competition and promote competitive market conduct;

to ensure that regulatory decision making has regard to the environmental, health, safety and social legislation applying to the regulated industry;

to ensure that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency; and

to promote consistency in regulation between states and on a national basis.

The Essential Services Commission is to be established as an economic regulator, meaning that the commission's prime focus will be on economic regulation, rather than environmental, safety, or social regulation. The current regulatory framework for utility industries in Victoria involves at least 15 separate agencies at both the state and national level. Operating under a variety of legislation, codes and rules, each of these agencies is dedicated to regulating particular aspects of the activities undertaken by utility and other related industries, including economic regulation, reliability of supply, health and safety regulation, and environmental regulation.

While the government considers it appropriate that specialised bodies focus on each of these important aspects of utility services, it is concerned to ensure that decisions of regulatory agencies in relation to utilities are more closely integrated and better informed.

What this legislation does is effectively hard wire the decisions of these regulators into the commission's regulatory approach, by requiring the commission to

consult with other bodies, including specialist regulators, in order to achieve a more closely integrated approach to regulation and to avoid regulatory duplication. Reciprocal obligations will also be imposed on other Victorian regulators or agencies nominated in regulations.

The commission will also be required to enter into memoranda of understanding (MOUs) — detailing respective roles and key interfaces — with other regulators that will also be prescribed in regulations. These MOUs will detail key reciprocal obligations for consultation between the commission and other regulators, and will be made publicly available. While MOUs will be prescribed for state-based regulatory bodies, the commission will be encouraged to also enter into such formalised consultation arrangements with key national bodies, such as the Australian Competition and Consumer Commission.

These initiatives will help to ensure that economic regulation is applied within an overall framework that is fully cognisant of — and consistent with — statutory requirements administered by environmental, health, safety and other specialist regulators.

The commission is responsible for setting reliability standards for distribution networks in gas and electricity. In addition to its economic regulatory functions, the commission will utilise its knowledge and expertise on service standards and reliability issues in providing informal advice to government on supply reliability issues. The commission will also — at the direction of the minister — undertake formal inquiries into reliability of supply issues. Such a role will ensure that the commission effectively complements the existing roles of commonwealth and state bodies in security of supply.

The government considers it vital that the ESC undertake its regulatory processes in a transparent and inclusive fashion. This is achieved firstly, through a requirement for the commission to develop a charter of consultation and regulatory practice. This charter will not only ensure that the commission embraces a consultative and inclusive approach to regulation, but also that this approach is presented in a fully transparent and accessible manner. The commission will be expected to develop its charter in consultation with stakeholders, as a matter of priority.

This part also provides an explicit requirement for the commission to consult with other bodies, including specialist regulators, in order to achieve a more closely integrated approach to regulation and to avoid regulatory duplication. Similar obligations to consult with the ESC will apply to other bodies nominated in the regulations to accompany the bill.

The membership of the commission, as detailed in this part of the bill, will comprise a full-time chair, with additional full-time and part-time commissioners as required. All positions will be appointed by the Governor in Council, with details of the tenures of such positions set out in the bill. The broad process for decision making is also set out in this part, including convening of meetings of the commission and voting on determinations.

On its establishment on 1 January 2002, the government intends that the ESC will have a chairperson and two part-time commissioners. Furthermore, from 1 January 2002, the ESC will — where feasible — include all statutory office-holders in collective decision making.

Part 3 defines the commission's specific powers, which include price regulation, setting standards and conditions of service and supply, licensing and market conduct. A key concern of regulated businesses is that the regulatory process, and in particular price determinations for prescribed goods and services, need to be conducted in a transparent manner. Accordingly, a range of factors that the commission must have regard to in making determinations is listed in this part. These are:

the particular circumstances of the industry and declared services for which the determination is being made;

the costs of making, producing or supplying the goods or services;

the cost of complying with environmental, health, safety and social legislation which applies to the regulated industry;

the return on assets in the regulated industry;

any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;

the financial implications of the determination for the regulated industry;

any factors specified in the relevant legislation; and

any other factors that the commission considers relevant.

These factors will ensure that the commission is able to adopt a tailored regulatory approach that takes into

account the particular characteristics of the industry concerned, including regional factors. This approach will also be fully cognisant of all costs involved in producing the service and importantly, of the financial implications of the determination for the industry. In essence, the commission's regulatory approach will be strongly focused on facilitating optimum long-term infrastructure investment in Victoria and financially viable regulated industries.

In making a price determination, the commission will also need to ensure that:

wherever possible the costs of regulation do not exceed the benefits; and

decisions take into account and clearly articulate any trade-off between costs and service standards.

While the government does not consider it appropriate to constrain the regulator to the extent of prescribing a regulatory methodology, the factors that the ESC will need to take into account, along with requirements under relevant industry legislation will move the commission further in the direction of an incentive-based approach to regulation that is efficient, cost effective and transparent.

Part 4 of the bill is concerned with the commission's powers in relation to collection and use of information. To ensure that the commission is accountable in the use of such powers, any requirement of the commission for a person to provide information, or decision by the commission to disclose information that has been provided on the basis that it is confidential or commercially sensitive, will be subject to the right of appeal.

Parts 5 and 6 deal with the commission's function to undertake inquiries and prepare reports.

Part 5 outlines basic procedural requirements to be followed by the commission when undertaking inquiries and reports, including requirements for public consultation and reporting.

Part 6 deals with ministerial directions to the commission to undertake specific inquiries and prepare reports. This part contains provisions enabling the minister responsible for electricity and gas industry legislation, after consulting with the minister responsible for this act, to specify the commission's objective in relation to an investigation undertaken in accordance with such a direction. These provisions have been retained from the Office of the Regulator-General Act to enable the government to direct the Commission to undertake specific investigations of the impacts of full retail competition for electricity and gas. These provisions are for the purpose of protecting consumers during the transition to full retail competition in these industries and will expire on 31 August 2004.

Part 7 of the bill contains a number of general provisions, including processes concerning enforcement orders and appeals.

I have already outlined a number of key features of the Essential Services Commission and the regulatory system it will administer that are designed to facilitate an optimal level of long-term investment by regulated industries providing essential utility services. However, the government also fully understands the importance of these industries to their customers and has accordingly increased penalties under this bill for non-compliance with determinations of the commission or breaches of licence conditions.

Penalties in such cases have been increased from $100 000 under the previous act to a maximum $500 000 under this bill, and from $10 000 per day to $50 000 per day for continuing non-compliance. These revised penalties provide the appropriate balance between a regulatory approach that encourages and facilitates investment in essential services, and one that recognises the potential for serious adverse community impacts in the event of serious non-compliance. The new penalties are also more consistent with those applying in other jurisdictions. Other penalties for information-related breaches of the Essential Services Commission Act have been amended, with increased fines and limiting the option of a custodial sentence to cases involving the deliberate provision of false or misleading information.

Part 7 also contains reformed appeals provisions, which among other things considerably extend the time lines for hearing of appeals. These changes are partly in response to concerns raised by regulated businesses over the adequacy of current time lines for appeals under the ORG act and also reflect the often complex nature of economic regulation.

Time lines for appeals against determinations made by the commission will be extended from the current 14 days under the ORG act, to 30 working days, with the option of an additional 15 working days if required. In addition, appeal arrangements have been reformed to allow for participation by interested parties and define a clear role for the commission as the proper contradictor in appeal proceedings. The government has also recently expanded the size of the appeal panel pool from 12 persons to 24 persons.

Draft regulations dealing with procedural matters of appeals and other matters were included in the government's proposal paper and will be completed prior to part 7 of this bill coming into operation.

This part also requires the minister to complete a review of the act's objectives within five years of the commencement of this provision. This will not be a broad review of the commission, but rather is intended to assess whether the act's objectives and processes need to be finetuned.

Part 8 of the bill deals with matters relating to the transition from the Office of the Regulator-General to the commission and details consequential amendments to other legislation.

Finally, parts 9 to 15 provide a range of amendments to relevant industry legislation. Without going into the fine detail of these amendments, I wish to highlight three significant changes.

Firstly, new objectives for the commission have been substituted into the Electricity Industry Act 2000 and the Gas Industry Act 2001. The objectives are, (a), to the extent that is efficient and practicable to do so, to promote consistent regulatory approaches for the electricity and gas industries, and (b), to promote the development of full retail competition in electricity and gas markets. The effect of these changes is to remove any duplication between the regulator's current objectives under these industry acts and the objectives under the Essential Services Commission Act, thereby providing a more complementary framework of objectives.

Secondly, the Grain Handling and Storage Act 1995 and the Port Services Act 1995 have each been amended to include licensing provisions. These licensing arrangements have been tailored to the circumstances of these regulated industries and have been designed to impose minimal compliance costs. As foreshadowed in the government's proposal paper for the establishment of the ESC, these arrangements will, among other things, enable the regulator to recover costs related to regulating these industries. The Water Industry Act 1994 will also be amended to include a licence surcharge which, consistent with other regulated industries, will be based on the costs incurred by the commission in regulating the water sector.

Thirdly, it will now be the responsibility of the minister administering the Essential Services Commission Act, and not the commission itself, to determine whether grain and ports facilities are regulated. This will ensure that threshold decisions on whether regulation is appropriate are made by government, with the commission responsible for administering regulatory approaches in line with its statutory objectives, functions and powers.

In respect of all the industry acts, the bill clarifies that the minister responsible for setting licence fees and charges is the minister responsible for administering the Essential Services Commission Act, after consultation with the minister responsible for the relevant industry act. In determining appropriate fees and charges, the minister will have regard to the total costs of the commission that are incurred, or likely to be incurred, in administering its regulatory responsibilities in respect of the particular regulated industry.

I wish to make a statement pursuant to section 85(5) of the Constitution Act 1975 of the reasons why the bill alters or varies section 85.

Clause 63 of the bill provides that it is the intention of clauses 44(7), 51(7) or 62(1) to alter or vary section 85 of the Constitution Act 1975.

Clauses 44(7) and 51(7) of the bill preserve provisions of the Office of the Regulator-General Act 1994 and continue to exclude civil proceedings for damage that may be suffered in respect of the provision of information or documents, in the context of an investigation or inquiry by the commission. The reason for limiting the jurisdiction of the Supreme Court with respect to these matters is to give persons who wish to make statements or provide information a degree of confidence that their statements or information can be made or given without fear of litigation. This is likely to enhance the quality of the submissions and information made available to the commission, and thus enhance the quality of its reports and decisions.

Clause 62(1) of the bill provides, as does the corresponding provision in the Office of the Regulator-General Act 1994, that proceedings cannot be brought in respect of a determination or provisional or final order except on the grounds that there was no power to make the determination or order or that the procedural requirements in relation to the making of the determination or order have not been complied with. The government believes that this clause does not preclude questions of errors of law being considered by the court. The bill provides for an improved appeals process, which will satisfy the requirements of appellants being given a fair hearing and a considered decision on any appeal being made.

It is necessary to ensure that where the commission makes orders regarding compliance with

determinations or with the terms of any licence, such orders should operate without risk of questions challenging the substance of the order being referred to court, except on the grounds outlined above. This is necessary to ensure that legitimate regulatory decisions are directly and effectively enforceable and that, in turn, the integrity of the regulatory framework administered by the commission is maintained.

In conclusion, this legislation has been developed after an extensive public consultation process with key stakeholder groups.

The development of the ESC legislation and related reforms has been a very significant and complex undertaking. I would like to thank Mr John Lenders, MP, Parliamentary Secretary for Treasury and Finance, for playing a key role in consulting with the community in the development of the ESC proposal and legislation. I would also like to thank the Department of Treasury and Finance and its ESC project group — headed up by Dr Stephen Rimmer — for providing high-quality and insightful advice to the government regarding the ESC.

In establishing a new and improved utility regulator for Victoria, this bill embodies the government's commitment to delivering triple bottom-line outcomes within a regulatory climate that pushes the boundaries of world best practice. It will provide greater consumer protection and access to decision-making processes and provide greater certainty and predicability for long-term investment in viable utility infrastructure. It will also enhance service reliability and facilitate a regulatory approach that closely integrates economic, health, safety, environmental and social aspirations.

I commend the bill to the house.

Debate adjourned on motion of Hon. PHILIP DAVIS (Gippsland).

Debate adjourned until next day.

GENE TECHNOLOGY BILL

Second reading

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

That this bill be now read a second time.

The Victorian government has described its commitment to embracing the opportunities that gene technology brings to Victoria in the recently released document 'Biotechnology: a strategic development plan for Victoria'.

This commitment is underpinned by the recognition that real and sustainable industry development can occur only where there is a transparent and coherent process to protect the public's health and safety and the environment from any risks associated with the use of gene technology and to incorporate community views on the ethical issues associated with this new technology.

The Gene Technology Bill 2001 is the Victorian component of a national system regulating all activities involving genetically modified organisms. With the passage of the Gene Technology Bill, Victoria will ensure the independent national regulator of genetically modified organisms (GMOs), established under the commonwealth Gene Technology Act 2000, has the power to act in this state wherever and whenever gene technology is used in research, development or manufacture of a product.

Without state level legislation, the national regulatory framework will not operate comprehensively, as the commonwealth does not have the constitutional power to regulate all dealings with gene technology such as those which may be carried out by individuals, state agencies and institutions that are not working with or through corporations. State legislation ensures that all dealings with the technology are covered in the one national scheme of complementary commonwealth, state and territory legislation.

The national scheme represents the regulatory system preferred by all states and territories. The commonwealth Gene Technology Act 2000 was passed with bipartisan support. Tasmania has already passed its state level legislation.

Throughout the development of the national approach there was extensive community consultation.

The national Gene Technology Regulator has been established as an independent statutory office-holder with powers akin to an auditor-general or ombudsman.

The processes carried out by the commonwealth regulator and described in this state bill are transparent. Applications received by the regulator which involve the intentional release of a genetically modified organism into the environment and which may pose risks to public health and safety or the environment will be open for public comment. The details of a licence granted by the regulator will be available for public scrutiny on the record of GMO and GM product dealings.

The national approach is to rigorously and scientifically assess risks associated with the use of gene technology.

The bill will enable the Ministerial Council on Gene Technology, established under the Gene Technology Agreement, to issue policy principles in relation to ethical issues concerning dealings with genetically modified organisms, in relation to recognising any areas designated 'GE free' for marketing purposes and may also issue codes of practice.

The bill describes the functions and powers of the Gene Technology Regulator. One of the regulator's key functions is to authorise specific dealings with genetically modified organisms.

All dealings with genetically modified organisms will be prohibited unless that dealing is authorised by a licence or the dealing is a notifiable low-risk dealing, or an exempt dealing as prescribed in the regulations, or is included in the GMO register established under the commonwealth act.

Before issuing a licence, the regulator will be required to prepare a risk assessment and risk management plan with respect to the dealings proposed to be authorised by the licence.

The regulator will also be required to seek advice from certain agencies or bodies, including the state, other commonwealth agencies, relevant local government councils and its own scientific advisory committee when the proposed use involves the intentional release of the GMO into the environment.

The regulator must invite public submissions and may hold a public meeting on the risk assessment and risk management plans prepared by the regulator.

The Gene Technology Regulator will be prohibited from issuing any licence unless she or he is satisfied that any risks posed by the dealings proposed to be authorised by the licence can be managed in a way that protects public health and safety and the environment.

The regulator will also be prohibited from issuing a licence unless he or she is satisfied that the proposed dealing is consistent with any policy principle issued by the ministerial council and the applicant is a suitable person to hold a licence.

The bill will enable regulations to be made that declare certain dealings with GMOs to be notifiable low-risk dealings.

The bill describes the functions of three advisory committees which will advise the Gene Technology Regulator and the ministerial council on scientific, ethical and community concerns.

The bill provides for financial transfers between the regulator and the state and credits to the gene technology account together with various reporting obligations on the regulator.

The bill enables the regulator to give directions to a licence holder, or to a person covered by a licence. It also provides powers of inspection in relation to monitoring and offences, the powers and obligations of inspectors and procedures relating to warrants.

This government recognises the great potential biotechnology holds for this state. In terms of realising the potential health, agriculture, industry, primary production and environmental benefits from utilising this technology, we have only begun the journey. However, it is equally true that the community is concerned, and rightly so, with the ethical and moral issues raised with the use of gene technology or in related technologies.

Six years ago, Victoria was one of the first states to adopt legislation — the Infertility Treatment Act 1995 — that prohibited any form of human cloning and experiments mixing animal and human sex cells. We are still one of only three states with such legislation.

As the prohibition on human cloning is already enshrined in our state laws, the bill before you does not include the provisions of the commonwealth Gene Technology Act 2000 that achieve the same end.

When proposed national legislative uniformity banning cloning is achieved, the commonwealth has stated it will repeal the provisions relating to human cloning within their gene technology legislation.

The community can be assured that this process will not in any way detract from Victoria's strict stance against human cloning or relax the legislative controls in place in this state to stop such practices.

With the passage of this bill, Victoria will ensure any and all dealings with gene technology will be subject to an appropriate level of scientific and public scrutiny to ensure adequate protection of the public health and safety of our community and the unique environment of our state.

I commend the bill to the house.

Debate adjourned for Hon. J. W. G. ROSS (Higinbotham) on motion of Hon. C. A. Furletti.

Debate adjourned until next day.

CRIMES (VALIDATION OF ORDERS) BILL

Second reading

Debate resumed from 18 September; motion of Hon. M. R. THOMSON (Minister for Small Business).

Hon. C. A. FURLETTI (Templestowe) — The opposition supports the bill and is of the view that it is good legislation. It is legislation that is necessary to be introduced and passed by the Parliament as expeditiously as possible given the purpose of the bill, which in effect is to rectify a loophole that has been discovered and given operation at law recently in the Supreme Court in Lednar's case, to which I will refer shortly.

In the second-reading speech the government expresses its strong support for this type of legislation, although it is interesting that on numerous occasions government members when in opposition sought to modify and vary the Crimes Act which was introduced in 1997 by the previous Attorney-General, Jan Wade, and which introduced the procedures with which the bill deals.

The bill is very brief and consists of only three clauses. This type of legislation is becoming somewhat symptomatic of the government's legislative agenda, and I do not think it is appropriate to allow the opportunity to pass without drawing to the attention of the house the standard of legislation being brought before it, and in particular the manner in which it is being done. I do not mean to be unduly critical, but it would seem to me to be a far better use of the time available to this chamber for bills such as this and the following bill, without wishing in any way to foreshadow the following bill, had been in some form of an omnibus bill where they could be debated as one bill, because they are very brief. Their purpose is very specific and they are appropriate candidates for being dealt with as one bill.

With that having been said, let me say this: the operative or substantive clause of the bill introduces proposed section 464ZL to the Crimes Act. It will validate any decision made on or before 22 December 2000 by the Magistrates Court. It is important to note that it will validate a decision made by the Magistrates Court not sitting in open court and also by a magistrate not constituting the Magistrates Court, those orders being made with respect to the obtaining of forensic samples pursuant to the Crimes Act.

I will deal in more detail with the purpose of and the need for the clause, but importantly the purpose of the exercise is to remedy or overrule the effects of the Supreme Court decision of Justice Gillard in the matter of *Lednar, O'Brien and Hill v. The Magistrates' Court and The Chief Commissioner of Police (Victoria)*, the judgment in which was handed down in December last year. I intend to go into some detail on that case. The court held not so much that there was a flaw in the Crimes Act but rather that there was a defect in section 125 of the Magistrates' Court Act, if one can call it a defect, or perhaps that the operation of section 125 was not quite as broad or all-encompassing as both the police and a number of magistrates considered it to be.

In that respect section 125(1) of the Magistrates' Court Act provides that:

> All proceedings in the court —

that is, the Magistrates Court —

> are to be conducted in open court except where otherwise provided by this or any other Act or the Rules.

It appears that what had developed was a mode of practice in the Magistrates Court whereby applications made by police to the court under section 464ZF of the Crimes Act — that is, applications requiring orders for the taking of DNA samples from prisoners — were heard in chambers. The reason for that would be obvious to most honourable members. The process being used by the police is outlined in some detail in the Supreme Court judgment. Generally speaking it involved an application and some key detail on the basis of the application, a statement by the applicant — generally the police officer seeking the order — and the paperwork being dealt with by a magistrate in chambers.

The other aspect is that those applications were always made ex parte, meaning not only that the subject of the application — that is, the prisoner in respect of whom the application was being made — was unaware of it or was not served with copies of the application, which is generally the case where a person's rights are being affected, but more importantly, he or she was not even aware that the application was being made.

It appears that in the passage of time since the enactment of the legislation a couple of thousand applications have been made; later I will put on record the statistics detailed by Justice Gillard in the Supreme Court judgment.

The Crimes Act had its genesis in 1988. It was amended in 1993 and further modified in 1997, on both occasions by the former Liberal government. The purpose of the amendments was to set up a database of DNA samples and to outline in considerable detail the

provisions for the taking of forensic samples from convicted criminals.

Some debate took place in the other place on this bill, when the suggestion was made that the bill was about DNA. As I have foreshadowed, it is not about DNA but about the amendments necessary to the Magistrates' Court Act to enable the establishment of a proper process whereby forensic samples can be taken.

