PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

29 November 2001

(extract from Book 9)

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By authority of the Victorian Government Printer

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JOHN LANDY, AC, MBE

The Lieutenant-Governor

Lady SOUTHEY, AM

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FIFTY-FOURTH PARLIAMENT — FIRST SESSION

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The Hon. G. W. JENNINGS

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The Hon. BILL FORWOOD to 13 September 2001

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The Hon. P. R. HALL from 20 March 2001
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The Hon. E. J. POWELL from 20 March 2001
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Gould, Hon. Monica Mary	Doutta Galla	ALP	Theophanous, Hon. Theo Charles	Jika Jika	ALP
Hadden, Hon. Dianne Gladys	Ballarat	ALP	Thomson, Hon. Marsha Rose	Melbourne North	ALP

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THURSDAY, 29 NOVEMBER 2001

QUESTIONS ON NOTICE

TUESDAY, 27 NOVEMBER 2001

CONTENTS

Thursday, 29 November 2001

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

FAIR TRADING (UNCONSCIONABLE CONDUCT) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. M. R. THOMSON (Minister for Consumer Affairs).

SECOND-HAND DEALERS AND PAWNBROKERS (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. M. R. THOMSON (Minister for Consumer Affairs).

LIVESTOCK DISEASE CONTROL (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

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

JUDICIAL REMUNERATION TRIBUNAL (AMENDMENT) BILL

Council's amendments

Returned from Assembly with message disagreeing with Council amendments.

Ordered to be considered next day.

QUESTIONS WITHOUT NOTICE

Urban and Regional Land Corporation: managing director

Hon. D. McL. DAVIS (East Yarra) — When did the Minister assisting the Minister for Planning become aware that the Premier's friend Jim Reeves was a candidate for the position of managing director of the Urban and Regional Land Corporation?

Hon. J. M. MADDEN (Minister assisting the Minister for Planning) — As the Minister assisting the Minister for Planning I provide assistance to the Minister for Planning on a range of areas, some of which are very specific and some of which are very general. Matters relating to appointments are dealt with by the Minister for Planning.

Hon. D. McL. Davis — On a point of order, Mr President, the minister has told the house in question on notice 150 that he has responsibility for particular areas, including Camp Street in Ballarat and the Land Monitor. I put to you, Mr President, and the minister that both those area have close relationships with the Urban and Regional Land Corporation. It has responsibility in part for Camp Street, and the Land Monitor monitors sales and purchases of land undertaken by the URLC. I believe the minister should answer the question and tell the house exactly when he became aware of that process.

The PRESIDENT — Order! The question was asked in relation to the appointment. The minister gave an answer that was responsive to the question, and I believe that deals with the matter.

Electricity: contestability

Hon. E. C. CARBINES (Geelong) — I direct my question to the Minister for Energy and Resources. The Bracks government came to office with a commitment to see consumers receive choice in their electricity retailers following the sale of Victoria's public electricity assets by the Kennett government. Will the Minister for Energy and Resources inform the house when full retail contestability in electricity will commence in Victoria?

Hon. C. C. BROAD (Minister for Energy and Resources) — Today I announce that full retail contestability in electricity will commence on 13 January. Yesterday the Governor signed two orders in council to provide for the orderly start of full retail contestability from that date. The government is determined to ensure that consumers receive choice of retailer in electricity, in line with its stated commitments.

Full retail contestability was originally scheduled to commence at the beginning of this year. However, on taking office it became very clear to the Bracks government that little work had been done to ensure that the systems and processes needed to manage the mass transfer of consumers in the market had been undertaken and so the date was put back until January next year.

Substantial work has been undertaken this year, including the development of a new national market transfer and settlement system by the national market management company, Nemmco. Nemmco has recently completed its trials of this system and reports that it is on track for 13 January. In addition, the government and the Office of the Regulator-General have prepared a range of required rules and codes including metrology procedures. These are also on track for 13 January. The implementation by the electricity businesses of business-to-business systems has also been undertaken. There has been some speculation about whether these systems will be ready for 13 January, but I am advised that a combination of systems and manual processes will be in place for that date.

The start of full retail contestability will in effect remove the monopoly that was established under the terms of the sales entered into by the previous government when it privatised the state's electricity system. The introduction of consumer choice is a massive undertaking and the indications from overseas experience are that some teething problems can be encountered. However, the government has undertaken to work in cooperation with the electricity businesses to minimise any such problems and to ensure that any inconvenience to consumers is minimised.

The government and the Regulator-General have already commenced a mass public information campaign called 'The power of choice'. Honourable members along with all households in Victoria have this week received a brochure outlining full retail contestability. I encourage consumers to read that brochure, and contact the call centre established by the Office of the Regulator-General if they have any further queries. The Bracks government is actively working to ensure the delivery of secure, reliable and affordable electricity to all Victorians.

Urban and Regional Land Corporation: managing director

Hon. P. A. KATSAMBANIS (Monash) — Will the Minister for Industrial Relations guarantee that the Premier's mate Jim Reeves is not entitled to any payout or reimbursement under the government's public sector employment guidelines?

Hon. M. M. GOULD (Minister for Industrial Relations) — As usual, the honourable member's question shows that he has no understanding of what goes on. With respect to the resignation of Mr Reeves, his ability in planning and experience in urban land planning will be a loss to this state. I am sure he will get whatever entitlements he is due.

Traveland Pty Ltd

Hon. KAYE DARVENIZA (Melbourne West) — Will the Minister for Consumer Affairs inform the house of the latest developments with Traveland Pty Ltd?

Hon. M. R. THOMSON (Minister for Consumer Affairs) — Traveland was part of the Ansett group and people may remember that Internova Travel Pty Ltd purchased Traveland after the collapse of Ansett. Yesterday the government became aware that Traveland has again been put into the hands of an administrator. Accordingly, its travel licences have been revoked as required by the legislation.

Some 33 Traveland branches have been affected by this. Traveland agencies operating under a franchise arrangement are not affected and can continue to operate. However, those Traveland agencies that are part of the group owned by Internova Travel will have to cease providing new travel arrangements for potential holiday makers.

The government is asking those people who have made arrangements with Traveland to check with their agency as to whether the moneys they have paid for their holidays have been passed on to the holiday provider. If they have made payments by credit card we ask that they check with their card provider for a payback or credit arrangement for that credit card. Anyone who has any doubt at all as to what their situation may be should contact Consumer and Business Affairs Victoria on 1300 558 181 so the department can give them more personal advice as to how best to follow up their circumstance.

The administrators met with the Travel Compensation Fund board yesterday in Sydney. The administrators are Hall Chadwick and they have until 5.00 p.m. on Tuesday to meet certain requirements set by the Travel Compensation Fund board. If they do not meet those requirements the company will cease to be a member of the fund. The government asks any member of Parliament who is approached by a constituent asking what to do in their circumstance to contact consumer affairs so it can be followed through.

Environment: greenhouse strategy

Hon. R. M. HALLAM (Western) — Given the minister's recent confirmation that she had set no target levels for greenhouse gas emissions in Victoria, can the Minister for Energy and Resources explain to the house

how she intends to assess and report the efficacy of the public funding directed to that cause under her administration?

Hon. C. C. BROAD (Minister for Energy and Resources) — I welcome this opportunity from the Honourable Roger Hallam to talk about the government's commitment to reducing greenhouse gas emissions in this state. The leadership being demonstrated by the Bracks government is a contrast to the complete absence of any leadership being shown by the current federal government which is not willing to work within the framework provided by the Kyoto protocol. The Bracks government supports and endorses that framework and has argued that the federal government should accept it as the responsible framework to work within and accept Australia's international and national responsibilities.

Within Victoria the government is facing up to its responsibilities. The Victorian government has recently set a target of reducing the government's own energy use by 15 per cent; a target which it believes is very important in demonstrating leadership by government in terms of its own operations. The government is undertaking the development of a greenhouse strategy for the state of Victoria. That strategy is being developed within the framework provided by the Kyoto protocol. The Victorian government believes within that strategy those targets are achievable in addition to the ones that the government is setting for its own operations.

Little Athletics: On Track

Hon. R. F. SMITH (Chelsea) — My question is to the Minister for Sport and Recreation. Yesterday in the house the minister commented how the Bracks government is successfully boosting participation in sport. Will the minister advise the house what steps he has taken to get participation in Little Athletics on track?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — A fortnight ago I had the great privilege of launching a program in schools instigated by the Victorian Little Athletics Association. That program — —

Honourable members interjecting.

The PRESIDENT — Order! Interjections unrelated to the question will not be allowed. I ask the minister to address the question.

Hon. J. M. MADDEN — Thank you for your ruling, Mr President. As I mentioned, a fortnight ago I had the great privilege of launching a program developed by the Victorian Little Athletics Association called the On Track program. The association has worked very closely with Sport and Recreation Victoria to develop the program. The program represents this government's commitment to the community and to grassroots sport.

The key to this is a special set of athletics disciplines being taught in schools which are working with the Victorian Little Athletics Association. It has been a very successful initiative developed in and around Little Athletics out in the community. The strength of the program is developing it in schools. The key to this is to overcome some of those age-old problems with Little Athletics. No doubt members of this chamber, having been to Little Athletics over many years and seen some of the difficulties, would appreciate some of the problems involved, which are probably not unlike some of the problems in the Liberal Party. They are — long waiting times between events, the lack of measurable skills development, small activity times, and the lack of perceived success for those who are not winning. They are age-old problems in Little Athletics.

The key to this program is that it involves a high level of activity and of skills development at schools. That is tremendous not only for the development of Little Athletics but also for the skill acquisition of those at schools who will go on to use those skills in a whole range of other sports.