I recall having participated in debate on the 1997 Crimes (Amendment) Bill when the then Attorney-General, the Honourable Jan Wade in the other place, in her second-reading speech said of the amendments:

> Underlying these reforms is the increasing use and application of forensic DNA technology. It is a technology which is regarded by Australian and international experts as the most important scientific advance to be offered to the criminal justice system since the development of fingerprint analysis almost 90 years ago.

Every honourable member who has had anything to do with the forensic science area would appreciate the reason why DNA or genetic fingerprinting is becoming so common — because it is the fingerprinting of the next century.

The emphasis that Jan Wade placed on the amendments related to the bill, which she said:

> … strikes an appropriate balance between law enforcement and the need to maintain necessary safeguards which preserve individual liberty. That is achieved through judicial supervision.

At the very heart of obtaining samples is the involvement of the judiciary — the Magistrates Court in this case. At the time I said that because of my legal background I had some concerns about what appeared to be a considerable extension of intrusive powers afforded to investigators. I recall I expressed a concern that, notwithstanding that the two ultimate objectives of any criminal justice system must be to determine the truth and mete out justice, if the process of obtaining DNA samples from people and matching DNA profiles extracted from crime scenes assists in the detection of criminals, it is difficult to argue against a process and procedure that facilitates achieving those outcomes.

So it was that Messrs Lednar, O'Brien and Hill, all prisoners or convicts, were approached to give DNA samples, but they objected. Orders were sought and obtained. They appealed against the manner in which those samples were taken and as part of the appeal the procedures followed were detailed. As I said earlier, the procedure included the application made by the police in each case or for each individual prisoner being made in chambers and ex parte.

The Supreme Court found that section 125(1) of the Magistrates' Court Act was clear. It found that no rules had been made to deal with section 464ZF applications by the Magistrates Court as it was empowered to do. At page 68 of his judgment Justice Gillard said there was nothing in the Magistrates' Court Act or any other act that empowered the court to hear the applications other than in open court.

So it was that Justice Gillard, quite correctly, in my humble view, found that the orders made by magistrates in a large number of applications were voidable. That is significant, because had they been void the matter would have ended there. The orders were made voidable so they remained on foot unless somebody took steps to have them set aside. That has of course led us to the situation where it is necessary to correct the deficiency in the legislation, and the bill seeks to validate those orders made prior to 22 December 2000.

I should comment in passing that it struck me as being of some interest that in making this amendment the government did not consider it appropriate to give magistrates the power to hear applications of this type in chambers. It is obviously an appropriate process; it is quite common for applications of this type to be heard in chambers. Perhaps it is possible for some provision to be made whereby the subject of the application is notified, but it is clear there must be a simpler method of dealing with these applications so as not to tie up the resources of the police, the corrections officers and of course the Magistrates Court itself. Therefore I urge the government to give the matter some consideration, perhaps as a second leg, in seeking to simplify the processes we have before us.

As the judgment of Justice Gillard indicates, arising from the evidence presented to him in September 2000, the police held 2980 unexecuted orders to obtain forensic samples. Of those, 1700 were issued ex parte, and as at October 2000, 1101 orders had been executed and information recorded on the DNA database.

The judgment indicates that some 1000 similar applications were awaiting judgment, and about 50 applications per week were being filed with the Magistrates Court. My reciting those sorts of statistics and considering those sorts of numbers highlights that it is absolutely imperative that the government give some consideration to facilitating the processes whereby these samples can be taken, bearing in mind my background and my predisposition for civil rights.

As the Attorney-General indicated in his second-reading speech, one of the beauties of DNA profiles and the use of DNA for the purpose of forensic and evidentiary purposes is that not only does it incriminate a person, but it also has the advantage of exculpating a person from suspicion because of the accuracy and the high regard in which that type of evidence is held.

The figures I quoted differed somewhat from the statistics referred to by the Attorney-General in the second-reading speech. I am sure the figure of 2448 referred to in his speech probably differed because of the data. I accept that there is an explanation for that, but notwithstanding that fact, the statistics are quite staggering.

In his judgment Justice Gillard also indicated that the evidence tendered showed that DNA samples had been matched to 157 offences, including 7 murders, 17 armed robberies and 6 rapes. That obviously indicates the importance and value of this new method. Indeed, in the *Herald Sun* of 6 October last year — around the time this matter was being heard — the very prominent page 1 of the *Herald Sun* is headlined 'The key to 200 crimes'.

It talks about DNA tests being used to assist in solving crimes, some going back as far as 40 years, and it indicates that there had been a broad-ranging world-first exercise, whereby some 1500 different inmates had been tested or had DNA samples taken that had led to fresh leads on more than 200 unsolved cases. That shows — for the purposes of emphasis if nothing else — the significance of this type of process.

DNA is an incredibly valuable investigative tool throughout the world now. It is used for the purposes of placing suspects in particular places. The Federal Bureau of Investigation in the United States of America has a central databank to which a DNA profile from any crime scene can be matched. I am told that 50 of the US states have those sorts of databases, so it is not that Victoria is unique in its laws or that Victoria is necessarily at the forefront in these matters, but it is keeping up with processes that are being utilised throughout the world.

One comment I read is that the reality of current crime detection is that finding a forensic sample at a crime scene is tantamount to finding a calling card from a person whose DNA is recorded. The matching capacity of computers and technology nowadays is amazingly quick and is improving in speed and reliability. Given that one of the greatest deterrents to crime is detection, this must be, of course, one of the most useful instruments for deterrence we have today.

So given the support the opposition has for the bill, it is anxious to wish it a speedy passage. It is somewhat ironic that this judgment was delivered almost 10 months ago and only now has the bill come before the house. One of the questions I asked in the briefing I had was: what would be the effect on the samples that had been procured?

I am not sure that I received a satisfactory answer, but we certainly wish the bill a speedy passage and urge the government to take whatever steps are necessary to ensure that the actual form of application is facilitated without necessarily impinging on the civil liberties of those affected by the legislation.

Hon. D. G. HADDEN (Ballarat) — I support the Crimes (Validation of Orders) Bill, the purpose of which is to amend the Crimes Act 1958 and to validate certain orders which are purported to have been made for the taking of forensic sample offences under section 464ZF of the Crimes Act.

Clause 3 of the bill inserts new section 464ZL into the Crimes Act to make good the results of the decision in *Lednar, O'Brien and Hill v. The Magistrates' Court and the Chief Commissioner of Police (Victoria),* which is a Supreme Court decision of 22 December 2000, case no. 6292 of 2000.

Clause 3 also validates orders made not in open court in the Magistrates Court. It deems them to have the same force and effect as if they had been made in open court. Section 125 of the Magistrates' Court Act 1989 sets out clearly that:

> All proceedings in the court are to be conducted in open court except where otherwise provided by this or any other Act or the Rules.

It is a straightforward section, but unfortunately it had not been followed with forensic sample offence orders and therefore there was a need for the bill. The decision of Justice Gillard in the Supreme Court last December ruled that the hearing of the forensic sample offence applications by police in Magistrate Court chambers were voidable as they did not comply with the open-court requirements in section 125 of the Magistrates' Court Act. Therefore the court quashed the orders made in respect of three plaintiffs, Lednar, O'Brien and Hill.

Subsection (1) of new section 464ZL deems that all orders which have been made will have the same force and effect as if they were made in open court.

Importantly, subsection (2) of new section 464ZL states that it does not affect the rights of the parties of Lednar, O'Brien and Hill in that Supreme Court decision.

Pragmatically, the decision of the Supreme Court in that case quashed the orders made for the forensic samples because they had not been made in open court and therefore were in breach of section 125(1) of the Magistrates' Court Act. The decision of the Supreme Court is contained in 81 pages, a simple and easily readable judgment of 484 paragraphs, which sets out the reasons why those three plaintiffs had to come before the Supreme Court in a judicial review. That was the only option available to them within our law, the problem being that they had no right of appeal from an order made by a Magistrates' Court under section 464ZF of the Crimes Act. The application was a criminal proceeding and therefore a Supreme Court application could not be made on the question of law under section 92 of the Magistrates' Court Act. An appeal to the County Court pursuant to section 83 of the Magistrates' Court Act likewise did not apply because it was not a criminal proceeding. The only way those three plaintiffs could challenge the orders made in the magistrate's chambers was by way of a common-law judicial review.

Fortunately, eminent counsel and a prominent firm of solicitors in Melbourne offered to take on the case from the Public Interest Law Clearing House. I commend both senior counsel, Mrs Felicity Hampel, QC, and Mr G. Connellan, and the firm Clayton Utz, for taking on the case pro bono.

The number of forensic sampling applications and orders before the courts which had been held up as a result of the Supreme Court decision varied somewhat. In the second-reading speech the Attorney-General stated that some 1064 orders were made and executed, and that a further 1384 were made but not yet executed. In paragraphs 26, 27 and 28 of his judgment Justice Gillard noted that evidence before the court revealed that as at 6 September last year the police had in their possession some 2980 unexecuted orders to obtain forensic samples, and of that number 1700 were issued ex parte. As at 9 October last year 1101 orders had been executed and information recorded on the DNA database.

His Honour also went on to say that the successful matching of DNA samples with the DNA database had identified various crime scenes, and that the DNA samples had been matched in 157 offences, including 7 murders, 17 armed robberies and 6 rapes.

On the day of judgment, 22 December 2000, His Honour noted that there were approximately 1000 applications ready to be made by the police team to complete those for convicted persons in custody. He also noted that approximately 50 applications were being filed each week in the Magistrates Court. The major thrust of the Supreme Court decision was that orders against those three plaintiffs were quashed as they were made in breach of the open-court ruling under the Magistrates' Court Act.

There were a number of other grounds under the judicial review, one in particular being the satisfaction of the two conditions precedent contained in section 464ZF(3)(a) and (b), which is that a convicted person has to have been found guilty of a forensic sample offence and be serving a prison sentence to satisfy the ground for the making of a forensic sampling order. A forensic sampling order is not one that can be made for any convicted person. There are specified forensic samples offences under schedule 8 of the Crimes Act.

They are serious offences and are broken up into four sub-areas: offences against the person — non-sexual offences, which include manslaughter, a common-law offence of kidnapping, and intentionally causing grievous bodily harm, et cetera; offences against the person — sexual offences; property offences — for example, robbery, armed robbery, aggravated burglary and burglary; and drug offences such as trafficking and cultivation under the Drugs, Poisons and Controlled Substances Act. The offences for which forensic samples can be taken from a convicted person serving a prison sentence are certainly not minor.

In conclusion, the government is committed to ensuring the police have the necessary investigative powers and tools to detect crimes and locate offenders, whether they be past, present or future offences. It is also important that the community has trust and faith in our criminal justice system. DNA or forensic sample technology is a valuable investigative and evidentiary tool in the solving of crimes. DNA forensic sampling can also eliminate a person from involvement in an offence. It might also implicate them, but it certainly can eliminate suspicion.

The bill is relatively short, with three clauses. Its purpose is simple: to amend the Crimes Act to validate the orders previously made or purported to have been made in magistrates' chambers for the taking of forensic samples from offenders as a result of the decision of 22 December last by Justice Gillard in the Supreme Court. The bill promotes public confidence in our forensic and criminal justice system and reflects the government's commitment to ensuring effective law

enforcement and to the solving of unsolved crimes. I commend the bill to the house.

Hon. R. M. HALLAM (Western) — The National Party supports the Crimes (Validation of Orders) Bill on the ground that it sees this as eminently sensible legislation. The point of the bill is to retrospectively validate particular orders made by the court. The National Party starts from the premise that the concept of retrospectivity should be handled very carefully. In fact, as a general rule the National Party would oppose it on the premise that a member of the community is entitled to rely on the law as it stands from time to time. However, in this case the National Party has been persuaded that a retrospective change to the law is certainly justified. Indeed, in the circumstances under which this bill is framed, clinging to the principle of simply opposing retrospectivity on the basis of principle would cause disruption to our legal system and divert valuable public resources.

I do not intend to go through the background in detail because that has already been done by the Honourable Carlo Furletti. However, it is appropriate to note that the Crimes Act 1958 lays out clearly the procedures and the circumstances regarding the taking of forensic samples from suspects, prisoners and convicted offenders. It allows those samples to be placed on a permanent database for future reference.

When the appropriate amendment to the Crimes Act in relation to the taking of samples came before the chamber, the procedures were debated and as a result of those discussions they were very carefully and clearly laid out. It was generally acknowledged that we were dealing with sensitive issues, because by their nature the procedures involved some personal intrusion. However, we took the view at the time that individual rights could be counterbalanced by the enormous community benefits available from the development of DNA technology, because this was an enormous breakthrough.

I acknowledge the comments of Mr Furletti that the bill is not about DNA but simply about the process by which the samples may be collected. However, it should be noted that the new DNA technology provides us with a powerful tool. It provides clear, easily established and irrefutable evidence of personal presence. It is a fact that one's DNA profile is unique to the individual, and it does not change over one's life. Because of that, and because the profile can be established from samples taken such as hair, skin, saliva — in fact, any body fluid — we individually leave behind our presence, and that is particularly important in respect of the crime scene where the criminal leaves a personal spore. Given that the prospect of detection is an important deterrent against crime, then this new technology takes on even greater importance because it is not just a massive breakthrough in the solving of crimes; it becomes a positive deterrent as well.

It is also important that the DNA profile does not diminish over time. The techniques that we have now come to respect can be used in the identification of DNA going right back to mummified bodies that may be many thousands of years old. That means the blueprint is identifiable and demonstrable well after death. The DNA technology becomes an important tool in the solving of crimes, and there are many well publicised instances where the cases of unsolved crimes of many years ago have been reopened and successfully prosecuted using this DNA technology.

Because of that the National Party has no trouble justifying the taking of forensic samples, given that there is enormous community benefit to be derived. Beyond that, it is critically important to recognise that just as DNA might provide the evidence to implicate a person in a crime scene or in a criminal offence, it also has the potential to eliminate the person from suspicion, so it is an important double-edged sword.

During the Crimes Act debate particular attention was made to the taking of forensic samples from prisoners who were serving sentences for serious offences. Again, that is not surprising because in those circumstances all the sensitivities that we would anticipate are heightened, and the prospect is that the prisoner in those circumstances would not volunteer the sample.

In those circumstances there would be little upside for the prisoner so why would he want to cooperate? It was recognised that in those circumstances there was a need for the sample to be acquired from a non-consenting prisoner. We are talking about some very intrusive procedures.

The National Party also recognises that in reality the community benefit is likely to be reflective of the prisoner's unwillingness to participate. The question could be posed that if a prisoner has nothing to fear on the basis of his or her innocence of any crime they would have less reason to obstruct the taking of the forensic sample. Indeed, in those circumstances they would be better to cooperate because they may be exonerated or eliminated as a suspect by the same process.

Given that there was a need to take samples from non-consenting persons, in those circumstances the law laid down a very strict regime and mode of approval. It required the applicant to convince a court as to the appropriateness of securing samples from the person. Because the technology is of recent development and because the genetic blueprint is not affected over time and thus allows crime authorities to revisit some unsolved crime scenes, it was not surprising that the police would want to commission a task force to establish a deoxyribonucleic acid (DNA) database involving substantial numbers of persons from whom samples would be sought.

In the early days of the technology large numbers of applications were made to the courts. It became common practice for a magistrate hearing those applications to do so in chambers rather than in open court. The logic of that was simply to avoid the diversion of court resources and a delay in proceedings. It is that process which was challenged in the Supreme Court and which led to the case *Lednar and Ors v. The Magistrates' Court and Anor*, which was cited to the chamber by the Honourable Carlo Furletti. The Supreme Court ruled that the procedure employed by the magistrate in hearing the application in chambers rather than in open court was inconsistent with the Magistrates' Court Act 1989.

Further, the judge ruled that because of that breach all the orders issued in proceedings heard in chambers would become voidable at the option of the prisoner. The judge also ruled that for future orders to be valid the proceedings should be heard in open court. That is what we confront. It is a bizarre circumstance. More than 1000 orders have been made and executed but are now voidable at the option of the person subject to those orders as a result of the Supreme Court's decision. In addition we are told there are nearly 1400 orders that have been made but not yet executed which are also now voidable at the option of the person subject to them.

In respect of the orders made but not yet executed, we are confronting a nuisance in terms of the new procedures which will be required to be followed. In other words, those orders will now have to be reheard in open court. That may be a nuisance, but it is not a big deal compared with the earlier category of more than 1000 orders that were made and executed, because they would not just have to be reheard but re-executed, and that would create all sorts of difficulties, particularly in those circumstances where the persons involved in those orders may have been released from prison. There is the prospect that the DNA samples achieved under that process may be obliterated from the public record, and that would be a bad outcome.

It means we have an administrative quagmire, the prospect of substantial financial penalties and the prospect of the resources of the legal system being diverted so that the courts and police force are tied up. It may also mean that the prisoners involved would need to go through the process again, although the National Party notes the Supreme Court ruling is that the process is voidable rather than voided at the option of the person subject to the order.

The bill remedies that circumstance by validating the orders that have been made to this point — in other words, notwithstanding the Supreme Court's ruling those orders are to stand, with the exception of the Lednar case. The Supreme Court's ruling with respect to that case will stand, but all other matters will be voidable as a result of the Supreme Court's ruling and will have to be reconstructed. The National Party believes that is fair. It believes this legislation is a good lesson for the Parliament because it highlights the need to have legislation that not just articulates the intention of Parliament but spells out carefully the procedures by which that intention should be pursued and thus avoids the possibility of the will of the Parliament being frustrated by a challenge based on an administrative assumption.

Like the Honourable Carlo Furletti I am surprised that the government has gone only halfway. The National Party supports the bill because it is re-establishing the orders rendered voidable by the Supreme Court's decision. However, the bill does not address the additional issue of the court procedure. The National Party is not persuaded that the process followed by the Magistrates Court in hearing applications in chambers was necessarily wrong. It seems to us it was a practical decision taken by the Magistrates Court on the basis of available resources and community benefit.

The government has chosen not to change the way in which the orders must be processed in the future. Like the Honourable Carlo Furletti I simply ask the government: why not? What is so wrong with the process that would see a pragmatic concept of orders being determined by magistrates hearing applications in chambers? The National Party recommends to the government that it take the next most logical step and overcome the problem confronting the bill in the obvious way by clarifying the process now. In any event, the bill is supported by the National Party.

Hon. S. M. NGUYEN (Melbourne West) — I support the Crimes (Validation of Orders) Bill. The

government has introduced the bill because it is taking a strong stance against the criminal elements in our society. Not long ago honourable members debated the Corrections and Sentencing Acts (Home Detention) Bill, which dealt with the issue of minor offenders. At the same time the government is committed to being heavy on people involved in criminal activities, for example, by providing for life sentences for drug traffickers. That is the government's response to law and order issues. It is finding a balance between dealing with commercial drug traffickers and helping minor offenders by using home detention programs. It is sad that the home detention program was knocked off by the opposition because it thinks the government is soft on crime, which is not true. The government has made a strong stand against heavy commercial drug trafficking and other related activities.

In August the government published a review of sentencing in Victoria conducted by Professor Arie Freiberg, a Melbourne University criminology professor. The discussion paper is part of the Bracks government's commitment to getting a better community understanding of the sentencing process and providing input into law and order issues. Next Monday a forum is being held with the Hobsons Bay City Council. The Attorney-General will be present and Professor Freiberg, who completed the sentencing review, will be the speaker. It is important that the community has input and a better understanding of how the process of sentencing works and is able to express its concerns and say what the government should look at. It is also important for families of minor offenders to say what the government can do to support those families.

The government is taking a positive approach to the community it represents. It presents the problems of today to the people of Victoria and works with the community to solve those problems and make the community better. The Attorney-General is improving law and order. The bill will give the police more opportunities to solve many cases which have been unsolved for many years. In Victoria there are hundreds of unsolved murder cases, but because of limitations in their powers the police cannot do further investigations. The bill will give police the chance to solve more than 200 unsolved murders that occurred over 50 years using deoxyribonucleic acid (DNA) technology. It is important because there are many suspected criminals living around Victoria yet the police are not allowed to investigate them further.

Many samples like hairs, cigarette butts, body fluid samples and fingernail scrapings are kept in police files for many years. The police can use these samples to test for DNA, which will give them a chance to solve some of Victoria's most baffling murder mysteries. There are hundreds of cases that need to be investigated further. It is important to show the community that the government is keen to face the challenge and be tough on suspected criminals.

Today we are also talking about what is happening with terrorists around the world. The bill will help police to better investigate people who are living around Victoria and Australia and who are suspected of crimes. As I said before, I would like to speak only briefly because I have another meeting to go to very soon.

In conclusion, the government is keen to reform sentencing and to review all the things we need to improve in safety in Victoria so we can show the public we are keen to fight against criminal activities in Victoria. The government was sad to see that two weeks ago the home detention bill was not supported by the opposition, because it is important in helping many minor offenders get back to a normal life. This bill will also give the police more power to investigate unsolved cases that have been there for 50 years. For those reasons I support the bill.

Motion agreed to.

Read second time.

Third reading

For **Hon. M. R. THOMSON** (Minister for Small Business), Hon. M. M. Gould (Minister for Industrial Relations) — By leave, I move:

That this bill be now read a third time.

In doing so I thank honourable members for their contributions to the debate.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

BUSINESS INVESTIGATIONS (REPEAL) BILL

Second reading

Debate resumed from 25 September; motion of Hon. M. R. THOMSON (Minister for Small Business).

Hon. C. A. FURLETTI (Templestowe) — I am pleased to rise on behalf of the Liberal opposition to support the Business Investigations (Repeal) Bill, which finds its way before the house as another example of the pathetic legislative program the government is engaged in.

The last bill, on which debate has just concluded, was a three-clause bill. It had a reasonably lengthy third substantive clause. The bill before the house is, again, a three-clause bill. Its operative clause consists of one line. It is possibly one of the shortest bills to come before the house since the Second World War, and it is a disgrace that the government should bring in a bill of this nature — in fact two very short bills in the one day — rather than using an omnibus bill to deal with these matters quickly, expeditiously and efficiently, as I indicated in the debate on the earlier bill.

Let me read the whole — I repeat, the whole — of the substantive part of the bill, which states :

> The Business Investigations Act 1958 is repealed.

It is a shameful indictment of the government. The bill repeals the Business Investigations Act which was originally introduced in 1949 and consolidated as part of the overall process of consolidation of legislation in 1958.

We are advised in the second-reading speech that the Business Investigations Act has not been used for 20 years because it is largely redundant and because the objectives which it was intended to achieve are now substantially achieved by more modern legislation. Accepting that, what the 1949 act consolidated and the Business Investigation Act 1958 did was to outlaw some fairly dubious practices.

I had occasion to go back and read some of the second-reading debate which took place on 25 October 1949. It appears that time passes but many things remain the same. The Attorney-General at the time, the Honourable Mr Oldham in the other place, in debating the bill suggested the matter had been raised with him on many occasions during the last few weeks. He said that interests in businesses were marketed under various titles. Apparently, the evil that was being addressed was the hawking of interests in businesses, and they had taken a number of different guises, some of which were referred to as the sale of option certificates, concession certificates or lot holders certificates, which appeared to identify the interest that was being sold in the business. I hasten to add that the Business Investigations Act was introduced to address the sale of interests in businesses conducted by individuals or partnerships, not by companies, because corporations in those days were already controlled and regulated through the Companies Act.

It appears that then, as still happens, the lure of making the quick dollar attracted many people. One of the contributors to the debate back in 1949, the then honourable member for Bendigo, Mr Galvin, suggested that millions of pounds were involved, so we are talking about possibly hundreds of millions of dollars today. It was an evil which it was necessary to address.

The Attorney-General at the time indicated something that we hear often in this place. He said:

> It is at all times difficult to protect the foolish from their folly and any attempt to do so by legislation becomes all the more difficult in that in the process the honest man may be brought into the net.

As it was then so it is now the usual instance of trying to protect a fool from his own foolishness, which is a very difficult task for legislators. As I said, the then Attorney-General referred to a common theme of making a quick buck, and said that many people became entrapped because of the promise of:

> … fantastic interest returns, couched in language that excites the cupidity of the … investor.

In those days the marketing of shares in companies would have been caught by the Companies Act and would have been illegal. As I said, the sale of interests in and fractions of businesses conducted by individuals or partnerships was not protected. The evil is cured by the Business Investigations Act, which is not a very long act. Firstly it defines very broadly ‘business’ and ‘interest’ and then applies part VIA of the Companies Act 1961 to any business within the meaning of the act — that is, to individuals — as if that business were a company. It brings into effect the Companies Act in respect to the sale of interests in businesses conducted by individuals and partnerships.

Hon. T. C. Theophanous — What’s wrong with that?

Hon. C. A. FURLETTI — There is nothing at all wrong with it, Mr Theophanous. I am referring to the law as it currently stands, not to the one-liner that you people have introduced.

The law as it stands allows the minister considerable powers in entering upon and effectively taking absolute control of a business after receiving a report from one of the inspectors. It allows the Attorney-General, who administers this particular act, to take steps almost without control to dispose of the assets of the business

which has been investigated and which deserves that course of action to be undertaken.

Hon. T. C. Theophanous — It hasn't been used for 20 years!

Hon. C. A. FURLETTI — Yes, I am aware of the fact that it has not been used for 20 years — and one has to ponder why it is still here. Why did it take you two years to get rid of it? This is only a one-line bill; I would have thought you would have got to it beforehand.

As I indicated, the act also restricts people hawking an interest in a business. Section 5(1) refers to persons going 'from place to place offering any interest', so it really is seeking to address hawking. This is one of those pieces of legislation which come into effect and, as was indicated by the Attorney-General at the time, Mr Oldham, have an impact on other areas. It was as a result of that bill and the evil it was seeking to correct — I hope Mr Theophanous is listening, because he might learn something.

Hon. N. B. Lucas — It's doubtful!

Hon. C. A. FURLETTI — It is doubtful, I agree, but we will try to educate him. It was through this process that the cap on partnerships was introduced, so that a maximum of 20 people constituted a partnership and beyond that any business enterprises had to convert into companies, whether private or public. That is something which honourable members may take home and ponder when we leave tonight.

The other purpose of the Business Investigations Act was to prevent the sale of a business with illegal objects so that anybody who was obviously seeking to deal in interests in a business with an illegal intent or purpose was outlawed. As the Honourable Theo Theophanous said by interjection, it has not been used for 20 years. That is because legislation such as the Corporations Law, the commonwealth trade practices legislation and the state Fair Trading Act have been enacted. The Fair Trading Act was introduced in 1985 and rewritten in 1999, the Trade Practices Act has been in place since about 1974 and the commonwealth Corporations Law has very recently been passed. The enforcement agencies under the commonwealth legislation — namely, the Australian Securities and Investments Commission and the Australian Competition and Consumer Commission — have investigative and inspectorial powers, which had been not been dreamt of by the government back in 1949.

Those pieces of legislation and the bodies that operate under them now afford the protection to the consumer and the individual which the Business Investigations Act sought to effect in the past. They have been in operation for many years. The opposition accepts that the Business Investigations Act 1958 is redundant and in the interests of clearing the statute book should be repealed. Accordingly the opposition commends the bill to the house.

Hon. E. J. POWELL (North Eastern) — The National Party is not opposing the bill before the house. It is a very small bill and its main purpose is set out in clause 3. I will not read it out because the Honourable Carlo Furletti read it in its entirety. Its main purpose is to repeal the Business Investigations Act 1958. That act, as has been said by interjection and by the Honourable Carlo Furletti, has not been used for 20 years and is now largely redundant. It has been replaced by much more modern and appropriate legislation, such as the Trade Practices Act 1974 and the state Fair Trading Act 1999. Those measures did not exist when the act was originally passed in 1958.

The need to repeal the act was acknowledged during the national competition policy review. The Business Investigations Act 1958 applies to businesses that are not conducted by a company. The main purposes of that act are to prohibit the hawking of any interest in certain businesses to members of the public, prohibit the sale of an interest in any business if the objects include illegal acts or where the establishment or continuance of the business would be illegal if carried out in Victoria and permit the appointment of an inspector to investigate the affairs of a business where fraud or misfeasance is alleged. After an investigation the minister has fairly strong powers, which include winding up the business, disposing of the business or placing the business in the hands of trustees.

In the second-reading speech of the original act passed in 1949 the former Attorney-General stated that if a person carried on or continued to carry on business after a direction to wind up, it would mean a penalty of £500. I am pleased to see that in the 1958 legislation the penalty was changed from a monetary amount to penalty units.

The honourable member for Wimmera in the other place, the National Party spokesman for consumer affairs, consulted widely with many people in Victoria to see whether there were any issues in the bill. Because it is a small bill we did not think there would be, but there could have been something we missed. He wrote to the Victorian Employers Chamber of Commerce and Industry, the Municipal Association of Victoria, the Victorian Local Governance Association, the Law Institute of Victoria, the Real Estate Institute of Victoria

and his local real estate agents and commerce associations.

The honourable member for Wimmera received a written response from the Victorian Automobile Chamber of Commerce saying that that organisation saw no immediate concerns for small business arising from the introduction and eventual enactment of the bill. Real estate agents and others he spoke to personally said they were already covered by the current legislation, which the Honourable Carlo Furletti also spoke about in his presentation.

The Business Investigations Act 1958, which the bill repeals, is part of the consolidation of the original act passed in 1949. It was introduced in state Parliament on 25 October 1949 by the then Attorney-General, Mr Oldham. I obtained a copy of the second-reading speech from the parliamentary library. It talks about the issues in drafting a bill and states:

> In drafting the bill, some major difficulties were experienced. It was necessary to control the practices referred to without impeding the right of bona fide promoters of legitimate partnerships to raise money for their enterprises or undertakings and this has been achieved …

A member of the Country Party — now known as the National Party — made some comments about the lack of time available to read through the second-reading speech and the legislation and to get information from their electorates and legal advice. The then Country Party member for Shepparton, which is one of my electorates, said:

> Share hawking is the financial racket of the age and investors have been robbed of millions of pounds by those who practise it. The Attorney-General stated that this bill was extremely difficult to draft and contained drastic provisions.

The honourable member went on to say:

> There are no legal members of the Country Party who can assist us in a hurry.

The honourable member then asked that he be able to get some legal advice, especially on this legislation. The then honourable member for Rainbow, another Country Party member, agreed with the principles contained in the bill and stated:

> … but from a cursory examination it appears that it would be possible to stop the ordinary sale of businesses.

They wanted to make sure that that would not happen. The then honourable member for Korong said:

> No honourable member desires undue delay in dealing with this measure, but, in the circumstances, an adjournment of the debate … would be reasonable.

Obviously that happened, because it was adjourned on the motion of Mr Cain, the honourable member for Northcote, until Thursday, 27 October.

The then honourable member for Korong commented that the house seemed to be spending half its time debating bills and the other half filling up loopholes in them. We need to make sure that those sorts of things do not continue to happen. When the bill was returned to be debated, it was passed and became law.

Small businesses in Victoria are looking for leadership and support from the government. Initiatives such as cutting payroll tax would provide employers with the confidence to employ more people without going over the threshold that would attract payroll tax. The small business community is looking for a reduction in Workcover premiums, which is an added burden to its costs. It is disappointing that after two years the Bracks government has brought in a bill such as this on small business, its only purpose being to repeal redundant legislation which, as has been said before, has not been used for the past 20 years. I agree with the comments of the Honourable Carlo Furletti when he said that this type of bill could come in as an omnibus bill. A number of minor bills are coming in this session, and we will obviously deal with them. It is appalling that the government is wasting valuable parliamentary time debating these issues separately, not just in this house but in the other house as well.

Although the National Party does not oppose the bill, it believes it could have come in another form, such as an omnibus bill, to save the precious time of honourable members.

Hon. T. C. THEOPHANOUS (Jika Jika) — I support the bill and I thank Liberal and National party members for their support for it. The bill simply repeals the Business Investigations Act 1958. It does so because that act is redundant and, as the Honourable Carlo Furletti said, it has not been used or applied for 20 years. It is therefore time for it to be repealed. However, it is a bit of a cheap shot for Mr Furletti to say that we have been in government for two years and to ask why we have not repealed it over that time when he was part of a government that was in power for seven years and took no action to clean up legislation such as this.

I have also heard the comment with regard to omnibus bills, and, Mr Acting President, it is just as well there are a few of us in the chamber with long memories about some of the goings on of the previous Kennett government, because it used to bring in omnibus bill after omnibus bill and it used to hide — —

Hon. C. A. Furletti — You just said that we did not do any clearing out of legislation!

Hon. T. C. THEOPHANOUS — It had nothing to do with clearing up legislation. Let me be clear: the Kennett government brought in omnibus bills that made substantive changes to a whole host of legislation as part of its program of selling off half the state and privatising it. It brought in omnibus bills that were privatisation by stealth!

Hon. Philip Davis — You're right: it has been a bit dull. It's about time you tuned it up, Theo!

Hon. T. C. THEOPHANOUS — That's right.

Hon. Philip Davis — Let's remind you, Theo, in case you have a short-term memory lapse.

Hon. T. C. THEOPHANOUS — What do you want to remind us of? All the state assets you sold off? Do you want to remind us what you did to the Auditor-General? Would you like us to talk about what you did to the Director of Public Prosecutions? Which part would you like to remind us of? Would you like to remind us of all the schools you closed throughout country and regional Victoria, or about the hospitals you closed or about the train and tram lines and everything else you closed around this state?

Honourable members opposite come in here and pretend that somehow they did not do anything. The fact is that the bills they brought into the house under an omnibus title had nothing to do with redundant bills, but this one does.

Hon. K. M. Smith interjected.

Hon. T. C. THEOPHANOUS — What did you do with Workcover?

The ACTING PRESIDENT (Hon. R. H. Bowden) — Order! I know debate can often be robust, but I would like honourable members to stop provoking each other so much.

Hon. T. C. THEOPHANOUS — They are provocative, but Mr Smith is looking for a lower house seat because he cannot hold his upper house seat. They are not much of a lot on the other side.

Hon. K. M. Smith — Who?

Hon. T. C. THEOPHANOUS — I apologise to Mr Smith — —

Hon. E. G. Stoney — On a point of order, Mr Acting President, Mr Theophanous is straying well from the bill. I ask you to bring him back to concentrating on the bill.

The ACTING PRESIDENT (Hon. R. H. Bowden) — Order! The debate allows for some latitude, but I suggest that all honourable members not further provoke each other. I do not uphold the point of order.

Hon. T. C. THEOPHANOUS — I return to the bill.

Hon. K. M. Smith — You mean you will start on the bill!

Hon. T. C. THEOPHANOUS — I just wanted to apologise to Mr Smith because I got the numbers wrong when I accused him of getting three votes; I am told he got several more than three in the ballot.

Hon. K. M. Smith — I put in six myself!

Hon. T. C. THEOPHANOUS — That's pretty good, Mr Smith!

The repeal of the legislation is a cleaning-up exercise. I understand consultations on the bill were undertaken with Small Business Victoria and the Law Institute of Victoria, and that no issue is being raised about the act's repeal.

The Business Investigations Act 1958, which is being repealed, prohibits the offering for subscription or purchase of interests in non-corporate businesses, although it does not cover businesses in which no more than 20 persons have an interest. That fact was referred to earlier by Mr Furletti.

It also prohibits the sale of an interest in a business, whether it be in Victoria or elsewhere in Australia, if pursuing its objects or the very establishment or continuance of the business would be illegal in Victoria. The original purpose of the act was to provide a response to the hawking of interests in fraudulent businesses that were not registered companies; that also was mentioned earlier by other honourable members.

At the time there were satisfactory controls on companies, such as the prohibition on share hawking and investigatory powers available to the companies regulator. However, the same was not true for other businesses in which, for example, persons were being sold certificates of up to £100 each, going under such names as concession certificates, lot holders certificates and unit holders certificates. The enterprises the subject of those certificates ranged over everything from tanbark projects in Western Port, olive groves in the

Grampians and plastics in Melbourne. That is an interesting piece of history. The piece of some interest to me is that I was unaware olive groves had been established in the Grampians for such a long time.

From what I have described it is clear that the act is no longer required; it has not been used for 20 years. Most businesses are now conducted by companies to enable them to enjoy the benefits of company taxation rates and limited liability. The bill generally does not apply to them.

The sale of interests in companies is regulated under modern corporations and securities law. It has extensive provisions regulating the acquisition of shares and other securities. The current Corporations Law also regulates the sale and administration of managed investment schemes designed, among other things, to protect people against the modern equivalent of the fraudulent businesses the subject of the act. Other coverage, as was mentioned earlier, is provided by the Fair Trading Act 1985 and the Trade Practices Act.

Section 9 of the Fair Trading Act prohibits misleading or deceptive conduct in trade or commerce, which is defined broadly. It provides adequate powers in that regard. The Trade Practices Act covers misleading and deceptive conduct engaged in by corporations. In addition, section 995 of the Corporations Act says a person shall not, in connection with any dealing in securities, engage in misleading or deceptive conduct.

A range of powers has been brought into play in other acts. In particular the Fair Trading Act is an important act that established rights for consumers in 1985 — an initiative of another Labor government. That largely has provided protections that are relevant when we talk about the repeal of the Business Investigations Act.

In addition, a range of investigatory powers are available under the Trade Practices Act. Where there are reasonable grounds to believe there has been misleading and deceptive conduct, an inspector may apply to the court for an order compelling the production of information and documentation. Inspectors also have entry and search powers. They may obtain search warrants, if that is deemed necessary, under the act.

The Australian Competition and Consumer Commission has wide powers to obtain information and documentation under section 155 of the Trade Practices Act. Because of the powers available under various legislation honourable members will understand why the act has not been used for 20 years.

I congratulate the government on introducing the bill in this form. I reject totally the opposition's notion that Parliament should have more omnibus bills introduced. I look forward to Mr Furletti issuing a policy that says more omnibus bills would be introduced here if his party were elected.

Hon. C. A. Furletti — You've got nothing between the ears if you say that.

Hon. T. C. THEOPHANOUS — It is obvious that Mr Furletti has nothing between his ears because if he still supports the introduction of omnibus bills he has learnt nothing about why Victorians voted his party out in the first place — that is, because he is not listening and is not prepared to talk to people, and because he does not consult. The whole notion of responsible government is that it will minimise the number of times omnibus bills come to this house. Under the previous Kennett government everything was rammed through this place with little debate or discussion.

Hon. C. A. Furletti — You weren't in the house.

Hon. T. C. THEOPHANOUS — I was in the house a lot more than you were. I am happy to compare the number of speeches I made, the number of times I spoke and the length of time I spoke for in this house when Labor was in opposition — more times than you did, Mr Furletti; you would find it was a helluva lot more than you did!

It would be much better if the opposition simply supported the bill instead of trying to have a cheap shot. When Mr Furletti has a cheap shot, at least he should get his facts right. Because of the way he is performing as the Deputy Leader of the Opposition, a lot of people on that side wish they had voted for Ken Smith!

I can see that Mr Smith is behind Mr Furletti in this. While he is standing behind him, he will be all right. As Mr Smith says, by interjection, he is giving Mr Furletti his total support. I would be pretty worried if he were giving me his total support!

Having had a light-hearted divergence from the issues in the bill, I point out that the bill enjoys the support of all sides in the debate. It is important in ensuring that legislation in the state is relevant and not outdated.

Motion agreed to.

Read second time.

Third reading

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

That this bill be now read a third time.

In so doing I thank honourable members for their contributions.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

RETAIL TENANCIES REFORM (AMENDMENT) BILL

Second reading

Hon. M. R. THOMSON (Minister for Small Business) — I move:

That this bill be now read a second time.

The purpose of this bill is to amend the Retail Tenancies Reform Act 1998 to restore certainty in the provisions covering the operation of rent review clauses in retail leases.

In particular, the bill corrects an anomaly arising from a decision by the Victorian Civil and Administrative Tribunal (VCAT) in the case of *Khodr v. Foo Qan Eng Holdings Pty Ltd (no. 3)* VCONVR 58-559, otherwise known as the Khodr ruling.

Section 12(2) of the act specifies the basis or formula on which a rent review under a retail lease can be made. Under section 12(2)(a) one possible basis or formula is a fixed percentage of the base rent. In the Khodr ruling, VCAT interpreted the term 'base rent' as a reference to the initial rent paid under the lease. As a result, the rent review clause in question, which stipulated that rent increases would be in the order of 4 per cent per annum, was invalidated.

As fixed percentage rent adjustments are commonly used in Victorian retail leases, the Khodr ruling has created uncertainty for both landlords and tenants regarding the operation of rent review provisions.

Clause 4 of the bill amends section 12(2)(a) of the act to remove the words 'of the base rent'. This overcomes the effect of the Khodr ruling and allows, for example, a lease to provide for a fixed percentage increase throughout the term of a lease on the previous year's rent. A similar approach was taken under the Retail Tenancies Act 1986 (s.10(1)(a)) as amended by the Retail Tenancies (Rent Review) Act 1991; and by the Supreme Court (Appeal Division) in *Pasen v. Buy-Rite Discounts Pty Ltd* (1992) (VCONVR 54-431).

In developing the bill, the government consulted with the key parties, including the Law Institute of Victoria, the Property Council of Australia and the Australian Retailers Association of Victoria. After considering several options, the parties all agreed that this bill is the most effective solution.

Clause 5 provides that the bill will not affect proceedings determined or hearings concluded by VCAT before its passing or appeals from those matters. Furthermore, the transitional provisions ensure that rent review clauses in leases covered by the act that, for example, were expressed as a fixed percentage of a previous year's rent are validated.

In conclusion, the passing of this bill is necessary to ensure that certainty is restored to the rent review provisions of the Retail Tenancies Reform Act 1998. This is of benefit to both landlords and tenants.

I commend the bill to the house.

Debate adjourned on motion of Hon. C. A. FURLETTI (Templestowe).

Debate adjourned until later this day.

AGRICULTURAL AND VETERINARY CHEMICALS (CONTROL OF USE) (FURTHER AMENDMENT) BILL

Second reading

Debate resumed from 25 September; motion of Hon. C. C. BROAD (Minister for Energy and Resources).