Honourable members interjecting.

Hon. J. M. MADDEN — The interjections of opposition members just show their ignorance. In their term in government they thought sport was dealing with the top end of town. This reinforces not only the government's commitment to grassroots sport in the community but its commitment to growing the whole of the state.

Urban and Regional Land Corporation: managing director

Hon. BILL FORWOOD (Templestowe) (to Hon. J. M. Madden) — You are brain dead.

Honourable members interjecting.

The PRESIDENT — Order! Withdraw that.

Hon. BILL FORWOOD — I withdraw. My question is — —

Hon. J. M. Madden — On a point of order, Mr President, because of the interjections I could not hear the comments of Mr Forwood.

The PRESIDENT — Order! He did withdraw.

Hon. J. M. Madden — I ask him to repeat it, Mr President, because I did not hear him.

Honourable members interjecting.

Hon. J. M. Madden — I did not hear the word 'withdraw'.

The PRESIDENT — Order! I understand that. But the thing is that if the minister keeps shouting he will not hear it this time either.

Hon. BILL FORWOOD — I withdraw.

My question is to the Minister for Industrial Relations. Given that she has just admitted that the Premier's mate Mr Jim Reeves is eligible for entitlements, will she now tell the house what those entitlements are?

Hon. M. M. GOULD (Minister for Industrial Relations) — The honourable member obviously — —

Honourable members interjecting.

The PRESIDENT — Order! A question has been asked; we are entitled to hear the answer. I ask both sides to settle down and allow the minister to answer.

Hon. M. M. GOULD — The honourable member is misleading the house with respect to my response to the previous question asked by the Honourable Peter Katsambanis. I indicated that Mr Jim Reeves would have been a great asset for this state with respect to his skills and ability in planning and development, and I said that he would get whatever entitlements he would deserve.

Honourable Members — What are they?

Hon. M. M. GOULD — The question is: is he entitled to any? Has he ever been appointed to any position? The answer is no, he has not been. So the response is that he will get what he is entitled to, if he is entitled to anything. So do not try to put words in my mouth. I did not say that he would get X, Y and Z; I said that he would get whatever he was entitled to.

Foster Plastics Industries

Hon. JENNY MIKAKOS (Jika Jika) — My question is directed to the Minister for Industrial Relations. During the adjournment debate on Tuesday the minister advised the house that she would look further into a matter concerning Foster Plastics Industries in Glenroy. Will the minister advise the house of what further information she has received about the dispute at Foster Plastics Industries?

Hon. M. M. GOULD (Minister for Industrial Relations) — On Tuesday night honourable members were made aware of an industrial dispute involving Foster Plastics Industries and the Australian Workers Union (AWU). That dispute concerns the negotiations of an enterprise agreement as well as occupational health and safety issues. Those negotiations have stalled, as often happens with these sorts of situations. This has resulted in the union taking legally protected action, as it is entitled to do under the Workplace Relations Act.

Unfortunately the Workplace Relations Act is the only system we have in this state, unlike other states, that have other systems that they can work under. That disadvantages our state. As I have mentioned on many occasions, despite the Bracks government's position of being committed to playing a constructive role, the problem is that we have contacted both Foster Plastics Industries and the union; however, to date the company has failed to respond to those contacts over the last couple of days. Therefore, the information I have is limited, as I have obviously not heard the employer's side of the story.

Without that cooperation of the parties involved, it is difficult for the government to provide any assistance with this dispute. Because of the limited powers of the Australian Industrial Relations Commission under the act, the commission's processes are obviously also restricted to some extent if it does not get cooperation. That is highlighted in this dispute.

I have been advised that the AWU has taken the matter to the commission for its assistance about this dispute. I have also been advised that the company failed to attend that hearing in the commission. It seems that at this stage the company in this dispute does not want the assistance of the government or the assistance of the commission. Nevertheless, my officers will remain available to assist the parties, and we will continue to monitor the situation.

Unfortunately this dispute shows the flaws of relying on just the federal Workplace Relations Act and the federal system. When opposition members raise issues about attempts of union bashing they ought to make sure that they get their facts right and stop this type of approach because there are always two sides to every story.

ALP: union links

Hon. M. T. LUCKINS (Waverley) — I direct my question to the Minister for Industrial Relations. Premier Bracks has called for the 60-40 rule to be modified by stating:

> I think around 50-50 is more sensible.

Given the Premier's concession and the minister's past Australian Council of Trade Unions executive membership, what action will she take to reduce the influence of the union movement on industrial relations policy, which is binding on the government?

Hon. M. M. GOULD (Minister for Industrial Relations) — I think this is almost as bad as Mr Smith's question that was asked in the house yesterday! Obviously opposition members have absolutely no idea of how the trade union movement works or the ALP works; they cannot even work out how their own party operates half the time! With respect to the internal issues and how the party is made up, that is a matter for the ALP and not for the opposition.

Hon. M. T. Luckins — On a point of order, Mr President, I believe the minister has not been responsive to my question. The fact is — —

Honourable members interjecting.

The PRESIDENT — Order! If the honourable member has a point of order I want to hear it.

Hon. M. T. Luckins — The fact is that policy made at ALP conferences is binding on the parliamentary party and therefore on the government. My question relates to what the minister will do to back up her Premier in ensuring that unions have less influence on policy in her portfolio area.

Hon. M. M. Gould — On the point of order, Mr President, I was responsive and said that that was a matter for the ALP and not for the opposition — that is very responsive.

The PRESIDENT — Order! The answer was responsive to the question, and I do not propose to take it any further.

Ports: Maersk Sealand service

Hon. T. C. THEOPHANOUS (Jika Jika) — Will the Minister for Ports inform the house how a recently introduced shipping service between Melbourne and the United States by the world's largest container line will benefit Victorian exporters?

Hon. C. C. BROAD (Minister for Ports) — I thank the honourable member for his question and his interest in ports. I am pleased to inform the house that the world's largest container line, Maersk Sealand, has begun a new fortnightly shipping service between Melbourne, New Zealand and the United States. Maersk Sealand has indicated that the first two months of operation has exceeded the company's expectations. A total of five shipping lines now provide direct shipping services between Melbourne and the United States. For exporters and importers this will mean more choice, more frequent services and increased competition on freight rates.

In addition, the new service has resulted in some of the fastest transit times available from north and south America, including an 18-day transit from Long Beach to Melbourne and a 31-day transit direct from Melbourne to Philadelphia. This is important for Victorians because Victoria is now the largest exporter of manufactured products of any state in Australia. Our manufacturers exported a record $8 billion worth of products including cars, electrical products and textiles in the last financial year. The efficient and effective operation of our ports has been an important factor in Victoria's strong performance in export markets under the Bracks government.

Honourable members interjecting.

The PRESIDENT — Order! Mr Ken Smith and Mr Theophanous are not helping honourable members hear the minister's response. I ask them both to keep quiet so we can hear the response.

Hon. C. C. BROAD — I am confident that the new chairperson of the Melbourne Port Corporation, Mr Peter Thomas, will continue to build on this excellent performance. The new Maersk Sealand service also reflects the strength of Victoria's intermodal rail link that has been given priority as part of the Bracks government's infrastructure plans. Maersk is using road and rail links between Adelaide and Melbourne to minimise shipping times and to reduce costs. This is in contrast with the previous government, where every effort was made to remove rail from our ports, and the new National Party policy of cutting funding to rail in country Victoria.

This government is building infrastructure, unlike the privatisation of the previous government. Since the Bracks government came to office two years ago, it has worked hard to support the sustainable development of our ports. We are doing this because we recognise it is the way to achieve a prosperous future for our ports and

particularly for the regional Victorians who depend on them. I welcome this new Maersk shipping line service.

QUESTIONS ON NOTICE

Answers

Hon. M. M. GOULD (Minister for Industrial Relations) — I have answers to the following questions on notice: 2154, 2278, 2412–5, 2431, 2433–4.

NOTICES OF MOTION

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

Urban and Regional Land Corporation: managing director

Hon. BILL FORWOOD (Templestowe) — I desire to give notice that on the next day of meeting I will move:

(a) That a select committee of five members be appointed to inquire into and report upon any matters relating to the selection, appointment and resignation of Mr Jim Reeves as managing director of the Urban and Regional Land Corporation, together with —

Hon. M. M. Gould — Another Star Chamber!

Hon. BILL FORWOOD — In response to the interjection of the Leader of the Government: if she appoints a judicial inquiry, I will not proceed! The motion continues:

any involvement of external agencies and consultants.

(b) That the committee shall consist of two members nominated by the Leader of the Government, two members nominated by the Leader of the Opposition and one member nominated by the Leader of the National Party.

(c) That the members shall be appointed by lodgment of the names with the President by the leaders no later than 4.00 p.m. on Thursday, 6 December 2001.

(d) That the first meeting of the committee shall be held at 10.30 a.m. on Friday, 7 December 2001.

(e) That the committee may proceed to the dispatch of business notwithstanding that all members have not been appointed and notwithstanding any vacancy.

(f) That the committee shall elect a deputy chairman to act as chairman at any time when the chairman is not present at a meeting of the committee.

(g) That three members of the committee shall constitute a quorum.

(h) That the committee may send for persons, papers and records.

(i) That the committee may authorise the publication of any evidence taken by it in public and any documents presented to it.

(j) That reports of the committee may be presented to the Council from time to time and that the committee present its final report to the Council on or before 31 May 2002.

(k) That the presentation of a report or an interim report of the committee shall not be deemed to terminate the committee's appointment, powers or functions.

(l) That the committee shall, unless it otherwise resolves, take all evidence in public and may otherwise sit in public at anytime if it so decides.

(m) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders and practice of the Council, shall have effect notwithstanding anything contained in the standing orders.

Further notices of motion given.

SUPREME COURT JUDGES

Annual report

Hon. M. R. THOMSON (Minister for Small Business) presented, by command of the Governor, report for 2000.

Laid on table.

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

Women: marketplace discrimination

Hon. G. D. ROMANES (Melbourne) presented report, together with minutes of evidence.

Hon. G. D. ROMANES (Melbourne) (*By leave*) — In receiving this inquiry from the Minister for Consumer Affairs the committee was asked to examine issues of potential community concern given that discriminatory market practices where they occur can impact on the economic wellbeing of women. The committee found that industry and government complaints bodies rarely separate complainants by gender or in relation to certain industries. This lack of evidence contributed to the committee's difficulty in establishing a need for dramatic changes or for major legislative reform. However, the committee would like its report to the Victorian Parliament to emphasise a range of practical and positive outcomes such as the

need for improved collection of data to enable more effective review of the issue in the future.

I would like to thank those who participated in this inquiry through appearance at public hearings or in preparing written submissions, and on behalf of the committee I thank the staff who support it for the work they have done, in particular Paul Bourke, the executive officer, Iona Annett, the research officer, and Lara Howe, the office manager.

Laid on table.

Ordered that report be printed.

PAPERS

Laid on table by Clerk:

Dunmunkle Health Services — Report, 2000–2001.

East Gippsland Region Water Authority — Report, 2001.

Far East Gippsland Health and Support Service — Report, 2000–2001 (three papers).

Freedom of Information Act 1982 — Report of the Attorney-General on the operation of the Act, 2000–2001.

Government Superannuation Office — Report, 2000–2001.

Intellectually Disabled Persons' Services Act 1986 — Report of Community Visitors, 2000–2001.

Members of Parliament (Register of Interests) Act 1978 — Summary of Variations notified between 1 October 2001 and 28 November 2001.

Parliamentary Committees Act 1968 —

Minister's response to Road Safety Committee's report on the Inquiry into Victoria's Vehicle Roadworthiness System 2001.

Minister's response to Drug and Crime Prevention Committee's Final Report of the Inquiry into Public Drunkenness.

Minister's response to Family and Community Development Committee's Final Report into the effects of television and multimedia on children and families in Victoria.

Rural Finance Act 1988 — Treasurer's directives of 14 July 2001 and 30 October 2001 to Rural Finance Corporation.

Hon. E. C. Carbines — On a point of order, Mr President, I draw the attention of the house to the fact that the motion listed on the notice paper in my name is incorrectly listed. It is not the motion I moved yesterday, and I wish that to be noted. I further wish that the correctly worded motion I moved yesterday be postponed to the next day of meeting.

The PRESIDENT — Order! Since the honourable member has put that on the record she had better name the report she did want to discuss.

Hon. E. C. Carbines — The report I wish the house to take note of is the Auditor-General's *Report on Public Sector Agencies — Results of 30 June 2001 Financial Statement Audits*.

Hon. I. J. Cover — On a point of order, Mr President, I seek clarification. The motion to take note of the report of the Auditor-General on public sector agencies has just been moved by me for the next day of meeting. What is the status now of the motion I have moved?

The PRESIDENT — Order! It is true that a mistake was made on the notice paper. The reason for the mistake is that the house has recently seen a couple of reports from the Auditor-General. It would help the house and the Clerks if such notices from honourable members were received in writing. Having said that, Mrs Carbines's motion would be listed first because it was intended to go on yesterday's notice paper. That does not, however, preclude anything. A number of people can contribute to debate when that take-note motion comes on. It will come on in Mrs Carbines's name.

Hon. I. J. Cover — On the point of order, seeking further clarification, Mr President, I ask if there is some process by which we can check as to the motion Mrs Carbines says she moved yesterday. Today's notice paper clearly shows the report of the Auditor-General on departmental performance management and reporting is the one to take note of. Can that be checked through some process?

The PRESIDENT — Order! We can check that on the tape and report back.

SENTENCING (EMERGENCY SERVICE COSTS) BILL

Second reading

Debate resumed from 27 November; motion of Hon. M. R. THOMSON (Minister for Small Business).

Hon. C. A. FURLETTI (Templestowe) — I am pleased to indicate that the opposition does not oppose the Sentencing (Emergency Service Costs) Bill and generally supports the intention of the legislation and the principal thrust the government intends the bill to address.

Regrettably, however, this appears to be another instance of the government's seeking to mislead the Victorian public. The government is seeking to create perception rather than deal with reality — the reality of 11 September, which has jolted governments all over the world into a new awareness of risk, a heightened sense of security and an increased disappointment at man's inhumanity to man. We are now very conscious of defending the right to life and to work and to improving the quality of life of our community, and yet those same values are so often lost and treated with disdain.

The violence of the tragic day in New York and Washington, which set a new milestone in modern terrorism, was followed by further acts of terrorism of a new style and with the sole purpose of spreading fear, anxiety and apprehension amongst citizens throughout the world.

Victoria did not escape that new aspect of bioterrorism experienced in many places in the world. The anthrax attacks on American politicians and civilians leading to the death of a number of ordinary people through inhalation and the attack on the Pentagon and of the World Trade Centre are to be deplored and clearly cannot be condoned and cannot be allowed to be given any oxygen.

It is the responsibility of government to deal with terrorism, whether actual, possible or prospective. The opposition therefore supports and endorses the efforts of the government to provide security for citizens and therefore our territory, thereby ensuring our sovereignty. The opposition also endorses and supports initiatives which prohibit and penalise those who would cause distress, anxiety, fear and concern through hoaxes or pranks.

Pranks are often ill-considered and spur-of-the-moment decisions by pranksters, sometimes immature, sometimes plain stupid, but they nevertheless cause a great deal of angst among the community and those affected. The considered and premeditated actions of the type we have experienced in the past with the contamination of pain-killers, Arnott's products and other foods cause recall and great economic loss and are also of concern among the community.

The legislation deals with deliberate hoaxes by amending the contamination and bomb hoax provisions of the Crimes Act and by amending the Summary Offences Act. I shall refer to the inclusion of other provisions in the Sentencing Act shortly.

We in this Parliament have since 11 September experienced first-hand a heightened degree of security. I recall when I have brought visitors to this place previously the comments that were made regularly about our being able to wander in and out. Members of the community were able to enter this magnificent building with absolutely minimal security. Clearly since the events that occurred in the United States of America and elsewhere in the world we here have needed to address those concerns. As I indicated, the world will never be the same after the events of that day.

The repercussions of a hoax can be devastating both in human and financial terms. The mayhem and chaos that is caused through hoaxes, the disruption of orderly lives and the concern certainly take their toll. It is a matter of significance that in every instance there is no choice but to activate and mobilise the emergency services that are necessary to respond to a call because one cannot determine at the time that the call is made whether it is appropriate to activate a response. There is no choice, and the emergency services, many of which are manned by volunteers, are activated at the first indication of a threat to life or to property or to our community insofar as there could be an incident involving fire, accident or other matter for serious concern.

The heroes who mobilise to combat those crises and to resolve the threats that arise from time to time should be applauded and congratulated, but regrettably in the bill they are not recognised to the extent that they should be recognised. The bottom line of all this, and the main purpose of the Sentencing (Emergency Service Costs) Bill is precisely that: to seek to compensate the community for the costs incurred as a result of the hoax or the threat.

There are some serious concerns about the legislation. I have foreshadowed one, which is that the legislation simply and solely allows for the state to seek to recover the costs of an emergency reaction. There is no recognition of the cost or loss sustained by volunteer or private organisations, or indeed the community contribution. The Leader of the Opposition in the other place cited a particular example of what occurred to one of his constituents. I am sure that would not be an isolated case.

The bill has a number of other elements whereby the financial circumstances of perpetrators of a hoax are to be taken into account. While that is mirroring some of the existing provisions in the Sentencing Act, I point out that this is a different set of circumstances that need to be addressed specifically.

The contribution to the second-reading debate by the parliamentary secretary to the Attorney-General in the other place made a lengthy point of the deterrent effect of the legislation. I suspect that that is not the case. I suspect that the bill will have very little deterrent effect because its principal purpose is the recovery of costs, and I think that somebody who has nothing from which costs can be recovered will not be deterred from that conduct.

That draws one to the question of whether the element of gravity of penalty should have been more thoroughly considered during deliberations on the bill, which leads us to wonder whether this is nothing more than a snow job and a matter of more smoke and mirrors from the government.

Hon. Jenny Mikakos — What would you suggest?

Hon. C. A. FURLETTI — When in government we will do it. It is another instance where the Premier went out on the front foot and made a statement immediately after the event, which he has then had to implement, and the implementation has come but it has not come in very good form. I began my contribution by indicating that while we support the thrust of the way the bill is implemented, as is usual with this government it is sloppy, and I shall address those specific concerns as I go through the legislation.

Since the first scare we had in Victoria we have been fortunate to have had no actual infection caused by bioterrorism, and we are fortunate to have had a rapid removal from the spotlight of even serious concerns. The evil that this type of legislation is intended to address is that done by people who contaminate goods and seek to make that public or would seek to publicise the existence of a threat that does not exist.

But, as I have indicated, to suggest this bill will be a deterrent is stretching a longbow. The main reason is that if they were impecunious those who perpetrate this type of crime would not in all likelihood be concerned about a provision in the bill that allows for cost recovery. I say to the honourable member who interjected earlier asking what we would do that the main purpose or thrust of this bill is:

> … to provide for the recovery of costs incurred by emergency services in certain circumstances.