Hon. B. W. BISHOP (North Western) — It is with much pleasure that I rise to speak on the bill and I thank my colleague Philip Davis for the adjustment made to the program to allow me to speak now. The National Party supports the bill, and I will run through its main purposes. It updates the Agricultural and Veterinary Chemicals (Control of Use) Act 1992, which is the principal act.

The bill also puts into place the results of a review of agricultural and veterinary chemicals, and it has now been agreed that these be looked at from a national level.

The bill also tidies up the principal act to ensure the safety of agricultural and livestock products sold in Victoria, Australia or around the world. It is absolutely crucial that we maintain the control and quality aspects

in Australia — the clean, green image that has been recognised for many years around the world. If we in Victoria are to achieve $12 billion in food exports by 2010 we will need all these management processes in place to reach the target. The third issue is to strengthen the enforcement powers and the right of entry for our departments and authorised officers in relation to their particular duties.

The bill has been developed in consultation with the Victorian Agricultural Chemicals Advisory Committee, which represents primary producers, air and ground-based spray operators, local government, chemical manufacturers, consumers, and environmental interests.

I have had a bit to do with that committee, and I know that Mr Peter Chambers from Rutherglen spent years on that committee representing the Victorian Farmers Federation (VFF) and provided practical and sensible points of view to the wider committee on the needs and requirements of farmers. Mr Chambers provided his advice over a wide area of agriculture. He was personally involved with grain, prime lambs, wine grapes, and I suspect he may have been involved in other agricultural production areas as well.

I have no intention of going through the bill clause by clause. I would rather use my contribution to talk about chemicals, particularly in relation to agriculture. I welcome the partnership that has been established between governments throughout Australia and register the National Party's support for a national registration scheme of agricultural and veterinary chemicals, which is an excellent way to go so that we all know where we are regardless of what the chemicals may be.

The bill reflects the changes that have occurred in agricultural practices over the years not only in Victoria but throughout Australia. When agricultural production started in Australia there were no chemicals, but now there is a huge armoury of chemicals available to assist in the production of agricultural products. As always you have a choice of whether to use or not to use chemicals. We have supporters and customers of organic or biodynamic agricultural production and alternative systems to manage that type of production, but the mainstream of agricultural production uses a wide range of chemicals.

We must ensure that when those chemicals are used everyone is protected so that the domino effect of their utilisation does not cause problems. One of the best examples I can remember, which is only a few years ago, was when cotton trash was fed to cattle. Mr Stoney will probably remember that issue. Chemicals had been applied to the cotton crop and the trash was then fed to the cattle. That was not acceptable to some of our markets. Much work was done on that issue and Victoria, due to its prompt action, came out of it well.

There were more direct issues, such as growth promotants for cattle, where some markets rejected those chemicals. Again adjustments were made. At the time not all markets rejected the chemicals, but producers had to assess the risk that some markets would be nervous about taking cattle on which growth promotants had been used because it would limit their market access. The effect of chemical use on market access is important for agriculture. Although chemicals have been used at times as a trade barrier, I can assure honourable members that if there is no market access it does not matter what the price is — if you are not in there you do not have a chance at the global trade we all rely on so much in Australia.

The position is that the customer is always right. While we all agree we have a huge suite of chemicals available, the use of chemicals is much safer now than ever before because of two areas: the end consumer is one, and the producer, transporter and processor is the other. Why the end consumer? Because end consumers are much more health conscious than ever before, and that applies throughout the world. Now advanced testing of products is carried out before they go offshore, particularly if chemicals are involved in their production, storage, treatment or transportation. There is far better communication in the world now than ever before.

It is the same in the areas that involve the producer, transporter, handler and processor. We may have seen some damage done in the past, but I do not think that was the fault of anyone. The research was not in place and we simply did not know how to manage that process. Today there is much more awareness and an ability to manage and control that process.

I can remember some time ago, in the early days in the grain industry, that there was no discrimination in the market about contact pesticides. Australia is more exposed to stored grain pests due to our warm climate, whereas our competitors often have snow during winter, which does not accelerate the breeding of grain pests. Australia was a big user of a number of contact pesticides but the market became more discriminatory, particularly in a number of countries that were well aware of the problems. Communications and testing were good so the market became sophisticated and changed. Australia was fortunate in that it was well ahead of the trends on that issue. During my time at the Australian Wheat Board I chaired the Stored Grains

Research Laboratory in Canberra that was involved with the CSIRO. The chief executive of that unit, Dr Jonathan Banks — he happens to be a descendant of the Banks who sailed with Captain Cook — and his team did some innovative work on this issue and led the world in the fumigation and aeration of grain. The research was visionary in replacing contact pesticides. They also did some work in the dried fruit industry.

That is a good example of how world requirements change due to the market changing across a wide range of products. Australia was fortunate in that it was ahead of the game in research and was able to meet the challenge. It is essential that chemicals are labelled correctly, tested and audited. We must have open market access so we can get our products into markets.

Many of us involved in agriculture could talk for some time about the change in agricultural chemicals. I know the Honourable Philip Davis would have remembered the arsenic plunge dips, where we used to dip the sheep between shearings once a year to keep the lice off them. The Honourable Graeme Stoney would remember it also.

Hon. E. G. Stoney — It was hard work!

Hon. B. W. BISHOP — It was, because you would have to yard up the sheep and run them through the dip. The first time the sheep were put through the dip you would have to stop them jumping in, the second year there was some resistance and by the time the third year had come around there was a tremendous amount of resistance from the sheep to going through the dip. It was a hard job and the sheep became more and more stubborn as time went on.

Dangerous chemicals such as dieldrin were used in the some of those dips. They are not used now because there is more awareness in the market and in agriculture. It is a totally different operation with different chemicals. Generally the sheep come straight off the board and a chemical is poured along their backs, which does the same job as the old dips did many years ago. Obviously in all those circumstances labelling of chemicals must be correct and testing must be fully accountable. All those things must be correct to ensure there is no residue. I know now that farmers adhere closely to those labelling requirements and techniques because they understand the processes and what the market requires. We have a wonderful range of chemicals available in agriculture, particularly in horticulture where diseases can be treated if they appear.

Hon. T. C. Theophanous — Name them?

Hon. B. W. BISHOP — There are plenty of sprays for grape crops. It is remarkable. There are sprays that make grapes grow bigger and sprays that make grapes shrink. There are chemicals for all uses. I can go back to the days of dried grape production where grapes were lowered into hot dips, which was dangerous and hard work. Now the grapes are put on racks and sprayed, which is much safer, easier and acceptable to all parties. Now they even dry grapes on the vine, spray them on the vine and machine harvest them from the vine. Technology and chemicals have come a long way.

On the broadacre side of agriculture, particularly going back to the grain industry — —

Hon. T. C. Theophanous — What about olives? Do you know anything about olives?

Hon. B. W. BISHOP — I know a little bit about olives. I do not know much about the chemicals involved with olives but I know that thousands of hectares of olives are going into the ground at Boort, which is great, and also around the Robinvale area. That is tremendous because we import olive oil and I believe our growers now are using world best technology in relation to olive oil production.

Hon. T. C. Theophanous — We have to get the price down a little, though.

Hon. B. W. BISHOP — Our growers are doing an excellent job in that area.

There are some really good chemicals to manage weeds in the grain industry. They have made our land much more sustainable. Chemicals can now be used on some of the lighter soils where cultivation used to be the only way to manage weeds. The land is sprayed early in the season and not cultivated until much later, which protects the land from the erosion difficulties that may have occurred as a result of both wind and water.

On the production side of the grain industry, and with all agriculture, there are sophisticated fertilisers and nutriments to put on crops to get the maximum potential from the crops. They are not put on piecemeal; it is a scientific approach. The fertilisers and nutriments are put on after soil sampling has taken place to ensure that the right chemical goes in the right place and at the right time. Nowadays the tissue of a growing crop can be tested to ensure that the crop has all the nutriments it needs, after which chemicals can be put on if desired.

It is most important that the labelling of chemicals is right and the testing is right. All chemicals require care; some more than others. Many of the dangerous

chemicals used years ago have gone due to testing and the awareness of the whole industry. Awareness of the market has been a good thing, and we have been able to meet that challenge. In Australia agriculture is market driven and the industry must respond to what the market wants.

People have been made more aware of how to use chemicals. This is a huge issue in agriculture. Years ago it used to be pretty rough and ready, with farmers handling a wide range of powerful chemicals. Farmers now are making some strong moves towards chemical safety and awareness of the use and handling of particular chemicals.

I have made the point before — and I make it again — about the awareness of farm women of chemicals and their efforts to make people more aware of the dangers. I congratulate Victorian and Australian farm women on raising the community's awareness of farm chemicals. That has been a tough job because people are generally a bit careless when they are in a hurry and tend to handle chemicals with limited care. I remember the frustration of one lady who was trying to teach her husband about chemicals. She was clever and inventive and used to put in his lunch box articles on chemicals to ensure he read them while he was eating lunch. I commend the farm women on their efforts in relation to chemical awareness.

Nowadays chemical spraying plants are set up in a much better way than previously, with rubber gloves, masks and all the protection required. In the old days — and Mr Davis will remember this and may well talk about it, as Mr Stoney will remember — there would be a 200-litre drum of chemicals in the back of the ute. You would pull the bung out of it, prop it up with a bit of wood, tip it into a 20-litre bucket, and tip it into the spray vat as it was filling to ensure it was well mixed. It was not a particularly safe way to deal with chemicals. Modern spray equipment has a separate chemical tank. The chemical can be pumped into it with a measured pump so you do not touch the chemicals, and there are no fumes. That then is pushed into the water in the spray tank to ensure it is properly mixed and does not endanger the operator. It is a very good process.

I have probably not referred to the bill in great detail, but I have made a strong attempt to put to the house — —

Hon. G. B. Ashman — There have been no points of order.

Hon. B. W. BISHOP — No, there have been no points of order. I have tried to put the right balance and perspective on chemical use and its labelling and testing in the agricultural and veterinary use areas. The bill is important. It is important that we take a national perspective on chemical use in Australia, because as our trade expands, more and more products go across state borders. It is essential that the three major planks of the bill are part of a package to ensure markets, products and consumers are protected as well as the health of those who use the essential chemicals in agriculture.

Hon. PHILIP DAVIS (Gippsland) — I am pleased to join the debate on the Agricultural and Veterinary Chemicals (Control of Use) (Further Amendment) Bill. It is an important bill, particularly for those with an interest in rural and regional Victoria and the future of the growth and development of our export markets in food and agricultural products.

By way of preamble and to put the debate into some context I make some remarks about the nature of agricultural industries. Firstly, I note that the purposes of the bill are to update the Agricultural and Veterinary Chemicals (Control of Use) Act 1992 to ensure that the act continues to effectively address chemical use practices which have the potential to contaminate agricultural produce or stock, as well as continuing to protect the health of users of such chemical products, the public and the environment. The bill also implements nationally agreed recommendations from the 1999 review of the legislation.

I refer to the purposes of the principal legislation that the bill amends. Before we can have a useful debate about this it might be useful for us to understand the principal objectives of that legislation. The purposes of the principal act are set out under section 1 as follows:

(a) to impose controls in relation to the use, application and sale of agricultural and veterinary chemical products, fertilisers and stock foods and the manufacture of fertilisers and stock foods, for the purpose of —

(i) protecting the health of the general public and the users of those products; and

(ii) protecting the environment; and

(iii) protecting the health and welfare of animals; and

(iv) protecting domestic and export trade in agricultural produce and livestock; and

(v) ensuring that a product is effective for the purposes described on its label; and

(vi) promoting the uniformity of regulation throughout Australia; and

(b) to impose controls in relation to agricultural spraying and to provide protection against financial loss caused by damage to plants and stock from agricultural spraying; and

(c) to impose controls in relation to the production of agricultural produce to avoid the contamination of food for human consumption.

That explicitly sets out the purposes of the principal act that the bill seeks to amend.

It is important to understand why it is important to have proper control of agricultural and veterinary chemicals. To illustrate that I will make some brief points about the importance of agriculture to this state. It is useful to reflect on the fact that from the most recent available figures the food industry in Victoria is valued at about $15 billion annually, of which exports contribute $5.5 billion to Victoria's revenue. The food industry also employs 13 per cent of the state's manufacturing work force. Victoria has a disproportionate interest in agriculture and food, given that although it is only 3 per cent of the nation's landmass, in fact it produces 23 per cent of Australia's agriculture commodities and 30 per cent of its food products.

It is important to recognise that to a large degree there is a bipartisan approach to the development and involvement of agricultural policy, and that the agribusiness initiative started by the previous government has been continued by this government. The objective set out by that initiative was that we should obtain export growth of $12 billion in food and fibre by 2010, it is therefore relevant to note that the policies which the government implements are directed towards achieving that goal.

It is important for the regions to recognise that there are 37 000 farmers in Victoria who have a direct interest. Many industries are particularly relevant to the debate. The dairy industry is dominant in terms of its stake in Victoria, given that Victoria produces 62 per cent of Australia's milk, 75 per cent of processed dairy products and 85 per cent of all dairy exports. In 2000 Victoria's dairy exports were valued at $2.3 billion.

The meat industry is very important. Victoria accounts for 18 per cent of Australia's beef exports. It is a leading producer of lamb, with 43 per cent of lamb exports and 25 per cent of pork exports. In 2000 meat exports from Victoria were valued at $1.3 billion.

Victoria produces 15 per cent of Australia's harvest in grains, which were valued in 2000 at $1.03 billion. Victoria exported more than $183 million worth of fruit in 2000. Of course citrus, pears, apples, stone fruit, berry fruit and table and wine grapes were major products. Vegetable exports exceeded $88 million, and in 2000 the total exports of fresh fruit and processed horticultural products was valued at $587 million. There are some modest exports such as seafoods, essential oils and thoroughbred horses, just to name a few. Those comments are useful to give some perspective to the debate.

As a representative of a regional community, Gippsland, it is useful for me to note in the Victorian context that Gippsland comprises some 280 000 people and is vitally interested and dependent upon agriculture and food processing. The agribusiness sector comprises about 20 per cent of the regional work force. Although the figures are not as current as I would like, the Australian Bureau of Statistics figures show that in 1996–97 the gross value of production for the agricultural and forestry sector in Gippsland was $1.6 billion. In 1999, 37 per cent of all Gippsland businesses were involved in agriculture and fishing.

Wine production is important — there are about 20 vineyards in Gippsland — but it is particularly relevant because of the evolving winery gourmet deli tourism industry. The protection of the industry as a high-value agricultural producer is important not just in terms of the agricultural output but because it attracts tourists to the region. For those honourable members present who have trouble finding things to do on the weekends — I am sure all honourable members are in that category — a trip to Gippsland, particularly West Gippsland, to visit the gourmet deli trail is commended.

Gippsland is the principal source of fishing industry activity in the state. In 1999–2000 the region produced 2000 tonnes of seafood — scale fish and abalone — which is 54 per cent of Victoria's wild catch. We always get confused about where fisheries should lie in the debate about protecting our agribusiness interests. In 2000–01 Gippsland produced approximately 32 per cent of Victoria's dairy production, which equates to 19 per cent of Australia's dairy production, so the region is a significant producer of agricultural food products.

As a local member and a member of the opposition I take a keen interest in legislation that comes before the Parliament that impacts on the viability of that industry sector. I should observe that in regard to this legislation there was an extensive debate in the other place. I understand many matters were raised with the Minister for Agriculture during the committee stage and I should like to note that most of those issues raised were dealt with by way of a full written response to the opposition from the minister. A subsequent communication between the shadow Minister for Agriculture and the

minister led to the clarification of probably the most outstanding issue regarding how costs would be attributed in the confiscation of equipment in relation to prosecutions.

The clarification, which was provided in correspondence the opposition has seen, goes some way to satisfying the opposition's concerns about the impact on individuals who will be affected by the amendments — that is, the minister has made it clear in his correspondence that the costs would be borne by the department and not by the individuals, and that unless required for evidentiary purposes for prosecutions equipment seized would be returned as soon as it was identified that the equipment was not needed for that purpose or within three months, unless a prosecution proceeded. There were particular concerns about that aspect of the bill.

The Liberal opposition will not oppose the bill, but I will make some further general remarks. I understand there are a number of speakers on the bill so I am sure we will have an interesting debate. I am looking forward particularly to the contribution of my learned colleague the Honourable Ken Smith, who has advised me that he will intercede in the debate and make some observations about the importance of natural and organic industries. I make the substantive point that the bill is designed to facilitate, as I said earlier, a national agreement about the control and use of agricultural and veterinary chemicals for the purpose of improving our access to export markets.

It also protects consumers at a domestic level and the environment more generally. The legislation confers additional powers on officers in terms of compliance arrangements — both penalties and the ability to inspect. There are additional requirements in relation to documentation and putting advice in writing, and justification for using chemicals where there is a withholding period, including providing advice that that has occurred and providing advice under particular circumstances where a chemical is used for off-label use. It can be done where a veterinary practitioner is involved in the treatment of individual animals. The bill provides protection for a veterinarian to use a product that does not have label registration for treatment of a particular individual animal or group of animals where it is necessary for a particular purpose.

The issues I want to allude to relate to the evolvement of our consciousness about the importance of utilising chemicals in the agricultural industry. Today we hear the stories that appear prominently in the press. Many people will recall that just recently — until more contemporary matters about Afghanistan, federal elections and other current matters took it out of the news — the United Kingdom has been experiencing an extraordinary episode of foot-and-mouth disease. This might not directly relate to the use of chemicals, but clearly we need to be conscious that there has been a huge impact on the agricultural sector in the United Kingdom as a result of foot-and-mouth disease. In effect its ability to access export markets for a whole range of agricultural products has been terminated, and there is a huge cost. The current cost to the British government alone is estimated to be well over £4 billion and rising. That is an extraordinary sum.

In recent years we have seen the incidence of bovine spongiform encephalopathy (BSE), which is a product of insufficient control over livestock industries. It has also adversely impacted on the British beef industry in particular, but there are also implications for its dairy industry. Both diseases have been acquired, it would seem, by a degree of laxity and negligence in the management of feeds which have been taken up by livestock. In the case of foot-and-mouth disease in the UK it seems that the causal factor is feedstuffs which may have been ingested by pigs that may be carriers. In the case of BSE it looks as if animal meal has been the cause of the outbreak. Perhaps nobody will ever know, but that is the current deduction.

I make the point because it is a reflection of practices which people in the industry are well aware of. But there has been insufficient regulation and control, which has allowed serious diseases to emerge through the net. The misapplication of chemicals can have similar adverse consequences and cause the integrity of our agricultural and food products to be undermined. Honourable members would remember back in the 1980s the dieldrin issue which affected the beef industry for some time. There have been important issues about cotton trash which has been used as a stockfeed in more recent years. It has contained chemicals which have been a threat to our beef industry, the cotton trash having been used in feedlots.

I mention those issues by way of example of some of the things which can occur if we are not alive to the seriousness of controlling our agricultural and veterinary chemicals arrangements. I am reminded of the debate honourable members had in the autumn session about the right to farm. One of the biggest issues in what is notionally called the right to farm today is the impact on and by neighbours of chemicals through spray drift. It is an important issue and we must elevate the awareness about the outcomes of improving the management of our chemical use. It will not be primarily dependent on the heavy-handed use of the

regulatory framework. It needs to go hand in hand with an increased community awareness and education.

I shudder when I look back at my own farming career. I started back in the mid-1960s as a schoolboy — I will say that, although I will not say how old a schoolboy — picking up drench guns and dipping sheep and so on. I can remember when I was first jackarooing in the southern Riverina in 1971 still dipping sheep with arsenic.

It is amazing to think that I am still here! Not only that, I can remember weeks of spraying Bathurst burr from the back of a truck and mixing chemicals as we bounced across the plains. We sprayed large infestations — thousands of acres of Bathurst burr — and mixed chemicals like 2,4-D and 2,4,5-T on the back of the truck. During that time the mister was operating and we used our fully extended arms with sleeves rolled up to mix the chemicals.

Today I wonder how many uninformed, uneducated farmers exist — some are probably in this chamber — who have done similar foolish things in absolute ignorance. I have no doubt that increased compliance measures are important not just to our access to the export market but also to the health and safety of our human population.

As farmers we have all been involved in the use of different chemicals. Typical sheep farmers are involved in the use of chemicals, drenches and vaccines for dipping and hand jetting sheep and for the treatment of fly strike and lice. We are involved in the management of our pastures: we use chemicals on weeds and cockchafer grubs.

One of the great initiatives of the 1990s was the introduction of registration requirements for farm chemicals and the chemical user courses which were run by the government in conjunction with the Victorian Farmers Federation. I suspect that most farmers have been through those chemical user courses and have a much better knowledge today of their obligations and importantly of the risks associated with using farm chemicals. There are chemicals which are now not on the market and which are not accessible. I remember the great cure-all used to be Lucijet, which was not just a cure for flystrike in sheep but also got rid of foxes and other animals that were a bit of a problem on the farm. There are probably very good reasons why we do not see Lucijet on the market today, but I can testify that it was absolutely deadly to some pests including blowflies. Life goes on and we are now better informed and better educated and while there are some contentious matters in the bill before the house, the direction is sound and therefore I do not oppose it.

Hon. R. F. SMITH (Chelsea) — I am pleased to speak on the Agricultural and Veterinary Chemicals (Control of Use) (Further Amendment) Bill, which amends the principal legislation to ensure that agricultural or veterinary chemical products do not contaminate agricultural produce or stock or damage plants or stock — that is, they do not incur any damage in the monetary sense. The bill imposes controls on the use of such products to protect public health, the environment and the users of chemicals.

I take the opportunity to talk about one aspect of the safe use of chemicals in the agricultural industry that has not been mentioned — namely, how they apply to the safety of the users themselves or the working men and women on farms who use these chemicals.

Hon. W. R. Baxter — That has been referred to but you were not here to hear it.

Hon. R. F. SMITH — Mr Baxter, you definitely would not have talked about the perspective from which I am about to speak, and that is to refer to the work done by Dr Yossi Berger, a renowned occupational health and safety operator within the union movement, who I employed in my stewardship of the Australian Workers Union. Yossi did a lot of very good work in the field in the interests of not just the working men and women but farmers as well. Farmers were often their own worst enemies in the way they used the products and were a bit gung-ho. Unfortunately a lot of people paid the price for a lack of knowledge or understanding of the dangers associated with those chemicals.

In particular I refer to the many shearers who have been badly affected by the use of chemicals particularly as the result of shearing sheep which had contaminated fleeces or excessive chemicals in their wool. There have been lengthy legal arguments and settlements have now been reached for a number of shearers. Unfortunately they will suffer for the rest of their lives as a result of the contamination they incurred as a result of that chemical exposure.

The bill is another step in the right direction in as far as it educates people in the safe use of chemicals and eventually protects us all in that the very foods we eat and the drinks we consume — including those produced by the wine industry — will all be safer as a result of people implementing the changes to the act provided in the bill. The purpose of the bill is to update the act and to continue to address practices that will

ensure the safe use of chemicals and, as I said, to protect the health of both the users of chemicals and the stock affected by the chemicals.

The bill reflects the importance to the government of the agricultural industry in Victoria — we understand where we are in terms of reputation. Victoria has a very solid reputation as a producer of clean, green, environmentally friendly food, and as a result we enjoy very good export markets. If we maintain or even enhance that reputation those markets will grow. Some would argue that gene technology is not progress but as it continues to develop, more and more people around the world will want to source their food from areas where people do not engage in the use of certainly unsafe chemicals but also any chemicals or gene technology. There will be debates about those matters and those industries. Clearly if we are to maintain our reputation there will be significant economic benefit to the state and to farmers and farming areas in particular. I think it is fair to say that both sides of the house would agree with that, and the support of the bill demonstrates that.

The bill is the result of extensive consultation with the Victorian Agricultural Chemicals Advisory Committee, which is established under the act to provide key stakeholders with input into legislation of this nature. The aspects of the bill that deal with veterinarians will implement nationally agreed controls over the use of veterinary chemical products. Those changes were developed in consultation with the Veterinary Practitioners Registration Board of Victoria, which has also endorsed the changes. There is a national registration scheme to ensure there is consistency between the states and the commonwealth government. The principal act provides support for the national registration scheme for the use of agricultural and veterinary chemicals.

The bill aims to ensure that people who use approved chemicals do so safely. When chemicals are approved by the national authority they must be labelled and those labels must contain all the relevant information that users will need both to identify a particular product and to use it safely. The bill also prohibits the use of chemicals that are designed for use on plants being used on animals and vice versa, except that a provision in the bill allows veterinary practitioners in the performance of their profession limited use of chemicals on animals.

The bill strengthens controls on the use of agricultural spraying. That is designed specifically to avoid any harmful effects which may occur with overspraying or missing of the target. For instance, when spraying, crop dusters can overshoot or be a little wide of the mark and can do unforeseen damage to people and livestock.

The bill also extends existing offences for providing false or misleading information on the use of chemicals. It extends controls on contaminated agricultural produce, fertilisers and stockfood. That will be achieved by new powers for controlling the safe handling, use, transport and disposal of contaminated agricultural products. The bill extends the powers of authorised officers to effectively enforce compliance with the provisions of the legislation, including the right to enter a property, with written permission from the owner, when there is a deemed need to do so. In circumstances where there is genuine or clear evidence of suspect produce the officers can seek and obtain warrants to search premises.

The bill also provides for the collection of moneys for licences and for that money to be used for the general administration of the act. The bill is essential for the ongoing protection of our reputation as a clean and green producer of food and livestock. As has been mentioned, the amount of money that the agricultural sector generates in Victoria is in the order of $13 billion. That is quite significant — it represents 5 per cent of the total Victorian economy — so it is not to be sneezed at. It is very important to the wellbeing of the overall economy.

For all those reasons this bill needs the support of the house. I commend it to the house.

Hon. E. G. STONEY (Central Highlands) — I rise to say a few words on the bill. I read the second-reading speech with some interest, and I noted that the government is continuing a very important initiative of the Kennett government — that is, to produce clean and green food. The second-reading speech states:

> This bill represents an ongoing commitment by the government to protect Victoria's reputation for producing clean and green food.

I would like to add to that that it is important that Australia produces clean and green food. No doubt the bill will assist with that. Certainly the bill is in the national interest.

I consider myself qualified to speak on the subject because I have spent half a lifetime — as have other members of this house, including Mr Davis and Mr Bishop — handling agricultural and veterinary chemicals on the ground. I have used many chemicals for sheep and cattle and in spraying hundreds of hectares of pasture seed, right through from when we

started to use chemicals to now, where their use in the pasture seed industry has become very sophisticated.

It has been my contention for many years that farmers use far too many chemicals, sometimes through lack of knowledge, sometimes through inadequate spray gear and sometimes because they just throw a bit more in because they think it will work better. It is probably fair to say that farmers have never been told what are the long-term effects of some chemicals because when they were released by the companies nobody really knew what the long-term effects would be. That has been of some concern to me since my father died of leukemia, which was put down to using dieldrin sheep dip and other organic phosphates. I have thought about that often and it is a great sadness to me.

Dieldrin was one of the magic chemicals of its era. If you dipped your sheep with dieldrin no fly would come within half a mile of your sheep that particular year and perhaps even the next year. However, for example, after many years of using dieldrin and growing wonderful crops all of a sudden potato growers found it was an agricultural and environmental disaster.

Another chemical that comes to mind is DDT. I remember holding the flags for the crop-dusting aircraft. The technique was to hold the flag and wave it and as soon as the crop-duster lined up you walked your 30 metres to the next section, and the plane already had its line. You would hope like hell that the drift was not going your way, but often it was. You would come in at night and everyone would say, 'You're covered in chemical', but you could not smell it. I have often thought about that and about how we were spraying right beside the house. Even in the early morning chemicals would drift onto the roofs of your sheds and the house, and until the water in your water tank was gone you were drinking DDT and the other chemicals that we used at that time. They were the early days in the chemical industry, but they certainly fixed up the army worms and the caterpillars, and we grew some wonderful crops. There was always an upside to it.

The question of spray drift has always been an important issue. An example in the district of Mansfield was at the Delatite winery, which was established right in the middle of a very large, expansive grazing and pasture seed industry. Vines are very sensitive to some chemicals, and the whole district had to change the way it handled chemicals and the way it farmed. When the vines burst is the time you spray for thistles and docks. We used esters, which are highly volatile chemicals. Esters can travel seven or eight kilometres up valleys and can kill young vines. Farmers had to change the way we operated with thistles and docks next to the fledgling vineyard, and they did it. It was an example of how farming adapted to new techniques, new farming enterprises, and also the urban sprawl, which brought great challenges to the farming industry as people came in and settled and demanded higher standards.

Hon. J. M. McQuilten — Delatite wines are wonderful.

Hon. E. G. STONEY — Delatite wines are almost as good as Laanecoorie wines. A better understanding was forced on the farming community by changes in farming practices and the demands of the general community, and it was a good thing that farmers upgraded their farming practices. They got airconditioning in their spray units and they even began to wear gloves. As Mr Bishop mentioned earlier, they began to develop techniques to get the chemicals into the spray units without touching them, and they upgraded nozzles so they could use a lot less water and put on smaller amounts of chemical to make them a lot more effective. Those practices occurred throughout Australia during those years, and they certainly assisted in what is now recognised as a very clean and green agricultural industry right across Australia.

I made the point earlier about chemicals being misused by farmers, probably through lack of knowledge and lack of instruction by the companies which, I believe, were not informed either. However, I make the point that we grew some wonderful crops in Australia when chemicals became more widely used — big, new crops we could not grow before — and certainly the yields were doubled and tripled.

The fledgling pasture seed industry in Victoria, of which I was part, dabbled in mixing chemicals. It was never stated on the label, but we discovered if we mixed 300 millilitres of Gramoxone with a litre of Atrazine we could kill poa anua. We were growing crops for re-export to America. We went to America and obtained a contract and grew them in the off-season so that America could pick up six months on its bulking up of seed for seed — it was called Mother or Basic seed.

However, that is not the point I want to make. The point is that by using very small quantities of chemicals and mixing them we achieved what is called a systogenic effect. We created a situation with the poa anua, which was a slightly weaker plant than the crop — which was, say, rye grass — whereby in reasonable quantities the Gramoxone made the plant take up more Atrazine, and we were able to selectively spray by using the technique of mixing the chemical. The chemical

companies did not know anything about it for years, and one day we got the chemical representative up there and he was gobsmacked — I think that was the word — about what was happening. It worked. I must point out that if we had used 500 millilitres per hectare of Gramoxone we would have killed the lot. We were using calculators and having early nights; we were very careful about what we did because it was a fine line between killing the crop and getting a clean crop. It was groundbreaking at the time but we used a lot of off-label techniques, and probably it was a process not to be recommended, but it certainly did work.

I was interested to look at the latest labels in our chemical shed. On our property we have a blackberry problem so we spray a lot of what is called Grazon on blackberries. It is an effective chemical for woody weeds. I took the label off an unopened drum, and I have it in the house before me. There is no doubt that labels on chemicals today are very comprehensive. The label lists every state and lists the quantity allowed. It gives a critical comment on how to spray each variety of weed in each state. Farmers should not complain that they are not getting information, because they most certainly are.

I was interested to look up 'blackberry' on this list, among many weeds it lists that Grazon will kill, and it states that Grazon can be used in every state of Australia except Tasmania. I thought that was strange because Tasmania has blackberry, and I wondered why it mentioned that state and said it was not to be used there. I went to the back of the book and found the reason. The label states:

> In Tasmania for blackberry
>
> do not treat bushes carrying mature or near mature fruit.

I thought that was a bit odd because the only time that spraying blackberries is effective is when they have mature or near-mature fruit. I do not know why Tasmanians are not legally supposed to spray blackberries at the time that it is best to spray them.

Hon. J. M. McQuilten — Because some Taswegians go and pick them!

Hon. E. G. STONEY — Yes, a lot of people like to pick them. But in Victoria people also like to pick blackberries. Indeed, I have a friend, Sue Dyason, who makes wonderful blackberry jam, and I mention her in the hope that if her name is recorded in *Hansard* she will send me a bottle of her blackberry jam next year. There is graft and corruption in politics after all!

It is interesting that this comprehensive book deals with subjects such as high-volume spraying, hand guns, knapsacks and aerial applications, and states:

> Do not spray when wind exceeds 15 kilometres an hour and/or air temperature reaches 35 degrees Celsius.

The booklet is comprehensive and it goes on to talk about lots of do nots and about protection of livestock, wildlife, fish, crustaceans and the environment. It talks about storage and disposal, safety directions and first aid.

The Liberal Party does not oppose the bill, and I believe it will certainly assist in national agriculture. I wish it a speedy passage.

Hon. D. G. HADDEN (Ballarat) — I rise to speak in support of the Agricultural and Veterinary Chemicals (Control of Use) (Further Amendment) Bill. The purpose of the bill is, in a nutshell, to control the use of agricultural and chemical products for the safety of the user and the consumer of the end product.

Clause 4 inserts proposed paragraph (d) into section 1 of the principal act, which is the Agricultural and Veterinary Chemicals (Control of Use) Act 1992. It states:

> (d) to impose controls in relation to the transport, handling, sale and other dealings with agricultural produce, fertilisers and stock food.

Clause 5 inserts two new definitions into section 1: the definitions of 'contaminated' and 'maximum limit'. Clause 5(e) states that 'contaminated' means having a contaminant present in the fertiliser or stock food in excess of the maximum limit for that substance and that 'maximum limit' means a substance present in a fertiliser or stock food according to the level declared under subsection (4).

The Agricultural and Veterinary Chemicals (Control of Use) Act ensures that the use of agricultural and veterinary chemicals products does not lead to contamination of agricultural produce and stock or to consequential financial losses resulting from damage to plants and stock. The principal act also controls the use of agricultural and veterinary chemicals products not only to protect the user of the product but also the end user as well as the general community's health and safety, and the environment.

In today's environment we are conscious, as other honourable members have said, of the sensible and informed use of chemicals because of their effects on us and the environment. The information is much more widely published and the consumer knows more about

it. We are conscious of reading the labels on what we purchase, which practice should apply even more for chemical products.

The main purpose of the bill is to update the principal act, to impose sensible controls and to insert two new definitions. As another honourable member said, Victoria's agricultural markets produce about 23 per cent of Australia's national product. That speaks for itself. The users of chemical products must be cognisant of the fact that the end product must be safe for use and for us to eat.

It is important to note that the bill was developed in consultation with the key groups — namely, the Victorian Agricultural Chemicals Advisory Committee, which was established under the principal act to have an important input into legislation to control agricultural chemicals in the state, and the Veterinary Practitioners Registration Board of Victoria, which endorsed the proposed amendments.

Veterinary practitioners are referred to in the bill. A national registration scheme ensures agricultural and veterinary chemical products meet the standards we all expect and certainly the standards set by the national registration authority.

I refer to a couple of clauses that are extremely important, without detracting from the other provisions that are equally important. Clause 9 requires that the use of chemical products complies with statements that appear on labels and that chemical products are used in the manner specified on the labels. The penalties for not complying with the requirements set out for chemical products are quite high and indicate that they are a deterrent factor.

Clause 9(4) inserts proposed section 19(7). It requires that a person must not sell stock or agricultural produce obtained from stock that the seller knows or reasonably ought to know has entered land or grazed any plant on land within the relevant withholding period stated on the label of the chemical product. The penalty of 200 units for a corporation is severe. The penalty in any other case is 100 penalty units. Proposed section 19(8) provides:

> A person must not sell stock food or agricultural produce derived from any plant or animal —
>
> …
>
> unless the seller has notified the buyer of the stock food or agricultural produce in writing that the withholding period had not expired …

The quite high penalties indicate that a deterrent factor has been built into the legislation.

Clause 11 inserts proposed section 32 to prohibit the misuse of agricultural chemical products on animals except by veterinary practitioners. It prohibits the use of the chemical products without a permit issued under schedule 1, which deals with general exemptions. That clause ensures that what we buy and eat at the end of the day is safe.

Clause 20 inserts proposed sections 54A to 54I. They relate to the powers under the act to search premises with or without the consent of the occupier. The bill provides the authorised officer with the power to obtain a search warrant from a magistrate. The powers in the bill give the authorised officer the ability to effectively investigate what may be breaches under the act and to enable a prosecution, if that is to be the end result. Proposed section 54B deals with the obtaining of search warrants.

Sitting suspended 6.30 p.m. until 8.01 p.m.

Hon. D. G. HADDEN — As I said, clause 20 of the bill inserts proposed sections 54A to 54I. They extend the powers of authorised officers under the act to enter and search premises where they reasonably believe there has been a contravention of the act.

Proposed section 54B provides for a search warrant to be issued from a magistrate where an authorised officer believes on reasonable grounds there has been or may have been a contravention of the act.

Clause 20 inserts proposed section 54G, which requires an authorised officer to return a seized document or thing to the person from whom it was seized within a time frame of three months of its seizure unless the document or thing is required for a court proceeding. There is provision in proposed section 54H for an order to be obtained from the Magistrates Court to extend the time period from three months.

Clause 24 inserts proposed section 75A, which provides for fees collected under the act in relation to licenses and permits to be made available for a number of matters under the act such as assessing applications, monitoring operational standards of licensed chemical applicators and monitoring compliance with as well as generally administering the act.

The bill benefits industry, the consumer, the regulatory bodies, and ensures that the principal 1992 act continues to control the identified risks associated with the use of agricultural and veterinary chemical products.

Certainly in Ballarat Province there is a broad cross-section of farming which covers agriculture,

potato production, sheep, cattle, including dairy cattle, crops and plants and vineyards as well as the perennial problem of noxious weeds.

The bill is necessary to support this state's very high reputation for clean and green food production as well as to meet the increasing demands of Victorian, Australian and international consumers for clean and green agricultural products.

It is certainly critical to have an effective legally controlled framework over chemical use. I am pleased that the bill is receiving bipartisan support in the house, and I commend it to the house.

Hon. K. M. SMITH (South Eastern) — I join the debate today because I understand the importance of the bill to Victorian farmers and probably most importantly to the consumers of the products that are produced by those farmers whatever that may be. Australia has an excellent reputation for being clean and green, not like a lot of other countries around the world that use so many chemicals they are not in a position to know what is being put onto the ground or sprayed into the air.

When I travel overseas I talk particularly about how green this state is. I talk about the products that come out of or off the ground and how clean they are. Victoria has a reputation around the world for being clean and green. It is a great term that aptly describes our agricultural industry here in Australia.

This legislation, along with the federal legislation that is in place, is bringing Victoria into line with the rest of the country. That is important because it will protect Victoria's reputation. I must say that we are great producers in this state. Not only do we produce products with the help of chemical fertilisers, a number of people also produce organic or biodynamic food without the use of chemicals or fertilisers that may damage the food.

I am lucky; some people within my electorate moved very quickly into organic produce. I attended a dinner with David Bellamy, and we spoke about the importance of our reputation around Australia and the need to expand our organic markets around the world. A good selling point is not only that a product comes from Australia but that it is organically grown. David Bellamy — a spokesman who understands not only the agricultural industry but the environment — spoke very highly of Victorian products here and marketing opportunities.

Ron and Bev Smith, farmers from Fish Creek, also attended the dinner. I was lucky enough to visit their dairy farm. They have a great reputation for their magnificent farm. Honourable members would be aware that West Gippsland is probably among the best dairying country in Australia. Ron and Beverley Smith's property would be the best of the best in Australia. They use no fertilisers, chemicals or injections so far as animals are concerned, and the presentation of their cattle could not be better. Their milk has been classified as being fit to carry the organic milk and biodynamic produce label, which is not easy to get. Over a period they have been prepared to dedicate their land to not using fertilisers or chemicals, and only apply natural minerals that are not used by other farmers.

In the beginning their farm was practically clay at ground level, but you can now dig at least a foot into the soil before hitting clay. It is beautiful soil that is full of worms. Their cattle are in magnificent prime condition. Ron and Bev are seen as experts in their particular area of organic milk. People from throughout the world have visited their farm, which is truly a magnificent place. The legislation is about the use and restriction of chemicals that people can use, but the farmers I am talking about do not use chemicals, which is important.

A number of asparagus farmers in the Tooradin and Koo Wee Rup areas, such as Graeme and Margaret Benham — unfortunately Graeme passed away about 12 months ago — were pioneers in growing asparagus organically. I was present when they received their endorsement at the launch of their organic asparagus onto the market. Bill McGrath, the then Minister for Agriculture, spoke highly of the product. It is still one of the best products one can buy. One can taste the difference in the flavour of organically grown asparagus compared with asparagus grown in the normal way. You do not have to be an expert to pick the difference.

About a month ago I visited the Mornington market where Margaret was selling her asparagus. Many people were buying her product because she has a reputation. She also cans the product, and to do so she had to go to a particular canning firm so nothing would be added to the product which would detract from the organic name, Victory.

I turn to fish and aquaculture producers that have set up in Wonthaggi called Oceanaire. All of the product will be produced as being clean and green. They have already carried out their market research and have sold their product to overseas markets for about the next 10 years. They have orders that they are unable to fulfil because of the demand for their organic fish and

crustaceans. They market their product as being clean and green. People in the marketplace are smart enough to understand that you are better off not using chemicals.

We have all heard about mistakes being made over the years. Some years ago I lived in Balnarring, where there was a clay tennis court. It was probably not up to the standard of a competition clay court, but we played the Balnarring Open on it — not with the world's best tennis players but some of us did pretty well. The court had a weed problem. I was president of the football club and the coach told me about his experience years ago in the bush spraying along railway tracks. He said, 'Listen, Smithy, it will be okay. I will just go down to the lands department and get their trailer. They have some 2,4,5-T. I will come in and give your court a spray and get rid of the weeds for a while'. I helped him spray the court until it was a little on the wet side to ensure that nothing would grow through the clay court.

It rained that night, and because the court had a natural fall to one end everything ran off and down among the trees and probably about 30 feet to the road's edge. That did not worry us for some time because everything remained normal. The weeds never came up in the court again, but it was rather sad because there was a trail from the tennis court through the treed area where everything had died. It looked like Agent Orange had gone through the place. Those trees and any vegetation such as grass and weeds that were beyond the tennis court did not grow for about 10 years. On reflection, we may have put too much 2,4,5-T on the tennis court.