That is what the bill deals with; it does not deal with anything other than recovery of costs. When we look at the detail in the bill, in particular proposed section 87J, which deals with the financial circumstances, one has to seriously consider what the government is seeking to do. I accept that that section mirrors section 85H of the Sentencing Act, which allows an individual to seek compensation from an offender for property loss or damage, but that provision is on a one-on-one basis. My concern is that despite all the hoo-ha, publicity and promises made by the Premier, the specified purpose of providing for the recovery of costs incurred by emergency services in certain circumstances — note, we are not referring to part, some or a proportion of the costs; we are referring to the recovery of costs incurred — is watered down dramatically in proposed section 87J in that it provides that if a court decides to make a costs recovery order it may take into account the financial circumstances of the offender. Given that the section provides that a court order is in the form of a civil judgment, one has to wonder why this provision is in the bill.

This provision is a little different to a one-on-one provision — we could take issue, of course, with section 85H, but we are not dealing with that. What is wrong with a judgment debt running against an offender who has perpetrated a hoax that has involved cost to the community, as is the case with any other civil situation? The government had that opportunity. Regardless of whether or not the person can pay, there is provision for instalments and other arrangements. If the government seriously wanted to seek to recover moneys, that aim should not be watered down by the provisions of proposed section 87J.

The bill, as I indicated, defines ‘emergency service agency’. The list in clause 4 includes the police force and the Metropolitan Fire and Emergency Services Board and numerous other agencies. I certainly do not intend to identify each agency, because they are listed in the bill, but paragraph (g) refers to:

> … any other person who, or body that, employs or engages an emergency service worker.

So that is the catch-all provision that provides a door for inclusion of some private organisations and individuals who may be involved in emergency response activities and employ an emergency worker as defined in the next part of the proposed section. It does not cover, as I indicated previously, private individuals who do not come under the general clause to which I referred earlier.

The other aspect of the cost-recovery order, which is set out in proposed section 87D, is that the state is the recipient of the costs and these costs are paid into consolidated revenue and not to the emergency services called upon to respond or to the particular volunteers to whom I referred earlier, despite the fact that they respond to and are at the forefront of emergencies, as they were so tragically in New York on 11 September.

Proposed section 87D and the following proposed sections are not dissimilar to the compensation provisions in the Sentencing Act. In fact, many elements of those sections are duplicated in this bill. The concern I have is that while the relationship between an offender and a private citizen who has suffered property loss or damage is appropriately dealt with, in the view of the Liberal opposition the particular scenario of those who perpetrate bomb hoaxes or the contamination of goods or the like could have been given greater consideration.

The purpose of the bill has not been appropriately considered or focused on in terms of the Crimes Act and the Summary Offences Act, both of which could have been amended relatively easily and simply to include the provisions of this bill, but this chosen course needed to be taken because there was some publicity in it for the Premier.

The provisions set out in proposed section 87H are similar to the existing provisions in the Sentencing Act relating to compensation by individuals. The evidence provision, proposed section 87I, is very similar to section 85G of the principal act. Indeed, all the provisions set out in that proposed section, although structured slightly differently, are included in existing legislation.

I draw the attention of the house to two new provisions. Proposed section 87I (d) is a new provision because it allows a person who has made a statement of costs to be called to give evidence. That is clearly to justify and verify the amount of the cost-recovery order. Proposed subsection (a) is a strange inclusion. It is different from section 85G of the principal act; it states that the court must give the offender a reasonable opportunity to be heard. It is strange that needed to be included. We are aware of the principles of natural justice which override our system of justice.

I have already indicated that proposed section 87J will allow the court to take an offender's financial circumstances into account. In further consideration of that provision it is suggested that it is appropriate and fitting that that occur because varying financial circumstances lead to different results. I accept that argument readily in terms of sentencing. However, when talking of sentencing and penalties, clearly each circumstance must be looked at within its parameters. As I indicated earlier, the provision is not talking about penalties or sentencing somebody for the criminal act that they have perpetrated; it is talking about, as specifically identified in proposed section 87D, the cost-recovery order which has the effect of being a civil debt. The opposition believes the financial circumstances of the individual are totally irrelevant in that circumstance.

The other provisions regarding the court giving reasons for its decisions are taken from the principal act. Comment has been made about each party bearing the costs of any proceedings under this new process. The point was made by a former lawyer in the other place, the Leader of the National Party, that where the facts and outcomes have been determined — these proceedings cannot be taken until such time as there has been a finding of guilt and/or the conviction of an offender — why should the community bear the cost of seeking to recover compensation to the community, which is really what the bill is about?

The enforcement provision, as I indicated earlier, is for a judgment debt which is due. There are some transitional provisions which make it clear that the bill will apply only to offences allegedly commenced on or after its operation. That is to avoid a situation where the offence may have occurred before but the hearing occurs subsequently.

I have indicated that a number of amendments could have been made to existing legislation, which would have facilitated the intention of the government in this instance. Section 53(6A) of the Summary Offences Act currently has a provision of the type being implemented. Payment is ordered to be made to the informant of a reasonable amount of the cost involved in bringing out the police, as it were.

Section 53(6B) provides that the informant in whose favour the order is made must pay that money into consolidated revenue. In amending the Summary Offences Act this proposed section is intended to extend the definition from members of the police force to cover any emergency services worker. It is an indication of the simplicity with which the purpose of the act could have been achieved by amending legislation without necessarily introducing a new division, as this bill does, for the purpose of implementing the government's intentions.

The contamination provisions of the Crimes Act, which begin at section 248 in division 4 of part 1 of the act, are made more clear by proposed sections 249 onwards. The amendments make it clear that cost-recovery orders can be sought for any response by emergency service agencies. That applies similarly under section 317A of the Crimes Act insofar as it relates to bomb hoaxes. This is a novel provision. I do not know of any previous case where amendments have been made by adding footnotes to the particular provisions that are affected.

In conclusion, I am anxious to draw the government's attention to what appears to be an anomaly in proposed section 87D, to be inserted by clause 4, which has consequential effects in other amendments. It concerns what constitutes an immediate response to an emergency as referred to at line 12 on page 6 of the bill.

My immediate question is what if the response was not immediate — in other words, if it was not possible for an agency to activate its response or if it arrived 30 minutes after the event or if it was called after an initial analysis or assessment had been made — does that constitute an immediate response? Reading the provision literally, I believe an immediate response means you are called and you arrive. However, the word 'immediate' adds little to the thrust and purpose of the bill, which is to give an emergency service agency that responds to a situation a right to seek costs incurred. The word 'immediate' adds a new dimension that is not clear, is ambiguous and is a term which the government may wish to clarify earlier rather than later to avoid these matters being unnecessarily litigated in the future.

Having said that, I confirm that the opposition endorses any action by the government to respond to those among us who would put among our community any sense of fear or concern. The Liberal Party does not oppose the bill, but wishes it to pass so that those who perpetrate such crimes are held responsible to the community at large.

Hon. R. M. HALLAM (Western) — When the Premier introduced the Sentencing (Emergency Service Costs) Bill in the other place he began his second-reading speech with the sentence:

> The events of 11 September changed the world that we live in.

That is a very simple but profound statement, because as all members of the community have come to grips with the unspeakable atrocity committed on the entire civilised world on 11 September we have had to take into account the dimensions of that event — the terrible loss of life; the catastrophic effect on not just the local but the world economy; and the fallout in terms of confidence, investment and levels of job generation, not to mention the specifics of the insurance industry. Then there are the knock-on effects across wider communities as a direct result of attitudinal shifts. We have all been touched by the events of 11 September. Nobody has been immune.

The scary aspect of that tragedy is to contemplate the fact that it was all by design, that the terrorists involved not only acted deliberately but had carefully planned the whole attack and were prepared to waste thousands of innocent lives, and even forgo their own lives. It is hard for many of us to comprehend that atrocity. I do not think anybody has yet come to grips with the true impact, particularly when we get to the hard-to-assess issues such as community confidence. I give the example of the aviation industry, where there has been an enormous fallout and a dramatic impact on immediate prospects. Internationally the industry is facing a meltdown.

Tucked away in all those knock-ons is the fact that the community feels and is seen to be more susceptible as prey to the copycat criminal and hoaxer. This situation is now made to order for the perverse soul who takes some sort of pleasure in creating public alarm and mayhem. That is where this bill comes into play. It is simply designed to toughen the law on hoaxers by providing that the cost of our emergency service organisations responding to an alarm can be directly charged to the person convicted of falsely creating that alarm. That is the simple effect of the bill.

The National Party resolved to not oppose the bill, but it did so notwithstanding its conclusion that there is little prospect of the provisions of the bill ever being applied in the sentencing of persons convicted of offences specifically covered by the bill. The National Party's reasoned position becomes something of a contradiction in terms. Why would members of the National Party support legislation they believe is most unlikely ever to be applied in the day-to-day sense? Does that not make their response something akin to a hoax? If it does, is that not ironic, or perhaps appropriate?

I turn to the basis on which members of the National Party structured their rationale. I commence with the conclusion that, like Mr Furletti before me, we see several substantial holes in the bill, particularly in its practicality and application at law. I turn to one provision already canvassed by Mr Furletti. Proposed section 87J(1), to be inserted by clause 4, allows the court fixing the amount of any cost-recovery order to:

> … take into account … the financial circumstances of the offender …

That, of itself, is not remarkable. In fact, it may be predictable, because it is the same concept as is employed in assessing an award to a victim of crime.

However, our starting point is that based on the history of such offences, or perhaps more particularly on the history of such offenders, we believe very few will be able to pay the level of penalty contemplated by the legislation. We take the point that the people we are

involved with are by definition social misfits. They are not likely to be well adjusted or wealthy. That is a fact of life. Our assessment is that the opportunity to charge a person convicted with the costs of our emergency services response becomes hypothetical. It is our assessment that the courts will quickly conclude that the additional financial penalty envisaged by the bill is more symbolic than anything else. We think it is a waste of time as a practical means of recovering costs incurred by those emergency service organisations. The additional penalty is rather hollow. We have concluded that the courts will be most unlikely to invoke the provisions, or even if they do that that invocation will lead to any worthwhile recovery of the costs of response by the emergency services.

The National Party has concluded that although the bill sounds okay in theory and perhaps may be dressed up as consistent with public policy, it is unlikely to recover too much by way of emergency service costs incurred and that the courts are likely to take the attitude that it is simply not worth the candle. That is our fundamental conclusion. Once we reached that point there was not too much argument about the other technical holes we saw in the bill.

In fact, we dismissed what we assessed to be technical holes, but I want to run through them to illustrate why we deemed those provisions to represent holes.

The first is the example that has already been canvassed by Mr Furletti. The hackles went up in the National Party party room when we learnt that the court can only award costs relating to employed emergency service personnel, albeit we acknowledge that that employment can be within the private sector as well as the public sector. But the bill says the costs have to relate to those who are employed in those emergency services.

National Party members take offence at that. Our first question is: what about the volunteers? That was our starting point. There are some classic examples — the Country Fire Authority, the State Emergency Service, and so on. The truth is that those volunteer brigade members drop everything to attend a call-out. Everything stops in midstream when the fire siren goes off or the call goes out to individual members. Our first question is: why would the attendance of volunteers at the call-out not be recognised? Surely it will not be argued that there is no cost involved because the real circumstances are quite the reverse. Many of those people are self-employed, in which case the cost is both immediate and very personal.

The attendance of the many volunteers who are employed represents a cost of productivity for their employers, and we started from the premise that all those employers, self-employed people and volunteers regard their involvement as their contribution to the community; they do it because they think it is a worthwhile contribution. But that should not make their involvement any less relevant; in fact it should make it the reverse. Why should we say that those who are employed to be there should be counted as part of the cost and those who give up their time voluntarily should be ignored? It is stupid and insulting. I make the relevant point that those people who are the only ones who will be counted in the cost are actually paid to be there. How is that for double standards! In many cases they are doing exactly what they are paid to do: providing an emergency response is their job.

I have a very good mate who is a private building contractor. For many years he served as a captain of the brigade, so he was the first port of call in any fire call-out. I know that he put in thousands of hours at enormous cost to himself, his company and his family. It is insulting that someone who is contributing in that way should be ignored, and particularly — to add insult to injury — to say that the paid members of the Country Fire Authority — and I do not belittle them, their contribution is valuable as well — shall be counted and my mate should not be, even though he has just left a building site and lost the charge-out equivalent for the time he is away from the job. That situation is insulting.

My assessment is that the bill has just insulted our volunteers again, and I remind the chamber that without those volunteers we do not have a Country Fire Authority and we do not have a State Emergency Service. If we left it to the paid members, professional though they are, we would not have a service. Yet here again the government is prepared to ignore that volunteer contribution.

I turn to the issue raised by Mr Furletti — what about the person in the private sector who faces direct costs as a result? That factor is left to one side and ignored. We say the bill is very selective. It is insulting to our volunteers and it is at least illogical to the extent it ignores the prospect of a claim being made for loss directly incurred by a private individual.

The second hole went to the fact that any costs recovered under the provisions of the bill will go back to consolidated revenue as distinct from being paid to the emergency service directly involved. I know that sounds a bit pedantic because we must acknowledge that the vast bulk of the funding for the emergency services is received from consolidated revenue, and we acknowledge that we should at least presume that any

cost recovered under a cost-recovery order provided by the bill would be taken into account in the next budget allocation. So we decided not to make a fuss on the point of where the costs are directed when recovered, whatever they turn out to be; and all of them go back to consolidated revenue because we recognise that the service is mainly funded from that source in the first place.

The National Party has come to the conclusion that the question of the direction of that funding is more symbolic than anything else. If that is the case, why did the government not recognise the symbolism? If it is not such a big deal as to whether it goes to the consolidated revenue or directly to the emergency service involved, why did the government not decide that that symbolism was important? It would not have taken very much. The government did not have to be too bright to know that this would be seen to be a significant point of response in the bill, particularly given, as we suspect, the whole thing is not likely to be tested in the real world anyway. We think it is quite bizarre because here was the government's chance to say to the emergency service sector, 'We will give you the benefit of what we regard to be a windfall gain'. The National Party believes it quite appropriate that it ought to go to the organisation that incurred the cost in the first place, because it would have sent out a very good message from government. But it is too late for that.

We also noted that the cost-recovery order shall be treated as a judgment debt. That would allow the courts to employ their traditional authority to make a garnishee order, for example. So this is a very powerful weapon if it were ever used.

We then noted that the cost-recovery order would not affect any other right of the emergency service organisation involved to recover costs under any other head of power. We acknowledge that it is quite common for a fire brigade to impose a call-out fee where the call is to an uninsured property. We think that is quite appropriate given the structure of the funding of the organisation in the first place. We see it as appropriate that this new penalty to be imposed on hoaxers should be taken into account quite aside from any other entitlement to recover.

We also took into account that the new cost-recovery order would rank after any compensation awarded to a victim of the crime. We support all of those issues, but again we go back to our original assessment that this provision is unlikely to be employed in the real world, and it is thus quite hypothetical.

If we were convinced that the cost-recovery order were not likely to be imposed by a court, or, more pointedly, was not likely to lead to cost recovery, why resolve to allow the bill to become law? Why allow the provision to go on to our statute book? This is the bottom line — we see merit in the bill, quite apart from its practicality, and quite apart from the unlikely prospect that the court will employ it. There are two aspects of that bottom line that I want to mention in the National Party's assessment. The first is the message it sends to potential offenders. It says to the potential hoaxer, 'If you get caught we are going to throw the book at you. Do not expect any sympathy'. It says, 'We as a Parliament have toughened the law to make it possible for you to be charged for the cost of responding to the emergency you created'.

That is a pretty powerful message. The National Party is not convinced that the potential hoaxer is likely to be influenced too much by the prospect of an additional penalty, but it acknowledges that there might well be some value in this as a deterrent. The National Party is prepared to support the bill on those grounds.

Beyond that, the National Party thinks this bill has one very powerful redeeming feature and that is the message it sends to the community. It says that this Parliament is serious about copycat and hoax offenders — we really mean it. It also says that we have put paid to this cute concept that pretending to do something designed to cause public harm is somehow a lesser offence than actually committing the act. It says, 'Let's put a stop to that as well'. That is also a very powerful message. The test is whether the alarm has been caused, not how it has been caused. This is a very good message to send to the community. It says that this Parliament will not sit idly by and watch the community being held to ransom.

The National Party has concluded that it is quite critical that in these circumstances the Parliament be seen to respond and perhaps, more importantly, to be seen to respond firmly. The National Party sees that response as being critical to the recovery of community confidence. The National Party sees it as critical that people again go about their daily lives and that the economic and social disruption from 11 September is minimised. The National Party sees the message coming from this bill in the same light as it sees the need to take action against terrorism in a generic sense. It sees it in the same light as the rationale which justifies a campaign against Osama bin Laden and his fellow terrorists.

The National Party's bottom line is that our community needs to feel free from threat and that a Parliament and

a government acting decisively sends out the right message. In our view that is what makes this bill supportable. While the National Party is not persuaded that the bill is any great shakes as a cost recovery vehicle, it thinks it is supportable in respect of the message it sends out to potential hoaxers that we have toughened up the rules.

The bill is even more supportable in respect of the confident message it sends out to the general community and the comfort that people need to get on with their lives and to try to put 11 September behind them. That is not to make light of the tragic loss of life on that occasion or to turn our backs on those who have been most directly affected, but it is to recognise that the longer we take to put those terrible events behind us, the more succour will be extended to the terrorists who were directly involved in this instance or, worse still, to those sick souls in our community who would take a perverse pleasure in emulating those terrible deeds. We need to get on with our lives and we need to demonstrate that we are going to do that. This bill is part of that message.

Hon. JENNY MIKAKOS (Jika Jika) — I rise to make a brief contribution in support of the Sentencing (Emergency Service Costs) Bill. I agree with the sentiments expressed by the Honourable Roger Hallam. We have all been shocked by the events of 11 September. As members of a free, liberal democratic society we categorically reject acts of terror whether in our community or in any other community on this planet. We all share a great sense of loss following those events in terms of the very real fear they have created in many countries and societies around the world.

I agree with the Honourable Roger Hallam that it is quite disturbing that we have individuals in our own community who take some perverse pleasure from these events. I regard it as quite a sick act for any individual to be involved in the making of a hoax that unnecessarily creates panic or a climate of fear in our community. It is for this reason that the government is seeking to act and to restore a level of confidence within our community so that people can get on with their lives in the way in which they had been accustomed.

It is unfortunate that since the events of 11 September and the subsequent anthrax scares and incidents in the United States of America we have had a number of, thankfully to this point in time, hoax anthrax scares in our community. As honourable members would be aware through the media reports of these events, on 15 October 27 office workers were evacuated from two different buildings in Melbourne. They had to go through a terrible process of decontamination because white powder was found in letters delivered to those buildings. We are also aware that the United States consulate in Melbourne was evacuated after a suspicious chemical was detected on correspondence sent to the consulate.