Hon. N. B. Lucas — Did you kill the lines?

Hon. K. M. SMITH — The lines rolled themselves up and rolled away — even the lines died! I have related to the house tonight a couple of positive things that have occurred in my province, such as the organically produced milk and asparagus, and Oceanaire, which is developing a facility at Wonthaggi for organically grown fish and crustaceans and which will sell most of the product overseas. That venture has put them at the head of the market because it will be clean, green, come from Victoria and will therefore have a wonderful reputation.

I do not oppose the legislation, but it would be better if we could go a little further. One would not consider me to be a greenie, but I hope more people will move towards growing more products organically.

Motion agreed to.

Read second time.

Third reading

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

That this bill be now read a third time.

In doing so I thank all honourable members for their contributions to the debate.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

RETAIL TENANCIES REFORM (AMENDMENT) BILL

Second reading

Debate resumed from earlier this day; motion of Hon. M. R. THOMSON (Minister for Small Business).

Hon. C. A. FURLETTI (Templestowe) — On behalf of the Liberal opposition I am delighted to support this legislation. For such a brief and relatively short bill it has had a tortuous journey to this place. It is the replacement bill for the private member's bill which was introduced by the opposition two weeks ago and which remains on the notice paper as the Retail Tenancies Reform (Rent Review) Bill.

The bill introduced by the government reflects, mirrors and achieves precisely the outcomes that the private member's bill intended to achieve. My only regret is that in its deliberations the government saw it appropriate to put a mark on the wall higher than the opposition for the purposes of political advantage and not in the interests of the Victorian community affected by the legislation.

In this instance the minister — and I use the words advisedly — has utilised those landlords and tenants who are seriously affected by the decision in the Khodr case, which was referred to in the second-reading speech, to seek to ingratiate the government with the parties affected by the Retail Tenancies Reform Act. The opposition's private member's bill sought in brief to reverse a decision of the Victorian Civil and Administrative Tribunal (VCAT). I refer in particular to the minister's second-reading speech earlier today and draw the house's attention to some of the anomalies in that document.

While I am aware that it is recent form to capitalise second-reading notes, I would be pleased for Hansard to note my suggestion to the government that when reference is made to particular sections of legislation, the second-reading speech should reflect accurately the section to which it refers. In the sense of seeking to be cooperative and proactive, I draw the government's attention to the fact that the section that is under review in the bill is section 12(2)(a) and not section 12(2)(A). If the minister had any interest at all in the amendment she would at least know the correct section with which we are dealing — and that is section 12(2)(a). For the purpose of *Hansard*, and for those who rely heavily on second-reading speeches, and I am sure I speak on behalf of the opposition, Hansard should be allowed to amend the second-reading speech to correctly reflect section 12(2)(a).

As referred to in the second-reading speech, a decision handed down in January by the VCAT interpreted the definition of 'base rent' in section 12(2)(a) of the Retail Tenancies Reform Act to mean the initial rent or the rent in the first year of the lease. By its nature the retail tenancies legislation is complex. It follows that some of the terminology that is used requires interpretation. The term 'base rent' was generally accepted in the industry as meaning the core rent or the occupation rent for a premises. It had its genesis in the early shopping centre leases where a base rent was paid, and the base rent would generally be fixed often for the whole term of the lease. In addition to base rent there would be a contribution towards the outgoings and expenses of running the shopping centre as well as a percentage of turnover, which was called turnover rent. So the base rent was the core rent, and then there was turnover or percentage rent and a proportion of outgoings.

While the industry accepted the understood meaning of 'base rent' as being the rent paid from year to year, it is clear that in his interpretation the member of VCAT found it to be otherwise. As I expressed in my second-reading speech on the private member's bill, that turned the retail tenancy industry into some chaos. Some commentators have used the word 'turmoil'. Others have said that the decision created a degree of uncertainty and concern among the Victorian community because of the effect it had on property values.

There was the additional expense incurred in having to resort to the default provisions in section 12 of the Retail Tenancies Reform Act by going to market value and the valuers' fees payable by landlords and tenants in that respect. There was also the risk of parties retrospectively challenging agreements that had been reached and the effect on investments by Victorians particularly — for example, self-funded retirees through either property ownerships or property trusts.

The opposition consulted broadly on the issue. When the matter was raised the opposition consulted with the Property Council of Australia, the Australian Retailers Association, the Shopping Council of Victoria, the Real Estate Institute of Victoria and the Law Institute of Victoria. One theme was very strong: this serious problem needed to be addressed immediately and should not be left to fester.

As a result of that consultation, on 18 September I raised the matter with the minister in this house. I asked whether the minister was aware of the problem and whether she would take immediate action to rectify the problem, because the uncertainty was creating great concern to Victorians.

After admonishing me to some extent, the Minister for Small Business states:

> It is unfortunate that his first performance —

meaning me.

Hon. M. R. Thomson — I did not think you were allowed to quote the *Hansard* report of questions without notice?

Hon. C. A. FURLETTI — I am allowed to quote from questions, Minister. You should learn the standing orders.

Hon. T. C. Theophanous — You did not say you were quoting from questions without notice.

Hon. C. A. FURLETTI — I did. I am happy to take on the argument at any time. Page 69 of the *Hansard* report of 18 September reports the minister as stating:

> It is unfortunate that his first performance in the role has been tarnished by his question and the tone in which it was asked.

The question was focused on the concerns expressed to me by people affected by the decision of the Victorian Civil and Administrative Tribunal. The minister went on to say that the issue would be fixed as part of an overall review of the legislation. The report states:

> … we would deal with all of the detail of the legislation in doing that.

Honourable members will be aware of the rules of the house which precluded me from taking up the matter further until the next day. Having been told it would be dealt with when dealing with the rest of the matters raised, on 19 September in a question without notice I asked the minister whether she had underestimated the

number of small businesses and landlords affected and whether she could give an indication of when the government would introduce the legislation. The report of the minister's response states:

> The government has undertaken to bring that legislation into the Parliament this session and intends to meet that deadline.

The difficulty with that is that the session could finish in anything up to two years from now.

The concern of the Liberal opposition is that if the matter is going to be considered some time in the next two years, given that the minister is aware the discussion paper on the retail tenancies overall review was supposed to be released in this place on 1 July — we are still waiting for it to be released and I do not know when it will be released — and one would assume that the discussion paper would need to be available to the public to comment on, we are looking at months if not years into the future. The opposition is not willing to accept that. It was because of that that the opposition introduced the Retail Tenancies Reform (Rent Review) Bill. In the second-reading speech on that bill I used words and phrases, again referring advisedly to the government, such as 'will not act promptly', 'simple legislation', 'procrastination' and its being incomprehensible that the government would not act promptly. Those words and phrases were used advisedly to bring to the government's attention the urgent need for something to occur.

The problem with legislation is that unfortunately we do not always get it right. In fact earlier today the house debated the Crimes (Validation of Orders) Bill, which was introduced because of a decision of the Supreme Court invalidating the intended operation of the principal act. That is the system upon which Parliament works. With the best of intentions legislation is passed. I have often said in this place it is absolutely essential that honourable members spend time in preparing legislation to ensure that it is good legislation, not as occurs with this government, which introduces shoddy, sham and smoke-and-mirrors legislation in most instances. As legislators we have an important responsibility; however, unlike the fantasies of Mr Theophanous, we do not always get it right. Nobody always gets it right.

The legislation was introduced on the basis of certain preconceptions, and we have a situation that has absolutely nothing to do with the legislation but with the interpretation of the legislation, and the interpretation of the legislation was that the term 'base rent', irrespective of what the industry understood it to mean — —

Hon. T. C. Theophanous interjected.

Hon. C. A. FURLETTI — Why don't you go back to your seat?

Hon. T. C. Theophanous — Why don't you say something sensible?

Hon. C. A. FURLETTI — I will say something sensible. The reality is the Law Institute Of Victoria wrote to the minister and said that the decision of the Victorian Civil and Administrative Tribunal was beyond the realms of legal and commercial reality.

The legislation was not so bad, but the interpretation was very doubtful. Most of the legal firms that cast their eyes over the decision of VCAT were of the opinion that had the decision been appealed to the Supreme Court it would have been overturned. It had nothing to do with the legislation and all to do with an erratic decision. In fact I received an email from the Law Institute of Victoria, which responded to my sending it a copy of the Retail Tenancies Reform (Rent Review) Bill, a private member's bill and the second-reading speech. I am pleased that the minister is in the chamber because she needs to hear this. The institute states:

> … with a view to overturning the most unfortunate and unexpected VCAT decision in Khodr's case.

There was nothing wrong with the legislation. The response from a member of the institute who was responding on behalf of the chief executive officer, Ian Dunn, who was overseas, goes on to say:

> Our leases committee raised this matter with the minister in June …

I repeat, 'in June' — four months ago. It goes on to say:

> As I understand you know, members of the committee have recently been working with officers of her department and other stakeholders to provide a workable resolution to the issue.

I do not know whether the government would have taken an initiative had the opposition not taken up the whole issue and presented the bill in the form of a private member's bill.

Hon. T. C. Theophanous — We have been trying to fix your mistakes of the last four years.

Hon. C. A. FURLETTI — Mr Theophanous comes back again; he is a thickhead. The comment of the institute with respect to the private member's bill is:

> … all of the stakeholders and our representatives are happy with the present proposals and are keenly looking forward to the matter being rectified shortly.

In other words I understand that to be an endorsement from the Law Institute of Victoria of the private member's bill that was put before the house last week and was due to be debated in this place tomorrow. After a week of silence, the government decided to call a meeting, which I understand took place last Monday. In fact I read about it having taken place in a circular dated 5 October called *State of Play*, which is put out by the Property Council of Australia. Under the heading 'Retail issues — Khodr anomaly', it states:

> The Property Council, the law institute and the ARAV —

which is the Australian Retail Association of Victoria —

> have met with state government officials to discuss this matter.

It says state government officials, not the minister.

Hon. W. R. Baxter — Where was she?

Hon. C. A. FURLETTI — Certainly not at the meeting!

Hon. T. C. Theophanous interjected.

Hon. C. A. FURLETTI — I won't try to say it. She was not there, she was not available. Do you want me to go further?

Hon. T. C. Theophanous interjected.

Hon. C. A. FURLETTI — It is not for me to explain, I will let the minister explain.

Hon. T. C. Theophanous — So what!

Hon. C. A. FURLETTI — 'So what!' says Mr Theophanous. This is a matter of considerable importance to those affected by the retail tenancies legislation. It is something that — —

Hon. T. C. Theophanous interjected.

Hon. C. A. FURLETTI — The minister was asleep at the wheel! She was not interested in meeting the parties affected by this. She was away. So here we are in a meeting with the minister not there — in other words, the solution to the problem was resolved without the minister. We did not need her. The circular continues:

> In that meeting a solution drafted by the law institute was presented. Property Council and the ARAV have supported that proposed solution. We have been assured that the VCAT decision will be remedied, and as expeditiously as possible. We have indicated to the government our preference for a prompt solution separate from the review of the Retail Tenancies Act.

In the week before the minister told the house that this anomaly would be resolved as part of the overall review, yet less than a week later she has given assurances — although I cannot say that minister gave those assurance because she was not there, so somebody gave assurances on her behalf — that it would — —

Hon. M. R. Thomson — She gave them all assurances individually!

Hon. C. A. FURLETTI — I will reaffirm that the minister was not at the meeting. She may have spoken to them individually beforehand but then so did I, but she was not there when it mattered.

Hon. M. R. Thomson interjected.

Hon. C. A. FURLETTI — I respect family hours, Minister. I respect family very much; however, I will not pursue that. The point is that you were not there when it was important that you should be there. Nevertheless, without you a resolution was found — and it was a very suitable resolution because it clarified that there could be a percentage increase on something other than base rent as interpreted by the Victorian Civil and Administrative Tribunal (VCAT). It found that the determination and interpretation needed to be introduced from the date of commencement of the principal act — the Retail Tenancies Reform Act. It also found that it was important to preserve the rights of those whose disputes had been resolved and determined by a tribunal or a court.

Coincidentally that is exactly what the private member's bill did, which is still before the house, yet for political advantage the minister saw fit to raise a government bill. I would not have said there was any political intent in this had I not read an earlier edition of *State of Play*, the circular put out by the Property Council of Australia to which I referred earlier. An earlier edition of the circular dated 28 September states:

> … we believe the Khodr decision is wrong and we want it fixed. Minister Thomson has indicated that she wishes to meet with Property Council and other stakeholders to discuss the Khodr position on the 8 October.

That was yesterday. In between 28 September and 8 October the opposition introduced a private member's bill which would have fixed the problem. What this proves, Minister, is that you will not interrupt your holiday for anything, no matter how serious!

Hon. M. R. Thomson interjected.

Hon. C. A. FURLETTI — No, it is not a personal attack on you, please do not take it that way. The important thing is that you realise that there are a lot of people whose livelihood, investments and properties are affected by this inordinate decision, which was handed down in January. The minister was advised in June and has been sitting on her hands. It is typical of the Bracks Labor government. Let us think about it! And let those who are affected by it not be concerned.

Hon. T. C. Theophanous — The state is grinding to a halt with you lot.

Hon. C. A. FURLETTI — It is fortunate that we will not allow that to happen. If we have to introduce private member's bills into the house every week to correct anomalies, let me assure you, we will. The bill achieves the purpose. As I said in the second-reading speech I presented to the house with the private member's bill, while in general terms we oppose retrospectivity of legislation this is an instance when we must defer to common sense. It was essential that the validation of rent review provisions be retrospectively enacted to the date of commencement of the Retail Tenancies Reform Act 1998, and that happens in clause 3.

Clause 4, which is the core clause, amends section 12(2)(a) of the Retail Tenancies Reform Act by a very simple mechanism. This was indicated by the minister in response to my questions as being a complex problem. It has been amended by simply removing the words 'of the base rent' from section 12(2)(a) of the Retail Tenancies Reform Act, which will now state that:

> (2) The basis or formula on which a rent review referred to in sub-section (1) is to be made must be one only of the following —
>
> (a) a fixed percentage …

This is the complicated mechanism the government thought could not take place quickly or simply. What nonsense! That is how simple it is. If somebody wanted to misinterpret the term 'base rent' that is how simple it is.

I refer the minister to an article I was pleased to read on Monday, 8 October, in the *Australian Financial Review*. In the article, a lawyer, Mr Max Cameron from Minter Ellison, says:

> Solving the problem was urgent when the decision was handed down and it's still urgent …

It is still urgent nine months later despite the pressure from this side of the house two weeks ago asking the minister when she would take action and whether she would take action immediately. The minister cannot get away from the fact that what she said was, 'We will get to it when we are ready. We will continue to sit on our hands. We will continue to have our hands off the steering wheel and we will get to it when we are ready'.

Hon. T. C. Theophanous — You're making it up!

Hon. C. A. FURLETTI — It is in *Hansard*. I will take up the interjection, and I refer to the minister's answer to my question on page 116 of *Hansard* of 19 September 2001.

Hon. T. C. Theophanous — You're such a clown.

Hon. C. A. FURLETTI — There is only one clown in this house, Mr Theophanous, and it is not me. The minister states:

> The government has undertaken to bring that legislation into the Parliament this session —

which has two years remaining —

> and intends to meet that deadline.

A two-year deadline! Those are the minister's own words. I am happy for Mr Theophanous to interject as much as he likes.

Hon. M. R. Thomson — Do you want to tell them about the private conversation we had, Mr Furletti?

Hon. C. A. FURLETTI — Do you want me to? I am happy to. I would not push that one. But I will.

When I first asked it was put that this would be a particular problem that was to be looked at as part of the overall reform of retail tenancies. I stressed to the minister that this was a stand-alone problem. In my second-reading speech on the private member's bill I indicated that it was important that it be dealt with separately and as a stand-alone issue. The government chose not to do so until pressure was brought to bear, not only by the opposition, but also I am sure in its meeting with the relevant players on Monday 1 October — a meeting called in the absence of the minister for the purposes of addressing the action taken by the opposition in introducing a private member's bill.

I am delighted that the minister has introduced the bill and I am pleased that she saw the way clear to debate it immediately. I know it was hard for her to do that. I appreciate the difficulties she has had. I appreciate the fact that she has seen fit to step out of her normal line to consider small business and to consider the effect that

this decision has had on landlords and tenants alike in Victoria.

Members of the opposition hope that by supporting this bill — and we support it very strongly — it will have a speedy passage. We hope the minister may be good enough to convince her colleagues in the other place to ensure that it has an expedited passage, because the risk we run is that the longer it takes to become law the more chance there is of people falling through the cracks and the more likelihood there is of people challenging agreements that have been set in the past. Therefore by expediting the passage of the bill we will remove the uncertainty, clarify what was intended in the first instance by the Retail Tenancies Reform Act 1998 and remove any prospect of anomaly or uncertainty in section 12(2)(a) of that act. Therefore I commend the bill and urge the minister and the house to give it a speedy passage.

Hon. W. R. BAXTER (North Eastern) — This bill is a classic illustration of the paralysis in decision making which afflicts this government. We have seen it in so many examples of the government being totally unable to take a decision and move forward. Usually it sets about establishing a review that gives it some sort of breathing space while it makes up its mind.

On this occasion it is even worse than that because we had a very clear-cut illustration of the need for urgent action because the community was confronted on 25 January 2001 with an unexpected ruling by the Victorian Civil and Administrative Tribunal (VCAT) as to the meaning of certain words in section 12 of the Retail Tenancies Reform Act 1998.

Clearly it was an unexpected ruling. Clearly — without wanting to reflect upon the judgment — it was a ruling that was simply not in accord with the intent of the Parliament in 1998. Any fair reading of the debates of that time would indicate that it was not in accord with the intent of the Parliament in 1998. It was clearly in everyone's interest that the government move expeditiously to overturn the ruling by legislative action so that certainty could be returned to both tenants and landlords throughout the state of Victoria.

I say the ruling was unexpected and not in accord with the intent of Parliament because it seems to me that the ruling by the tribunal was clearly out of line with the everyday understanding of the phrase 'base rent'. I know Mr Theophanous, who I understand is following me in the debate, will go to great lengths to try to indicate that the government of the day in 1998 got it wrong by including the words 'base rent' in the act. Those words are being removed tonight to overcome the ruling by VCAT. I submit that the words 'base rent' when they were inserted in the original act in 1998 were well understood by members of the Parliament at the time, that they have a very clear meaning in everyday language — in the vernacular, if you like — and that it was only that a very strange, tangential and right-at-the-edge interpretation was placed on those words by the tribunal that we find ourselves in this predicament tonight.

On 25 January 2001, 10 months ago, the ruling was made. One would have thought, bearing in mind how important small business is to the economy of the state and how many people are engaged in and employed by small business, and bearing in mind the stress that many small businesses are under with Workcover premiums escalating as they are and with the implementation of the very useful but to some extent different new tax system that was being put in place this year, that a minister who was interested in the welfare of small business would have acted quickly to remove any doubt, uncertainty or concerns that small business might have had.

Is that what we saw from this government? No. We saw absolute lethargy — no interest whatsoever, despite very strenuous representations being made by many of the interest groups, whether it be the Law Institute of Victoria, the shopping centres council or whoever, indicating that the ruling was causing concern and was likely to introduce a deal of disruption in rental reviews that take place from time to time. I would have thought it was in the interests of the government to make sure that the thousands of tenants and the hundreds of landlords in the state were not left in limbo, but of course, as honourable members know, it seems that this government has a lot of difficulty in taking decisions and moving forward.

It was not until Mr Furletti, on behalf of the opposition, introduced his private member's bill in the week before last that we got any activity at all. I commend Mr Furletti on the work he has done in making representations via questions and the like on behalf of small business and landlords in the state. I understand his frustration with the types of answers that he was getting from the minister at question time. The assurance that the matter would be addressed some time this session was an extraordinary performance from the minister and could give no confidence at all to people in small business in the state that they had a minister who was seriously interested in their welfare. As honourable members know, Mr Furletti introduced his private member's bill when we were last sitting. Clearly that caused some excitement in the government's ranks.

I suggest that the real reason we are seeing this bill in the house today — yes, the genesis was in Mr Furletti's action 10 days ago — is the article that appeared in yesterday's *Australian Financial Review*. Having had a bit of experience in these matters, I suggest that at the cabinet meeting yesterday another minister swanned into cabinet waving this article around and said, 'What the hell's going on? Why haven't we taken some action to fix this problem that's been staring us in the face for 10 months? Why have we allowed the opposition to take the high ground by introducing a private member's bill to overcome this anomaly?'.

I think a decision was taken yesterday to put aside all those cabinet rules that we hear used as excuses from time to time about how you cannot get things through cabinet unless you give due notice and it all goes through the process. I think this bill was drafted yesterday, rolled in yesterday and into this house today. That is what has happened. I am not criticising the government for doing it, because clearly it should have done it 10 months ago. I suppose better late than never.

What are we going to do about restoring some confidence in people in small business in the state so that they know they have a government that is slightly interested in their welfare?

Hon. E. C. Carbines — You're showing how out of touch you are, Mr Baxter.

Hon. W. R. BAXTER — Very well, Mrs Carbines, you might talk to small businesses in your electorate about Workcover premiums, for example. I am sure all your small businesses are very uncomfortable with the Workcover premium bills they are getting since the Labor government came into office! I can give you plenty of examples where people have had increases of more than 100 per cent.

All honourable members know that small business is subject to intense competition, not only from other small businesses but also from the big operators such as the supermarkets, the multinational companies and the like. We know the sorts of pressures that small business is under; we know that the failure rate in small business is regrettably quite high; we know the stress that small businesses operate under.

Hon. E. C. Carbines interjected.

The ACTING PRESIDENT (Hon. R. H. Bowden) — Order! The honourable member is out of her place. If she wants to make a contribution, she may do so through the Chair.

Hon. W. R. BAXTER — We have a government, and in particular a minister, who has demonstrated that she has no empathy with small business and no understanding of its problems. She comes from a typical Labor background of Labor governments that have no idea of the difficulties of running a business. They are used to working where the cheque comes in every second Thursday whether the business is making any money or not. They have no understanding of having to put money up front, taking risks, putting good management practices into place and getting out there and competing. It is an indictment of the government that yet again it has demonstrated that it is incapable of action to assist small business in this state unless it is prodded, as it was last week by Mr Furletti and the opposition.

It is a dreadful way to run a government, but fortunately the opposition parties in this house have been able to force the government to take the action that it should have taken more than six months ago.

Hon. T. C. THEOPHANOUS (Jika Jika) — I support the bill that has been brought to the house by the Minister for Small Business. In supporting the legislation I must say that I was appalled at the attitude of the opposition with regard to this matter, and in particular by the attempts of Mr Furletti to justify the arrogant approach to legislation of the former government. The former government used to bring pieces of legislation into this house one after another. It never allowed for any public consultation and did not take into account the views of anybody else.

Every single amendment ever moved by the opposition in this house during the entire seven years that the previous government was in power was refuted and not passed. The number amounted to literally hundreds of amendments. I am glad Mr Hallam is in the chamber because he would remember what the Kennett government did. Government members would come into the chamber and vote against amendments put up by the former opposition, and then in the next session of Parliament they would come in, as Mr Hallam did on a number of occasions, and move the same amendment that we had moved to rectify faults in the legislation! Mr Hallam moved them and pretended that it was his legislation. That shows the arrogance of the previous government. It did not consult anybody; it could ram through anything it wanted to because it had the numbers in both houses of Parliament, and everybody simply had to do whatever its bidding was. The bill arises out of the arrogance of the previous government — —

Hon. R. M. Hallam interjected.

Hon. T. C. THEOPHANOUS — Mr Hallam might not like the facts because he was one of the worst offenders when it came to faulty legislation that the former government brought into this house and forced through because it had the numbers. Mr Furletti has made a song and dance about a fault in a particular piece of legislation, but what piece of legislation is it? It is a piece of legislation passed in 1998 by the previous government. It was rushed through this house and the other house without consultation. Nobody was spoken to; no-one was asked — —

Hon. C. A. Furletti interjected.

Hon. T. C. THEOPHANOUS — Mr Furletti might not know this, but under his government it was virtually impossible to even get a briefing. That is what the situation was under the government of which he was part. The opposition might want to laugh and carry on and say that it was the fault of the former opposition, but the fact is that the former government brought the legislation into the house; it was faulty legislation, and it is now admitting that it is faulty legislation because it is seeking to change it.

Hon. C. A. Furletti — You are making a fool of yourself.

Hon. T. C. THEOPHANOUS — Don't you go calling people fools, Mr Furletti, because there are many people on your side who would say things that are a lot worse than that about you. It has taken Mr Furletti a long time to learn, but one day he will understand.

Hon. N. B. Lucas — You've been on the school bus too long!

Hon. T. C. THEOPHANOUS — Mr Lucas might learn something, too, because he would know, as Mr Furletti unfortunately does not know, that resorting to abuse of people is no substitute for proper argument.

Hon. C. A. Furletti interjected.

Hon. T. C. THEOPHANOUS — If Mr Furletti wants to have an abuse session, I am happy to accommodate him, but I do not think it will help the debate. The fact is that the provision that has created the problem in the legislation was introduced by the former Kennett government. That is a fact.

Hon. C. A. Furletti — And supported by you.

Hon. T. C. THEOPHANOUS — It was introduced by the former Kennett government. The least that Mr Furletti could do is recognise that perhaps it made a mistake in introducing this, as subsequent events have shown. Instead, he has compounded the mistake by preparing legislation which, far from fixing the problem, would in fact have made it worse.

The reason that we are debating the bill is much more to do with the fact that Mr Furletti has in a sense invited people to use the decision that was made in relation to this case back in January by going out and publicly highlighting this and saying, 'Here is a way that you can get around the legislation'. That is what Mr Furletti did. By publicly doing that he has in effect made it necessary to bring in legislation in order to fix this problem. That is not to say that the legislation that he brought to the house would have repaired this problem. As will be shown, it would have made it a lot worse.

I turn to comments made to the Office of Regulation Reform by the leading legal experts in retail trading matters, Michael Redfern, Dr Clyde Croft and Derry Davine. They constitute the leases committee of the Law Institute of Victoria and are the pre-eminent experts in the field. I want to read what they said under the heading of 'Furletti amendments':

> The amendments proposed by Mr Furletti — —

Hon. C. A. Furletti — You had better be very accurate.

Hon. T. C. THEOPHANOUS — I am happy to read it all:

> The amendments proposed by Mr Furletti to paragraph 12(2)(a) — —

Hon. C. A. Furletti — Small or little 'a'?

Hon. M. R. Thomson — The *Hansard* copy says it is a small 'a'.

Hon. C. A. Furletti — I am glad you corrected it, Minister.

Hon. T. C. THEOPHANOUS — It continues:

> … of the Retail Tenancies Reform Act are similar to those we propose in that they retain the words 'a fixed percentage' but there the similarity ends. In our view the added wording in his proposed amendments does not assist the matter any further.

That is what they say about your proposition, Mr Furletti.

Hon. C. A. Furletti — So?

Hon. T. C. THEOPHANOUS — 'So?', asks Mr Furletti. They say it does not assist the matter any further, yet Mr Furletti asks, 'So?'. What do you want me to say to that, Mr Furletti, other than it shows

nobody can influence your fixed view. Mr Furletti has already said these people are the pre-eminent experts and that they said in response to him that his amendments 'do not assist the matter any further'. Yet Mr Furletti asks, 'So?'.

Hon. C. A. Furletti — I do not profess to have the resources of government, Mr Theophanous, but I would think you would get at least the second-reading speech right.

Hon. T. C. THEOPHANOUS — Yet you, Mr Furletti, have the cheek to go around and accuse people of being fools.

The ACTING PRESIDENT (Hon. R. H. Bowden) — Order! There is a little too much toing-and-froing in the chamber. Honourable members will have ample time to develop their points of view and present them to the house. The Chair has been quite tolerant. I ask honourable members to assist each other by letting honourable members present their cases.

Hon. T. C. THEOPHANOUS — I shall further quote those eminent people. In relation to Mr Furletti's proposals they state that it:

> … is a complete departure from the approach adopted in subsection 10(1) of the 1986 act which means that its effect must, consequently, be much more unpredictable than would be the case if this addition were not made.

Mr Furletti's approach to fixing the problem, according to the most pre-eminent experts in the field, does not assist the matter further and if brought into place would make the situation much more unpredictable than would otherwise be the case. Mr Furletti carries on in here about the problem that has created unpredictability, but he has proposed a solution that the most pre-eminent experts in the field say would actually add to that unpredictability. Mr Furletti then comes in here and asks, 'So?'. He proceeded to make the most appalling statements, including a grubby attack on the minister.

I will further quote what the leading team from the Law Institute of Victoria had to say about Mr Furletti's proposals. I am happy he wants me to quote it in full so we do not get any part of it wrong. It further states:

> As a result of the additional words it would appear that the amendment will mean that to be effective a percentage rent review clause may have to specify the period which is to be the subject of the increased percentage. This would mean that for a lease of three years commencing in 2001 it may be necessary to say that the rent for the second and third years is to be increased 5 per cent for the second year on the first year's rent and 5 per cent for the third year on the second year's rent and it would not be sufficient to simply refer to a rent adjustment of 5 per cent per annum throughout the term of the lease, as is the method commonly used in practice. There is the additional difficulty, as mentioned, that the addition in proposed paragraph 12(2)(a) is not made to paragraphs 12(2)(b), (c) or (d) which is likely to raise difficulties of interpretation and unexpected consequences.

Mr Furletti totally messed up his proposed amendment. Firstly, it did not have the consequential amendments required. Secondly, and most importantly, it would have meant that the most common methodology used to describe rent increases or adjustments would not have been applicable unless it was specified on an annual basis, according to the advice from Michael Redfern, Clyde Croft and Derry Davine.

The situation we find ourselves in is interesting. The truth of what has occurred in relation to this issue is as follows: in the first instance it has been traditionally a Labor government that has been keen to ensure that business people who are operating in rental situations are looked after through appropriate legislation that protects their rights. It is not something that the Liberal and National parties have ever had an interest in because ultimately they do not support the small businesses that have to pay the rents and they support the landowners from whom the rent is taken.

Hon. C. A. Furletti — That is the reason for the delay?

Hon. T. C. THEOPHANOUS — That is what you do, Mr Furletti — you support the landowners! The changes to the original legislation, and then the changes to the legislation in 1991 introduced by a Labor government to ensure fairness in this area, were subsequently changed in 1998 by a Liberal government. In its rush to make the changes it included this particular provision which has caused so many problems and which this bill seeks to amend.

When the decision was made in *re Khodr* in January, which started the process, the government took action, despite what Mr Furletti said about it. It was mentioned as an issue in the original January discussion paper that invited members of the public to comment.

Hon. C. A. Furletti — Before the decision.

Hon. T. C. THEOPHANOUS — Yes, but it was raised as an issue. It invited members of the public to make submissions about changes to the Retail Tenancies Act. Unlike the way your government operated, Mr Furletti, the Labor government invites submissions and asks people for their views. That is what occurred in relation to the preparation of the retail tenancies legislation.

A process of consultation that was put in place from January was accompanied by requests for a range of opinions from the legal fraternity and other organisations. The government was mindful of the fact that no case was before the courts other than the Khodr case. It was looking for a solution to this particular problem. Mr Furletti wants to make as big an issue of this as he can because he thinks that somehow he has found something new, when in fact he has not.

He came in here in a ham-fisted way with a bill which the Law Institute of Victoria and experts in the field said is unworkable and would actually make the situation worse. In so doing he also served to highlight the issue. The government has now come in with an appropriate change to the legislation which will ensure that the problem is resolved.

Unlike Mr Furletti's proposal, the government's proposal is carefully considered and has been supported by the Law Institute of Victoria and by all the major players. It will lead to the resolution of a problem which arose as a result of legislative changes made by the previous government. Therefore the government does listen on these sorts of issues and finds solutions when they are required.

Mr Furletti would have done himself more credit had he taken the time to discuss the issue — if he had an issue — and as he was invited to do. He should have worked with the government to find the solution that ultimately it came up with. Instead, you sought to hide the fact that your government made a mess of it. You came in here with a half-baked approach of which you had no idea of the implications and sought to somehow make a hero of yourself as the newly elected deputy leader. If that is the sort of thing you as deputy leader are going to come up with, you will not be deputy leader for very much longer, that's for sure! You are an embarrassment. You have not got the support of your leader.

The ACTING PRESIDENT (Hon. R. H. Bowden) — Order! Through the Chair! There is too much noise across the chamber.

Hon. T. C. THEOPHANOUS — The innuendo Mr Furletti used in his grubby, half-disguised attacks on the minister was appalling. He talked about whether the minister was on holidays and so on. He knows we have fixed the problem. Mr Furletti knows the government has provided the resolution to this issue. Instead of coming in here and thanking the government for providing the solution, the best he can do is criticise the government for introducing what is a very important and effective solution to a problem that has emerged. I do not think there was an urgent issue that needed to be dealt with at this time. It could have been dealt with alongside the legislation that will be introduced in the full revision of the Retail Tenancies Act; however, I congratulate the minister on acting in the way she has in dealing with this issue separately.

A case back in January highlighted this particular issue, but it is the only case that has come before the courts. So far as we know there are no other cases before the courts at present in relation to rent review because most landlords and tenants operate on the basis of working to the spirit of this particular legislation and adjusting and renegotiating rents during rent review processes.

The one loophole that has been identified should be closed, and the government has acted promptly to close that loophole, but the loophole was not of the making of this government. This particular loophole was a direct result of 1998 amendments made by the Kennett government. So in a sense Mr Furletti had a responsibility to fix it since he was one of the people who broke it in the first place!

Indeed, that occurred for one reason: under the previous government, pieces of legislation came into this house one after another — and I was here to witness it. They had not been properly thought out. Very little consultation occurred, and when consultation did occur it was only with the mates of the previous government. Ultimately the Victorian public saw through it. It saw through the arrogance, the lack of consultation and the fact that democracy itself was under threat under that regime, and it voted it out. Now, instead of recognising the mistakes of the past and seeking to work with the current government which is interested in consultation, in getting the right solutions for the people of Victoria, in considering the views of a broad range of people and putting out consultation papers that ask people for their views, and which makes them public once they have done that, the current government has been left to fix it alone.

Mr Furletti would do himself far more good if he learnt from the lessons of the past and embraced democracy and accountability because that is the only way he will have a chance so far as the Victorian people are concerned, and I can assure him of that.

Hon. N. B. LUCAS (Eumemmerring) — I am pleased to be involved in the debate because I believe in this case the government has been caught out by our new deputy leader, the Honourable Carlo Furletti. Tonight we should be debating a motion about whether the Minister for Small Business should stand down or be sacked by the Premier because she has been aware

of this problem for 10 months! It has taken 10 months to get action. The minister has been caught sitting on her hands. After 10 months she has been flushed out to do something about this.

Mr Theophanous admitted towards the end of his contribution in responding on behalf of the government that it was not seen as urgent, but this evening we are debating a bill introduced by the government for the very reason that it was caught out. The bill Mr Furletti introduced the other day has caused the government to think again. It is good that we are now getting a solution to this problem.

What we are about on this side of the chamber is getting solutions for people in small business. That is obviously not what the small business minister is about. The opposition has used its initiative, has been getting on with the job and has been working out how to solve a problem. The solution that we came up with was drafted by parliamentary counsel in response to our suggestions that we needed a solution, yet Mr Theophanous spent half of his speech attacking parliamentary counsel.

Hon. T. C. Theophanous — On a point of order, Mr Acting President, I take exception to the comments made by the Honourable Neil Lucas. Not only did I not attack parliamentary counsel, during the whole course of my speech I did not once mention parliamentary counsel. I take exception to his comments about my having done so, and I ask him to withdraw.

Hon. N. B. LUCAS — On the point of order, Mr Acting President, half of the Honourable Theo Theophanous's speech was about the drafting not only of Mr Furletti's bill but also of the act. It is a fact that parliamentary counsel write the legislation in response to either the opposition or on behalf of the government — they document what governments and oppositions want to put into legislation. That is their job.

Hon. T. C. Theophanous — Further on a point of order, Mr Acting President, it is true that parliamentary counsel seek to interpret the wishes of both governments and oppositions, but it has never been the case in this house that parliamentary counsel is held responsible for legislation. The only people held responsible for legislation are members of Parliament, in this case Mr Furletti, for those words. My criticism during my contribution had to do with Mr Furletti and his proposed legislation. I did not mention parliamentary counsel. I find it offensive that Mr Lucas is suggesting that somehow I was criticising parliamentary counsel in the way that he purports, and I ask him to withdraw.

Hon. C. A. Furletti — On the point of order, Mr Acting President, the issue here is the criticism by the Honourable Theo Theophanous of the drafting of the words that were used. Had it been a personal attack I would have asked for a withdrawal. He was complaining and criticising the words that were used, and the words which, as has been rightly pointed out by the Honourable Neil Lucas, and which Mr Theophanous would be well aware, were prepared and drafted by parliamentary counsel.

Had Mr Theophanous been of the view that the concept was wrong then perhaps he could have attacked me. The reality is that Mr Theophanous was attacking me for using those words as my words. He went on for some time. Nobody is hiding behind parliamentary counsel. Mr Theophanous is aware that the bill was drafted by parliamentary counsel and should be respectful of parliamentary counsel. If Mr Theophanous has an issue with respect to the words, he should be critical of the drafting, not of the drafter.

The ACTING PRESIDENT (Hon. R. H. Bowden) — Order! On the point of order, having listened carefully to the presentations, I find there is a point of order. I believe the honourable member was a little robust. I do not believe it is the practice for parliamentary counsel to be criticised, and under the circumstances an honourable member has taken offence. I find there is a point of order and ask the honourable member to withdraw.

Hon. N. B. LUCAS — I withdraw. Mr Theophanous criticised the drafting of the legislation and has criticised the drafting the legislation we are amending, so I am not exactly sure who he is criticising.

Hon. T. C. Theophanous interjected.

Hon. N. B. LUCAS — No, I did not draft it, so you cannot criticise me. I am not sure who he is accusing in relation to the drafting, but it is illogical that Mr Theophanous should criticise something that is being done to remedy a problem.

Mr Furletti should be congratulated for forcing the government out of its burrow on this occasion. I shall go through some dates to show how the government has been caught out. In January Judge Davey in decision 167 referred to this problem that we are now in the process of remedying, and in clause 14 of the decision referred to the basis of the rent payable in the immediately preceding year. The definition, which is

the crux of this case, was brought to light and immediately placed people leasing through retail tenancies in a difficult position. The document that was issued to explain the work being undertaken to review the case said that the time lines for that work to release an issues paper was December. Mr Theophanous indicated in his remarks that the issues paper was released in January — a month late. Mr Theophanous indicated there was reference to this definition about the base rent, and then we went through the public consultation phase to the end of March, the release of the discussion paper in April, the final consultation in May and the presentation of final report to the minister on 31 July.

I ask where the final report to the minister is? We still have not seen it, and it is now October. In raising this issue with the minister in September Mr Furletti rightly pointed out the problem and asked the minister what would happen. The minister basically said that she would deal with the issue along with all the other issues that the government was considering under the review of retail tenancies legislation, that the paper would outline the options and that she would get on with it in due course. Not satisfied with that, Mr Furletti raised the issue again the next day. The minister then said that a review of the total impact on retail tenancies was being undertaken, that an options paper would include the issue that Mr Furletti had raised and that the government had undertaken to introduce that legislation into the Parliament this session — in other words, by November 2003. Not to be deterred, to his credit Mr Furletti raised the issue again.

On 25 September, the matter having been raised for a third time, the minister is reported as saying:

> If there was an immediate urgency in bringing legislation to this Parliament we would be doing it …

That is what the minister is reported as saying on 25 September. We have not gone far down the track and the bill is now before the house. I wonder why the bill has been introduced. The answer is that as a result of the Honourable Carlo Furletti's press releases and private member's bill the government has been forced finally to do something.

A press release of 26 September from the opposition referred to the fact that certainty needed to be restored and that the government had failed to deal with the issue and, importantly, referred to the fact that:

> Thousands of retail leases provide for rent reviews based on the previous year's rental. The VCAT decision has invalidated this type of rent review provision creating a great deal of uncertainty and turmoil.

On 3 October a further press release pointed out:

> The Bracks government needs to react immediately to ensure the doubt being cast over thousands of small businesses is removed.

Into early October and there was still nothing from the government. Then there was the *Shopping Centre News* that also referred to the problem in its recent edition, saying:

> … the ramifications of this decision —

that is, the decision of the judge —

> for the industry are such that their decision needs immediate legislative clarification. It cannot wait for the processes that need to be followed as part of the total review of the act.

Maybe that is what gave the minister the final clue to do something about it. But if that was not enough, the *Australian Financial Review* of 8 October summed it up very eloquently in an article at page 51 that says:

> Victorian landlords and tenants appear to be unanimous in their battle to fix the state's retail tenancy laws as thousands of rent reviews appear in doubt after a surprise legal decision.
>
> For the past nine months, neither landlords nor tenants have known if their existing leases have any legal standing …
>
> The mass confusion has resulted in criticism of the Bracks Labor government's failure to quickly resolve the nine-month stand-off, or to introduce new laws to clarify the situation.
>
> …
>
> The delay has prompted private law firms to warn of serious financial consequences because of the uncertainty.
>
> A spokesman for the Minister for Small Business, Ms Marsha Thomson, confirmed yesterday —

that is, 7 October —

> the government had still not decided on a course of action. The spokesman said the government was considering proposing an amendment to the legislation before the end of November but could not guarantee if it would go ahead.

I know why it went ahead. It went ahead because of the bill introduced by the opposition which has forced and embarrassed the minister into doing something about this debacle. After 10 months of having been asleep at the wheel, the minister has finally woken up and decided to do something about it.