These events are quite shocking to all of us. I believe the events of 11 September and subsequent events have touched all of us. It is quite disturbing that there are individuals out there who wish to capitalise on those events by creating a sense of fear in our community. The government believes there is a symbolic value in the passage of this type of legislation, but there is also a very real practical benefit to it. The government is seeking to send a very strong message to the community that these types of hoaxes are completely unacceptable, but it also believes the passage of this legislation will act as a very real deterrent to individuals seeking to perpetrate similar hoaxes and to create similar panic in the community in the future.

I would like to turn now to the legislation and comment on it briefly. We are aware that these hoaxes have been taking place and it is estimated that each time the community is faced by one of these hoaxes the emergency services in this state incur a cost of approximately $60 000; that is $60 000 for each bomb hoax or anthrax scare. It is an enormous amount of money and a waste of community resources. These hoaxes are already offences under existing legislation but at present it is only possible for the state of Victoria to seek recovery of costs incurred by the police and not by the emergency services as a whole.

The government is seeking to make a change so that the costs incurred by the various emergency services are able to be recovered as a judgment debt against a convicted offender. The bill seeks to insert a new division into the Sentencing Act 1991 to allow a court to make a cost-recovery order in certain circumstances. A cost-recovery order will be able to be made when a person has been convicted of an offence relating to either the contamination of goods under division 4 of part 1 of the Crimes Act 1958 or a bomb hoax under section 317A of the Crimes Act 1958.

The order can be made where a cost has been incurred by an emergency service agency in providing an immediate response to an emergency that arose out of the commission of an offence.

I should point out that the cost-recovery orders build upon an existing legislative framework which, under the Crimes Act, provide for a conviction where there is

a contamination of goods or the making of a bomb hoax. There are already penalties designed to protect our community for such offences. The offence of contamination of goods is punishable by up to 10 years imprisonment, and the offence of making a bomb hoax is punishable by up to 5 years imprisonment.

The offence of contamination of goods covers not only circumstances where items have been contaminated but other situations — for example, where a letter has been made to look as if it has been interfered with. There have been situations where talcum powder has been made to look like anthrax after having been inserted into correspondence. The offence is constituted because it causes public alarm or anxiety or because there is economic loss through public awareness of the contamination. The existing offence of making a bomb hoax covers not only bomb hoaxes but also the sending of letters with the intention of inducing another person to believe the letters are dangerous.

The Honourable Carlo Furletti was critical of the legislation. Paraphrasing what he said, he thought the bill did not go far enough because it dealt only with matters relating to the recovery of costs. It is important to note that the government has not ruled out examining whether the offence provisions in the Crimes Act and the Summary Offences Act need to be altered in some way. Certainly once the legislation takes effect the government will be monitoring the effectiveness of those offence provisions together with the effectiveness of the cost recovery provisions. It is important for honourable members to be aware that we are not precluding further change to the legislation.

The bill applies only to the offences of contamination of goods and making a bomb hoax, as these crimes are most likely to involve the creation of a false emergency resulting in a significant call-out of emergency service agencies.

Clause 4 of the bill contains extensive definitions of an emergency service agency and an emergency service worker. I wish to note that it contains a specific reference to a volunteer officer within the definition of the Country Fire Authority Act 1958 and to a volunteer auxiliary worker appointed under section 17A of the Country Fire Authority Act 1958. So I refute the assertions made by previous speakers that volunteer workers — for example, with the Country Fire Authority — are not covered by this legislation.

It is important that we get our facts straight. Volunteers are covered. The provision relating to recovery of costs ensures that any payments made or expenses paid to volunteer workers are able to be recovered by cost-recovery orders under the provisions of this legislation.

The definition of an emergency services agency explicitly includes the police, firefighting agencies, ambulances and hospitals but has been drafted broadly enough to catch any agency that may be called upon to respond to an emergency. The cost recovery would work by the prosecutor or police informant applying to a sentencing court for a cost-recovery order on behalf of the relevant agencies. A bill of costs would be prepared by the emergency services agencies, which would be presented to the court. If a cost-recovery order were made, the funds would be paid into consolidated revenue. This provision is included to prevent a situation where individual emergency service agencies may compete among themselves for the proceeds of a cost-recovery order. That is seen to be highly undesirable. For that reason, all costs recovered will be paid into consolidated revenue.

Proposed section 87N provides that a cost-recovery order will be treated as a judgment debt. That means that it can be collected by the sale of certain assets or through a garnishee order being attached to bank accounts or to a convicted offender's future earnings. It is unfortunate that members of the opposition regard the provisions as being of little benefit. They seem to think that all potential offenders under these provisions are, in the words of Mr Hallam, 'social misfits and not wealthy'. I think that is an incorrect stereotype and is perhaps evidence of Mr Hallam's own personal prejudices in this respect.

I think we will see prosecutions occur in the future following tragic events that have taken place over the past few months. People may well be surprised at the types of offenders who have made threats to the community following the events of 11 September. It is important that we do not fall into the trap of believing that only people with no financial means are susceptible to making these types of threats. In fact, a person of any background or of any financial means, through some personal mental situation — that is the only way I could possibly explain it — could be capable of making such a threat for whatever reason. The media has reported a situation in Tasmania where an individual made a threat against another individual they knew. It was basically a revenge tactic on their part to scare someone they knew because of a personal falling out they had in the past. It is important that we not fall into the trap of thinking that only people of no financial means are capable of making these threats.

I believe the provisions in the bill will act as a very real deterrent to the broader community. But as Mr Hallam

has said, it is also important to send a strong message to the community that these types of threats are totally unacceptable.

Proposed section 87J enables a court to take a person's financial means into consideration in making a cost-recovery order. The court is able to take into consideration both the means and ability of an offender to make restitution. That gives the court a discretion not to make an order for an entire amount of emergency services costs against a convicted offender. The provision states that where a person is unable or has insufficient means to pay the total cost, the court must give first preference to any compensation order, second preference to a cost-recovery order and third preference to a fine.

This is in line with the government's thinking that it is important that compensation take priority over restitution to consolidated revenue. It is an important provision that appears to have been overlooked by opposition speakers up until now.

Before moving from the Crimes Act, it is important to view the provisions in the bill in the context of the various criminal sanctions that apply in the Crimes Act to actual offences of bioterrorism. I have been discussing hoaxes and contamination of goods, but it is important to put on the record that there are very real offence provisions in existing legislation that would impose a significant penalty on a person who has used a harmful substance to either cause loss of life or serious injury to a person or to destroy property.

The existing legislation also has significant penalty provisions, including a maximum of five years imprisonment for a person who threatens to inflict serious injury although not necessarily using a harmful substance but by creating fear in the community that may be harmful. The legislation also contains a stalking provision that is punishable by a 10-year maximum prison penalty. The legislation builds on a considerable legislative framework relating to actual acts of bioterrorism.

The bill also seeks to amend the Summary Offences Act, specifically the provisions in section 53 of the act that relate to false reports being made to police. The current provisions relate only to members of the police force, and those references are to be substituted by a provision covering any emergency service worker, which is a broad term as defined in clause 4 of the bill.

The Summary Offences Act 1966 already provides for the state of Victoria to recover costs incurred when responding to a false report and explicitly includes the expenditure of police. This will be changed so that costs incurred by any emergency service agency during an immediate emergency response are able to be recovered. This change will make it clear that money spent by the state on emergency service agencies, other than by police, who may become involved in a response to a false report can be taken into account under this section.

It is important to note that the changes amending the Summary Offences Act and the Crimes Act are not retrospective in nature. This is in line with the government's longstanding attitude that it should not seek to impose criminal offences retrospectively. However, the Premier's recent announcement of this change in the legislation has acted as a significant deterrent to the occurrence of these types of scares.

The Honourable Carlo Furletti sought to argue that the term 'immediate response' was ambiguous. I refute that assertion. I cannot understand why the words 'immediate' or 'response' can be seen to be ambiguous. They are clear in their meaning. It is only appropriate that emergency service agencies are able to recover costs where they have responded to a hoax on a quick-response basis and have in fact taken away resources that could be better utilised elsewhere in the community. I do not believe the term is in any way ambiguous, and there is absolutely no need for it to become a defined term in the bill.

Finally the bill inserts a number of footnotes into the Crimes Act. Honourable members opposite suggested that this was unprecedented. The government has passed a number of pieces of legislation over the past two years where footnotes have been inserted into various acts. These are helpful to police, prosecutors and legal practitioners in directing them to other provisions which are relevant to the Crimes Act. The new footnotes that will be inserted refer to cost-recovery orders under the Sentencing Act.

In conclusion, this is important legislation and is not merely symbolic in nature. We are sending a real message to the community that contamination of goods and bomb hoaxes are completely inappropriate, but we are also providing a deterrent to potential offenders. This is indicative of the government's attitude that the full force of the law should be brought to bear against those who prey on the fears of Victorians in the current climate following recent world events. I commend the bill to the house.

Hon. N. B. LUCAS (Eumemmerring) — The world changed on 11 September. The three previous speakers today have referred to the unspeakable atrocities that

occurred in America on that day. I will not dwell on that except to say that the issues that confront us in the civilised world now include, sadly, the fact that people with limited intelligence who would cause a mischief have, as a result of ongoing events in the United States, some strange encouragement to get involved in hoaxes and other such activities which put fear and anxiety into our community. The bill is the government's response to those who would commit mischief in our community through hoaxes and activities of that sort.

There are three types of people who might get involved. The first type is the opportunist who wishes to cause mischief but does not wish to cause anybody any harm; the second type could probably be described as the person who wants to cause anxiety and fear, who has some evil intent but in a cowardly way wishes to do things that will cause concern to the community without carrying out the activity; the third type, similar to the terrorists in the United States, actually does something to harm people.