The bill now before the house is similar to that proposed by Mr Furletti. It goes around the same thing in a slightly different way. I believe — a belief that has been confirmed by a number of letters received — that the opposition and the shadow minister should be congratulated on hastening the resolution, as one said; for accelerating the resolution, as another one

said, to get this matter sorted out. As Mr Theophanous said, it was the tradition of Labor policy to look after small business. A tradition to keep small business in limbo on the back foot for 10 months is a very strange policy. It seems the Labor government has really been caught out on this issue, and it should be ashamed of holding the matter up for so long and throwing it in with a total review of the Retail Tenancies Reform Act 1998, which has been going for about 11 months.

We know that under this minister things happen very slowly. We know that under this minister the issue has to be really forced to get a result. That is what the opposition has done on this occasion. I am proud of that and of the fact that we have forced the government into finally doing something. The small business minister stands condemned for her inaction. The shadow minister should be highly commended for his actions in getting this matter resolved.

Motion agreed to.

Read second time.

Remaining stages

Passed remaining stages.

TELECOMMUNICATIONS (INTERCEPTION) (STATE PROVISIONS) (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

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

ADJOURNMENT

Hon. M. R. THOMSON (Minister for Small Business) — I move:

That the house do now adjourn.

Disability services: high-dependency placement

Hon. N. B. LUCAS (Eumemmerring) — I raise a matter with the Minister for Community Services in another place through the Minister for Small Business. I refer to the great difficulties being experienced by a severely disabled constituent who has been cared for by her mother since birth. This evening on a confidential basis I separately provided the minister with some details regarding my constituent, who is in desperate need of a permanent place in a high-dependency unit. I previously wrote to the Minister for Community Services and was advised in January this year that a placement had been provided. I subsequently learnt that such placement was unsuitable to my constituent's condition and requirements and was not in any way compatible to her needs. That was eight months ago. A family friend has written to the minister begging her to find a suitable placement, and I wish to add my support by seeking the minister's urgent attention.

Water: Wallan supply

Hon. G. R. CRAIGE (Central Highlands) — I raise for the attention of the Minister for Energy and Resources, representing the Minister for Environment and Conservation in the other place, a significant matter for the township of Wallan concerning its water supply. It is the belief of the township, and certainly my belief, that the people of Wallan are entitled to have an assured water supply this summer. Wallan has had water restrictions when other towns have not simply because of the inadequacy of the pipeline carrying the water into Wallan.

Goulburn Valley Water, the responsible water authority, has consistently informed the residents of Wallan that it will fix the water supply. Goulburn Valley Water is clearly dragging the chain, because no-one else is to blame than the management of the authority. The new pipe being installed to carry water into Wallan is 300 millimetres in diameter and will pass through many properties in Wallan East. There is an existing easement which carries the current water pipeline.

Goulburn Valley Water is acquiring new easements up to 8 metres in diameter to lay a 300-millimetre diameter pipeline. It is acquiring land on many different properties in Wallan East. An easement that has been acquired on one particular property has many trees, but no environmental study has been carried out. It is an area where yellow-tufted honeyeaters exist, so they will be under threat.

Goulburn Valley Water is spending a lot of money defending its management decisions in court and is not settling matters. It has received much adverse publicity in the area for its standover tactics and for not treating people fairly or justly. Many landowners have been battling with the authority for months about rehabilitation works for damage done during the project.

I request that the minister inquire into the management of Goulburn Valley Water, and in particular its lack of

regard for due process, for spending countless dollars on lawyers and QCs and for adopting standover tactics.

Rural and regional Victoria: tenders

Hon. B. W. BISHOP (North Western) — I raise an issue with the Minister for Sport and Recreation, who represents the Minister for Education in the other place. The issue I raise involves the supply, service and support of computer equipment in schools throughout Victoria. A number of local suppliers throughout the state have raised real concerns about the government's policy of expanding the supply of computer equipment by direct tendering from major manufacturers. This policy previously occurred with the supply of laptop computers, and if it is expanded into the supply of desktop computers it will have a severe effect on rural and regional businesses.

I am not aware of the level of cost savings that are achieved by bypassing local businesses, which are very competitive, particularly taking into account the cost of supply, service and support that is required. I am advised that the South Australian government tried this model of dealing only with large manufacturers but is now moving back to involving local businesses, and that the New South Wales government uses a slightly different system but still uses local suppliers.

The bypassing of local suppliers will feed on itself as schools and local users will be wound into the net because the huge manufacturers offer direct supply off the back of school contracts.

A suggestion has been put forward, which I believe is excellent, that the money be distributed to schools and for schools to choose the equipment and suppliers of their choice. The National Party is in favour of saving resources, but the action of the Bracks government goes against its rhetoric of assisting country Victoria. I assure the minister that unless the contract is amended substantial job losses across country Victoria will occur. I request that the minister urgently reassess the program and to look at local businesses for the supply, service and support of computer equipment to our schools.

Aged care: Surf Coast

Hon. E. C. CARBINES (Geelong) — I raise an urgent matter for the Minister for Consumer Affairs, who represents the Minister for Aged Care in the other place. According to the figures from the Australian Bureau of Statistics for 2001 the Surf Coast Shire region in my electorate of Geelong Province has a commonwealth nursing home bed shortfall of 44 places and 13 hostel places. This lack of nursing home beds on the Surf Coast in my electorate means uncertainty for elderly residents about their future care needs being met and anxiety for their families who are left with few accommodation options for elderly relatives.

The nursing home bed shortfall affects every member of the Surf Coast community. Our hospital wards are becoming de facto nursing homes, with frail older people unable to leave hospital because of the bed shortfall.

Hon. D. McL. Davis — On a point of order, Mr President, I am concerned that this is a federal issue because the honourable member is raising a matter regarding federally funded nursing homes and not state-run nursing homes.

Hon. E. C. CARBINES — On the point of order, Mr President, I have not yet been given the opportunity of finishing the issue I am raising, but if the honourable member listens he may learn something from what I am about to say.

The PRESIDENT — Order! The honourable member is raising a legitimate response. I am happy to hear what she has to say and then I shall rule whether it is a matter of state government administration.

Hon. E. C. CARBINES — Recently I was contacted by a constituent who has an elderly father who is in need of constant care. The father is unable to access a nursing home bed in Geelong and has been in and out of Geelong hospital. My constituent believes this is highly unacceptable, as do I, and it is causing unnecessary stress on him and his elderly father. My constituent's experience highlights that the Howard government's under-resourcing of aged care — —

Honourable members interjecting.

The PRESIDENT — Order! I ask the honourable member to now put a question, because she is referring to a matter that concerns federal government policies, which is not our domain. Put a specific request to the minister.

Hon. E. C. CARBINES — Given the shortage of nursing home beds in the Surf Coast Shire and the specific concerns as evidenced by my constituent's experience and the federal government's refusal to act — —

The PRESIDENT — Order! I ask the honourable member not to flout my ruling. I have made the point; put your query.

Hon. E. C. CARBINES — Will the minister advise the house of the action taken by the Bracks government to improve aged care accommodation and support options for Geelong's elderly?

Asparagus: stemphylium

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — I raise with the Minister for Energy and Resources, who represents the Minister for Agriculture in the other place, an issue relating to the disease stemphylium, a fungal disease that affects asparagus.

I have been approached by the Asparagus Council of Victoria, which represents a number of asparagus growers in my electorate, about the disease, which attacks emerging asparagus spears and causes purple spots that render the product unsuitable for export.

The Victorian asparagus industry is worth approximately $30 million per annum, and of that 54 per cent is exported as fresh product. The export market will be in jeopardy if something is not done to address the stemphylium disease. The Australian Asparagus Council is undertaking a research project in an effort to rid the Victorian crop of this disease and it is anticipated that the cost of the project will be $300 000 over a three-year period.

The council has received a grant from the federal government of $50 000 for this year and is contributing $47 000 of its own money to kick off the project. However, to continue the research beyond the current year it is seeking a commitment of funds from the state government. I ask the Minister for Agriculture to consider providing funds for 2002 for this research project so that the asparagus export industry in Victoria is not jeopardised.

Insurance: sporting organisations

Hon. E. J. POWELL (North Eastern) — I raise a matter for the Minister for Sport and Recreation. During question time the minister indicated that he was aware of problems with some sporting bodies accessing public liability insurance cover. I would like to make him aware of some major organisations that are facing difficulties in my electorate.

He may be aware of the Southern 80 water ski race in Echuca, which is in jeopardy because of escalating insurance costs. One of the other major events is the Spring Car Nationals, which are held in Shepparton. An article in the *Shepparton News* dated 2 October is headed 'No cars, no more millions' and states:

> Rising insurance costs could force organisers to cancel next year's Spring Car Nationals, depriving the region of millions of dollars.
>
> Spring Car National director Daryl George said this year's insurance policy had cost 50 per cent more than last year.
>
> … the City of Greater Shepparton Council estimates visitors spend $6.2 million during the two-day event …

A further article in the *Shepparton News* dated 3 October headed 'Insurance hikes cripple car clubs' states:

> Goulburn Valley's motor racing clubs are buckling under the weight of massive public liability insurance hikes.
>
> Goulburn Valley Auto Club, based at Rushworth, and Wilby Park Motor Sports Club, near Tungamah, are both reviewing their proposed summer schedules after learning of the huge rises.
>
> In the meantime, smaller bodies including Nathalia and Tongala/Kyabram go-kart clubs and a revitalised Nagambie speedway club are resigning themselves to either going into recess or winding up altogether.

The state government must now act quickly. A forum was called by the government, and a number of positive solutions were put forward. I ask the Minister for Sport and Recreation to personally get involved to find a solution quickly before sporting bodies in country Victoria cancel functions because they cannot obtain public liability insurance for the events, or even worse, wind up altogether.

Sailors Falls: footbridge

Hon. D. G. HADDEN (Ballarat) — I raise a matter for the Minister for Energy and Resources, representing the Minister for Environment and Conservation in the other place. It concerns a bushwalking track known as the loop track at the corner of Ballan Road and Telegraph Road at Sailors Falls via Daylesford. It is a popular spot for many tourists and local bushwalkers, as well as local residents.

However, there is no longer a loop track. The old wooden footbridge was removed over two years ago because it was old and unsafe and has not been replaced. The footbridge needs to be replaced to give access to the loop walking track. I therefore ask the minister to give urgent consideration to the replacement of the bridge to enable local residents, tourists and bushwalkers to again have access to this loop walking track.

Electricity: theft

Hon. ANDREA COOTE (Monash) — My question is to the Minister for Energy and Resources. I

was concerned to read recently about power theft in Victoria, particularly by people such as marijuana growers and some market gardeners. My concern is that Victoria will need every bit of electricity it can get, given that it is going to have a very hot summer according to forecasts from the weather bureau. I ask the minister exactly how much power has been stolen in Victoria over the past year.

Land tax: assessments

Hon. P. A. KATSAMBANIS (Monash) — I raise an issue for the attention of the Minister for Energy and Resources, representing the Treasurer. It is of particular concern to constituents of mine and relates to land tax. We all know land tax is iniquitous and because of the actions of the opposition and many community groups the government was recently stopped from increasing it. However, the assessments for land tax will be issued early next year and for the first time they will be levied on new valuations of the site values of properties, current as at January 2000. In what also amounts to an iniquitous situation those site values are calculated in the main by local councils, which send out their rate notices in August or September and receive payment in October or November each year from their ratepayers.

It is only in the two-month period after the issue of the rate notices that ratepayers have the opportunity to lodge complaints against the site values levied on their properties. If they have concerns that the councils have struck wrong valuations they must address a significant issue. However, at the time they receive their rate notices the site values are of no interest to normal ratepayers because councils — certainly in my area — do not levy rates on site values but on the improved value of the land. This appears to be an extraordinary anomaly because when people receive their land tax notices in January 2002 they will have no opportunity to lodge any objections to incorrect valuations of their properties for the purpose of land tax.

We are all aware that this is a typical high-taxing Labor government, but it is important that any inequities in the taxation system be removed. I ask the minister to consider the situation of land tax payers billed in January who will not get the opportunity to object to the valuations when they receive their tax notifications.

It affects a lot of small business people and a lot of retirees in my electorate. It is of particular concern to people who have raised it with me. I call on the minister to take action to ensure that Victorians have the opportunity of having a proper assessment of the valuations on which their land taxes are levied at the time they receive their land tax notices.

Fruit bats: control

Hon. BILL FORWOOD (Templestowe) — I raise a question for the Minister for Energy and Resources, representing the Minister for Environment and Conservation in another place.

Honourable members would be aware that last week it was announced that the bats from the botanic gardens would be shifted into my electorate. I live quite close to the Yarra River and I am one of the people who walks through the area — I take the dogs down — and I know that the bats have been seen in the area in biblical plague proportions: they darken the clouds as they fly down the river. We know that the bats can fly 40 kilometres and that the government is about to spend $900 000 on relocating them into my electorate.

The issue is causing significant concern in and around my area. I was not the only person surprised by this announcement: the council was surprised and the local member, Craig Langdon, was surprised. Will the minister ensure that a full environmental impact statement is done on the effect of moving these things into my electorate before they are moved?

Bass Coast: Phillip Island

Hon. R. H. BOWDEN (South Eastern) — I seek the assistance of the Minister for Energy and Resources in her capacity as the representative of the Minister for Local Government. The matter is of growing community concern on Phillip Island.

Some months ago, in the early part of this year, there was a public meeting attended by approximately 700 people at the Cowes leisure centre. The subject of the public meeting was the level of real dissatisfaction that has built up on Phillip Island with the services of the Bass Coast Shire Council following the amalgamation process several years ago. This year a committee has been working for many months to try to seek the assistance of the government towards consideration of the re-establishment of a council on Phillip Island.

On Saturday night, 6 October, I attended a further large public meeting attended by at least 600 people. It was reported that as many as 700 people attended. This issue is developing a large degree of passion in the community. I can assure the minister that when 700 people on Phillip Island — who are my constituents — attend a public meeting and express their dissatisfaction with the local council it is time for the state government to take a measured and careful interest. Will the minister urgently conduct a public

inquiry with a view to fully examining the clear wishes of many residents of Phillip Island to again have their own shire council?

Landcare: facilitators

Hon. PHILIP DAVIS (Gippsland) — I raise an issue for the attention of the Minister for Energy and Resources for referral to the Minister for Environment and Conservation. I refer to Landcare facilitators. I am sure the house is in vigorous agreement on the value of the Landcare program in improving the environmental outcomes in rural Victoria and in recognising the enormous volunteer effort made by land-holders in regard to their activities.

Recently the Macalister and Tangil Valley Landcare groups made representations to me about Landcare facilitator positions being defunded. I simply ask: will the minister consider funding arrangements to ensure that the enthusiasm for Landcare projects within the rural community, in which about two-thirds of all farmers participate, is continued? What support will the Victorian government provide for Landcare facilitators?

United Firefighters Union of Australia

Hon. B. C. BOARDMAN (Chelsea) — I raise an issue with the Minister for Consumer Affairs. The minister has sole responsibility for the Fair Trading Act and in this house previously has been an advocate for ensuring the protection of consumers' rights and that contractual agreements are made on the basis that there is no fear or coercion. The minister would share my surprise that on 28 September I received in the mail a sponsorship reminder from the *Australian Firefighter*, which I read in the fine print is the official communication of the United Firefighters Union of Australia. It states:

> Thank you for helping.
>
> Thank you for caring enough to contribute your financial support to help produce our official journal — the *Australian Firefighter*.
>
> As you would have been advised on the phone recently —

No-one contacted my office so I was not contacted on the phone recently —

> your support is for our thousands of paid career firefighting members based in each state of Australia, it is not about supporting a local volunteer brigade or the fire service itself.

The word 'not' is underlined. It is a bill with payment due of $269.50. It is made out to the United Firefighters Union of Australia. I even get a proud sponsor certificate 2001–02 awarded to Cameron Boardman, member for Chelsea!

I am concerned by the correspondence. It assumes I have somehow agreed to assist the United Firefighters Union in its membership campaign to raise funds to rid the state of volunteer firefighters at the expense of making the firefighting service totally union dominated. Does the minister condone such activities by the United Firefighters Union and does the action of the union come within the realm of the Fair Trading Act?

Member for Geelong Province: conduct

Hon. I. J. COVER (Geelong) — I have a matter I wish to raise with the Minister for Energy and Resources, representing the Minister for Local Government in the other place. The matter I raise reflects the concern I have about the political opportunism and grandstanding of the other member for Geelong Province and her ALP colleagues on the council of the City of Greater Geelong.

The council is currently reviewing the operation of its customer service centres in line with the Bracks Labor government's best-value principles legislation. I point out that, along with my Liberal colleagues in the other place, I support the retention of the customer service centres in the City of Greater Geelong. That has not stopped the latest development.

Today the *Geelong Advertiser* reported that the other honourable member for Geelong Province has signed an advertisement that is set to appear in tomorrow's edition of the Bellarine *Echo*. That advertisement says:

> We are angry that the City of Greater Geelong would even consider closing our customer service centres.

As I pointed out, this is a consideration in response to the Bracks Labor government's best-value principles legislation. As I said also, I find it very odd and therefore request that the minister explain the best-value principles legislation to the other member for Geelong Province in this chamber and the honourable member for Geelong in another place, who has also been outspoken on the issue, because either they do not understand the legislation and therefore are just plain ignorant or they are deliberately trying to deceive the people of Geelong and the Bellarine Peninsula.

Interstate migration

Hon. R. M. HALLAM (Western) — I raise an issue with the Minister for Industrial Relations in her capacity as Leader of the Government. I ask the minister whether she would care to have a go at

explaining to the house why the Bracks government anticipates that the net interstate migration to Victoria under its administration is expected to decline to less than one-third of that attracted in the final year of the Kennett government.

Responses

Hon. M. M. GOULD (Minister for Industrial Relations) — The matter that the Honourable Roger Hallam raised with me is not within my portfolio area. I will refer it to the Premier and ask him to respond in the usual manner.

Hon. C. C. BROAD (Minister for Energy and Resources) — The Honourable Geoff Craige raised a matter for the Minister for Environment and Conservation. He requested that the minister make inquiries regarding due process to be followed by Goulburn Valley Water. I will refer that matter to the minister.

The Honourable Gordon Rich-Phillips raised a matter for the Minister for Agriculture concerning funding of research in regard to fungal disease in asparagus. I will refer that matter to the minister.

The Honourable Dianne Hadden raised a matter for the Minister for Environment and Conservation concerning access by bushwalkers to the Sailors Falls area and a bridge. I will refer that matter to the minister.

The Honourable Andrea Coote raised a matter for my attention concerning power theft and requested information about how much power theft has occurred in the past year. I will endeavour to supply that information. I do not have it to hand at this moment but if it is possible to establish a precise answer to that question I will certainly be happy to supply her with that information.

The Honourable Peter Katsambanis raised a matter for the Treasurer concerning the basis for valuations and land tax. I will refer that matter to the Treasurer.

The Honourable Bill Forwood raised a matter for the Minister for Environment and Conservation concerning bats in his electorate and requested that the minister examine an environmental impact statement on the impact of bats on his electorate. I will refer that matter to the minister.

The Honourable Ron Bowden raised a matter for the Minister for Local Government requesting that the minister examine the reinstatement of a council for Phillip Island, following the removal of the council for Phillip Island by the previous government. I will refer that matter to the minister.

The Honourable Philip Davis raised a matter for the Minister for Environment and Conservation concerning arrangements for Landcare funding, and in particular funding for Landcare facilitators. I will refer that matter for the consideration of the minister.

The Honourable Ian Cover raised a matter for the Minister for Local Government concerning customer service centres and the City of Greater Geelong. I will refer that matter to the minister.

Hon. M. R. THOMSON (Minister for Small Business) — The Honourable Neil Lucas raised a matter for the Minister for Community Services concerning a constituent with a severely disabled daughter in need of permanent placement in a high-dependency unit and has given me the documentation to pass on to the minister. I will forward that on to the minister concerned for a response.

The Honourable Elaine Carbines raised a matter for the Minister for Aged Care concerning a shortfall of 44 nursing home beds and 13 hostel beds in the Surf Coast Shire, and a problem a constituent of hers is having in finding a bed for his elderly father, given that the federal government has failed to act in providing beds for that shortfall. She asked the minister to outline what action she is taking to improve the aged care accommodation in the Geelong region. I will pass that on for her direct response.

The Honourable Cameron Boardman raised a matter in relation to mail he had received and asked whether or not it fell within the Fair Trading Act. As I have not seen the correspondence I am not at a point where I can indicate whether it does or does not.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — In relation to the question raised by the Honourable Barry Bishop regarding computer support for schools and other associated issues relating to major suppliers and local suppliers, I will refer this to the Minister for Education in the other place.

On the question by the Honourable Jeanette Powell regarding public liability insurance, as I mentioned earlier today I appreciate the extent of the problem and also recognise that it may be exacerbated because of recent international events in relation to insurance premiums on not only community sporting events but also community sporting associations and clubs.

As I mentioned earlier today, we have embarked on a number of initiatives, some in conjunction with the

Australian Sports Commission, to look at ways that we may overcome the extent of the issues. I appreciate the significance of the issue and look forward to ensuring that there is relief in some fashion for those stakeholders at some time in the future.

Motion agreed to.

House adjourned 10.28 p.m.