The bill covers each of those potential situations, although we hope and pray that no such incidents will occur in Australia. The fact is that they have, and just a few weeks ago a constituent came to me in relation to an incident involving Australia Post.

As a result of that I spoke to the manager at the Dandenong mail centre of Australia Post, David Humble, and I was extremely impressed with the way he addressed the particular case. Interestingly — and sadly, too — on 16 October following the anthrax scares in the United States Australia Post found in the post 26 incidences in Victoria of materials that were a cause for concern. On 17 October, the day after, that figure went up to 42 — that is, 42 incidents that had to be dealt with in an appropriate way. I will go into that in a moment. Fortunately, the idea in the sick minds of the people who send things in the mail has fallen away in recent weeks. It has come down to 2 or 3 a day in Victoria. On 5 November there were 14 incidents and by 8 November it had dropped back to 4.

It is amazing what people send in the mail. In a recent incident a consultant touting for business sent out a letter saying, 'If you have worries in a particular area just have this pill and you will feel a lot better. I am the person to help you'. He sent out 250 letters with a Tic Tac in each envelope. The machines at Australia Post work pretty quickly, and the letters fly through fast, so the 250 Tic Tacs were chewed up and turned into powder. The envelopes were damaged and white powder was detected at the letter centre causing another incident. I will also go into how that is handled later.

A young child sent some sand in a little plastic packet with a note to Grandma saying, 'We are having great fun at the beach. Here is a bit of the sand from the beach'. The sand was chewed up at the mail exchange and another incident resulted. Another person sent some coffee to Auntie saying, 'We have found this really good blend of coffee. Here is a little plastic packet of it'. That got chewed up and another incident occurred.

Wherever there is machinery dealing with paper, whether a photocopier or whatever, there is paper dust generated as pieces of paper fly past pieces of metal, so within the mail centre such bits and pieces of material appear from time to time. In many cases Australia Post can solve the situation quite quickly by looking at the sender's address and the address on the front and then clarifying by telephone what was in the package. In many cases they find that the situation is quite innocent and that there is no evil intent whatsoever — and the organisation moves on.

There are, however, others who send material through the mail with evil intent. A number of instances have occurred of people sending soap powder which has caused a lot of anxiety, particularly in the early stages before the number of incidents reduced. From what I learnt from the Australia Post representative a program of training and information is provided to staff working in those centres, and staff have dealt with incidents in a very professional way. Obviously they had to get up to speed in the early stages — this is not necessarily the sort of thing you would expect to happen — but now that it is happening Australia Post is dealing with it very well. The professionalism of Mr Humble was quite apparent and I was impressed with Australia Post and how it was dealing with the situation.

The basis of the bill is twofold. The first purpose is to create a deterrent for people who would commit mischief by providing penalties and costs that may be incurred. That can be supported if the deterrent sends a message to people to dissuade them from being involved in mischievous activity.

The way the legislation does that, however, is by suggesting that people who engage in these activities will have to pay for their misdemeanours by reimbursing the emergency authorities for the costs incurred in responding to incidents. There is a weakness in that proposition, which I will go into in a moment.

An emergency service worker is defined in paragraph (n)(i) of proposed section 87C as:

> any other person or body —

(i) required or permitted under the terms of their employment by, or contract for services with, the Crown or a government agency to respond to an emergency …

The definition of a government agency is picked up from the Victoria State Emergency Service Act 1987, which defines a government agency to include:

any body corporate … constituted by or under any act for a public purpose.

Section 5(2) of the Local Government Act 1989 states that a council is a body corporate and therefore a council by its nature is included in the definition in the bill and any costs incurred by councils can be recovered.

Where will the fines go? Proposed section 87D provides that costs incurred will be paid to the state, which means that agencies that incur costs will not be refunded. That is a great weakness for operators of an emergency service that incurs costs for a particular incident. Will the state increase grants to that emergency service in the current or subsequent year to make up for what could be a costly exercise?

In recent weeks the Country Fire Authority has turned out to a number of incidents. I wonder whether the state will reimburse that authority each year to cover the myriad occasions it has been involved with in recent times. Similarly, will local councils, which are near and dear to me, which have been involved in incidents receive by way of a special grant from the government reimbursement for costs incurred? There is no indication in the bill in either case of any reimbursement to government agencies that become involved with attending such incidents.

I turn to cost recovery of reasonable costs incurred by an agency in providing an immediate response. This matter was raised with staff in the Premier's office who indicated that the memorandum to the bill is relevant. The explanatory memorandum to the bill states the following in respect of clause 4:

… It is intended to cover things such as evacuations and decontaminations. It could also cover costs such as the analysis of suspicious materials, where that forms part of the immediate response to the emergency …

The government is hoping that as wide an interpretation as possible might be given to the term 'immediate response'. We all know the courts will determine what those words mean, given the lack of clarity in the bill. It can be argued that the words 'reasonably incurred' and 'costs incurred' are or are not immediate. In the future there will be some discussion on the meaning of those two terms when cases arise. I hope no cases will arise but sadly they may and it will be up to the courts to determine how those terms are to be interpreted.

The bill is a marketing and public relations exercise. It is full of spin to make it look like the government is doing something effective to address the issue. However, legislation is already in place which covers incidents such as the ones I have spoken about. I do not wish to steal the thunder of the Honourable Cameron Boardman who is following me in this debate because he will refer to those issues.

The government is suggesting that people will have recovered from them the costs of these incidents and that will solve all the problems. I make three points. The first, which I will deal with in a moment, is whether the costs will be reimbursed. Secondly, the Honourable Cameron Boardman will deal with the fact that legislation is already in place to cover such issues. The third point is that this is a deterrent to people by way of a smokescreen and a marketing, spin-doctored statement by the government. If it works that would be great and I hope it does. You cannot knock anything that will be a deterrent to those would-be hoaxers. However, it is important to make these points.

In reality, people who perpetrate these crimes in most cases do not have two pennies to rub together. When such cases go to a court, the facts are that a judge finding somebody guilty has to decide how much the state will be reimbursed. Interestingly, proposed section 87J refers to the court taking into account the financial circumstance of the offender. I wonder how many people will have to pay the full cost of recovery. I believe judges will find that those people found guilty of such offences will in the majority of cases not have any money and therefore in effect, after all this fanfare, the state, and indirectly the authorities, will not be reimbursed in any great way, which is a shame.

In the vast majority of cases the costs incurred by agencies as a result of hoax incidents will not be recompensed to the state. Costs will certainly not flow directly to the agencies concerned, and they will certainly not go to volunteers. Mr Hallam rightly raised the issue of State Emergency Service (SES) and Country Fire Authority (CFA) volunteers.

In my electorate there are many CFA volunteer-manned and womanned organisations. I have seen butchers running out of butcher shops, real estate agents running out of real estate agencies and council workers running out of council meetings — I have seen all sorts of people who volunteer their time to work for the community on a fire truck and for the SES, and volunteers who are self-employed do that at the

expense of their own businesses. It is a shame that under this proposed legislation they cannot be recompensed for the losses they incur in their businesses as a result of the work they do for their communities. If an incident occurs in Dandenong and the CFA has to rush to it, a reimbursement can occur because that unit is manned with full-time fire officers, but if an incident occurs in Pakenham or Officer or Berwick or Beaconsfield or Cockatoo or any of the rural areas in my electorate, no reimbursement will be available because the trucks are all manned by volunteers.

The opposition, as the Honourable Carlo Furletti indicated, does not oppose this bill. It does not oppose it because if, when it becomes legislation, it acts as a deterrent and sends a message to people not to carry out the crazy, silly, annoying acts we have been talking about, it should not be opposed. It is fair to say that there are inadequacies in the bill, which have been referred to by previous speakers. I know speakers who follow me in the debate will also point to some inadequacies of the bill — and that does the government no credit.

Hon. E. J. POWELL (North Eastern) — I am pleased to make a contribution on the Sentencing (Emergency Service Costs) Bill on behalf of the National Party. The National Party will not be opposing the bill, but like the opposition, it does have concerns about parts of the bill, which I will point out during my presentation.

As other speakers have said, the events of 11 September changed the world: they have affected all our lives in some way. It is one of those dates that will go down in history — we will all remember what we were doing and where we were on that day. I was driving back from Melbourne to Shepparton when I heard the events unfold on ABC radio. At 10.45 p.m. the first plane crashed into the World Trade Centre, 15 minutes later the second plane crashed into the World Trade Centre, then another crashed into the Pentagon and then a fourth plane crashed in Pennsylvania. Many of us watched in horror as the events unfolded on television.

Because of these events and the thought of terrorism — I stipulate the thought of terrorism, which perhaps affects people more than acts of terrorism — the community's fear has been greatly heightened and security has had to be tightened right across the world. Many of us had become very complacent about our public places, like airports, hospitals, municipal offices and even this house of Parliament. We were not used in the Western world to seeing that type of event, then suddenly it came as a wake-up call to us. In some ways, while it was disastrous, it has been beneficial in that it has alerted us to the fact that things like that can happen. We are now putting in place many security measures, which involves great cost for each country.

Some days after the terrorist attacks came the anthrax scares. They occurred mainly in the United States of America, but we are now seeing them occur right across Australia. Some of those scares have unfortunately turned out to be real anthrax cases, but many of them have just been hoaxes. This bill represents the need for changes in the legislation to deal with people who do things they think are funny but in fact are not funny at all.

There have been no terrorist attacks in Australia, but the threat of attacks is always there. Every time we hold events like the Melbourne Cup and the football grand finals involving huge numbers of people, there is always the threat that somebody could be there going about terrorist business. We have now seen how easy it is for terrorist attacks to occur. We, as a community and as a nation, are looking to see how we can stop those sorts of things happening in the future.

Previous speakers have talked about the hoaxes. The Honourable Neil Lucas talked about some innocent issues involving people sending substances compounded into powder in the mail, but the effect on people is still the same — it evokes fear and people have to call out the emergency services, which of course involves a cost to the community. This bill amends the law so that anyone who commits a hoax offence can be ordered to repay the reasonable costs of emergency services in responding to those bogus threats. The courts, as Mr Lucas and other speakers have said, will not just be asking for payment with whatever cash the person has or can acquire, the debt owed to emergency services will be treated as a judgment debt and may be repaid by the sale of assets. If the person does not have the money, the courts can ask them to sell some of their assets to repay the debt or they can garnishee their wages. We, as legislators, view that very seriously. People in the community would respond positively to that, because they are sick and tired of those who think such things are funny and believe such people should have to pay.

For making a false report the bill extends the power of the courts to include all emergency services. It is already an offence to make a false report to the Victoria Police. The provision will extend the payment of expenses to cover all emergency services.

The Honourable Neil Lucas raised the issue of local government. He asked whether it would be repaid for any expenses incurred under the emergency services provisions. The Premier's office has responded that it is included in the provisions. That is important. Local government is often at the forefront of an emergency, whether as a crowd controller or to fix up some of the mess afterwards. Local government has a role to play. It is good to have on the record that local government will be reimbursed its expenses.

After 11 September security has been increased in a variety of ways. The security in electorate offices has been increased. Shortly after that event electorate offices were notified by the Parliament of the emergency procedures that would not just protect electorate officers but also the public who may be in the office at the time. The emergency procedures set out how to isolate suspicious mail, cordon off an area and gave an emergency phone number to be called. Electorate offices are often the first port of call for members of Parliament, so are seen as areas that may come under threat. Precautions have had to be taken across country Victoria to protect not just ourselves but those who work for us and, more importantly, members of the public.

Since 11 September a number of incidents regarding suspicious letters and packages have occurred in my electorate. The Department of Natural Resources and Environment received a posted envelope containing suspicious powder. The incident was reported, staff were evacuated and the emergency services were called. The package had to be checked and the powder was identified. It was not anthrax or other dangerous substances. After many hours the staff were allowed to go back into their offices. The incident was a hoax. The department was disadvantaged, not just because of the stress to staff and relatives but also to its business. Post offices in Shepparton and Kyabram have received suspicious envelopes and packages. Even though they were hoaxes they had to be investigated. The powder was found not to be a dangerous substance. There was a similar experience involving a private mailbox in Numurkah.

These incidents were attended to by the police and the Country Fire Authority (CFA) Hazmat firefighters, who are trained to deal with hazardous substances and are paid staff. The Honourables Neil Lucas and Roger Hallam asked for clarification of compensation for volunteers. The volunteer CFA firefighters assist in crowd control and make sure people do not come into the area. They cordon off areas. Those volunteers normally work for other people or themselves. If they work for other people there is the cost to their employer, and I ask whether compensation will be paid to those employers. My electorate officer is a CFA volunteer. She was not called out during these incidents, but I know many CFA volunteers who work for large businesses in country areas and who believe their work as volunteers is giving something back to the community. It is important their work is compensated. They put their lives at risk, so it is not just the monetary compensation; it is the compensation in loss of time and the fact that we value what they do. It should not be the case that we do not value their time and effort just because they are volunteers.

The Honourable Jenny Mikakos said she believed volunteers were covered by these provisions and cited the relevant clauses. I seek clarification whether they will be compensated for loss of time and earnings. I believe the honourable member meant they were entitled to compensation if they were injured. As I said, I seek clarification whether they will be compensated for loss of time or whether the CFA branch will be compensated. Although there are paid firefighters, many of the volunteers undertaking crowd control are unpaid.

The Honourable Jenny Mikakos said the Honourable Roger Hallam was incorrect in his assumption that volunteers were not compensated. I understand they are compensated for injuries received, but I seek clarification about whether they will be compensated for their loss of time and loss of earnings. The honourable member also said the government is not precluding further changes to the legislation at a later date. If volunteers are not included in the compensation package, perhaps they could be included when further amendments are made to the legislation.

A number of speakers referred to the fact that costs recovered under the legislation would be paid into consolidated revenue. I seek clarification whether it would mean that CFA volunteers seeking reimbursement would issue an invoice to the appropriate department. I am not sure how it would advantage them, because some branches of the CFA and the police are not called out and some are. Other speakers in this debate have asked how compensation would be paid. Perhaps it could be paid by an additional grant or by issuing an invoice for compensation.

The cost to the community has been raised. The biggest cost is the loss of life, which is tragic. Since the World Trade Centre tragedy people realise it is not just the loss of life, but the cost of buildings, the loss of information, and so on, which cannot be recouped. As I said, in my own area, because of the incidents to which I have referred, businesses were disrupted, people were put

under stress by being evacuated from areas, shoppers were denied access to retailers, areas were cordoned off to allow investigations to take place and to protect people, and local traffic was diverted, so there is a cost to business and I wonder about compensation for that.

The bill reflects the wishes of the community in that if a person is found to have committed a hoax he has to pay. It is not a knee-jerk reaction. The community is saying strongly, because of what has happened and because of copycat crimes, people who think it is funny to disrupt the community by sending articles in the mail that may have some talcum powder in them should be punished.

The *Shepparton News* of 27 November had an article about the type of incidents to which I have referred. The article is entitled 'The work of idiots'. The Honourable Jenny Mikakos said that it was not appropriate for the Honourable Roger Hallam to use the word 'misfits', so perhaps 'idiots' is more appropriate. The article states:

> Shepparton Country Fire Authority officers were left seething yesterday after responding to five anthrax hoaxes in a day that wasted thousands of taxpayers' dollars …
>
> Yesterday morning, Shepparton Australia Post mailboxes in Fryers Street, Colliver Road, King Street and the Boulevard were covered with white powder, while in the afternoon Mooroopna CFA officers responded to a scare at the corner of Carr Crescent and Echuca Road.
>
> The Shepparton Hazmat disinfected and hosed down each mailbox.
>
> Colliver Road post office and milk bar owner Diane Thomas said the people behind the hoaxes were 'absolute idiots'.
>
> She said they should foot the bill if caught.

That is what the bill is about. It sends a clear message that if people get caught in a hoax it will not be seen as a prank or a joke, but as a serious offence with strong implications across the community, and they will have to pay.

Not just the impact of the call-outs of the emergency services and their having to deal with hoaxes but also the follow-on events should be taken into account — that is, a fire may break out or a road accident may occur, but the emergency services cannot respond because they have earlier responded to a hoax. Those issues should be examined. The community feels strongly about such circumstances. The newspaper article further states:

> Australia Post spokesperson Philip Money said more than 400 incidents or suspicious packages or situations had been reported since the anthrax scares began, but no anthrax spores had actually been found.

Had any spores been found the perpetrator would be dealt with much more strongly. There has to be that deterrent at the beginning so that the people who do these stupid acts are caught under this legislation.

The passage of the bill makes it clear that anyone taking part in a hoax or wasting the time and money of emergency services will be guilty of a criminal offence. The community would totally support the action brought about by the bill and the National Party wishes it a speedy passage.

Hon. B. C. BOARDMAN (Chelsea) — This debate has proved to be quite interesting. If you had taken the time to listen to all contributions of honourable members, particularly those from the National Party and the Liberal Party, you would have an appreciation of the real cost to the community and, if I could be so bold as to suggest, the human cost involved with such incidents and how they can instil a perception that cannot be measured or recovered against, but can be quite devastating nonetheless.

Although the bill deals predominantly with costs it only deals with costs in financial terms. It would be almost impossible and perhaps impractical for us as legislators to try to measure or devise a formula that is able to measure costs in non-financial terms because the types of incidents the bill is trying to address will result not just in out-of-pocket or financial expenses but also, as the Honourable Jeanette Powell outlined, the cost to the community, the loss of confidence, loss of community spirit and the loss of will to be involved and to participate in community activities. Those issues are of equal if not in some cases increased importance. But there is no way we as legislators can measure those costs. For that reason there is probably a responsibility for us to take this legislation seriously.

I place on the record a concern I have — it is probably a philosophical objection — about what the lead speaker from the government, the Honourable Jenny Mikakos, said about the bill being a deterrent. It may be a point of clarification so far as using a criminological definition is concerned, but a deterrent to criminals so far as the penalties that apply to criminals are concerned is not a matter of whether the criminals will be brought to justice and have the full weight of the judiciary placed upon them. I disagree with the government's suggestion that the bill is a deterrent and provides some base for prosecuting people who would participate in devious and completely unacceptable activities. I agree with Mr Lucas who summed up the legislation well as being a marketing cum public relations exercise.

In this year of Australia's centenary of Federation it is difficult to think past the events of 11 September and the professional and personal impact they have had on everybody. But we do have to remind ourselves this year as we celebrate 100 years as a peaceful nation that was built upon processes that did not involve conflict or hostilities that those processes were negotiated, worked through and had the complete involvement of all sectors of the community to ensure that the framework and fabric that in some cases we take for granted and of which we should be exceptionally proud could be instilled in society so the nation would prosper and develop to a level of democracy that other nations lack.

It is with a degree of tragedy and upset that although we have celebrated our centenary of Federation, the events of 11 September have led us to conclude this year with our fellow countrymen and women being involved in hostilities in Afghanistan. Who would think that a nation that proudly and rightly has based its whole history on negotiating through adversity by peaceful and democratic processes would be facing 2002 with its men and women effectively at war? None of us would have expected that and none would really want it to have happened in any case. But with that we have had to see and support change. In most cases it has been necessary and the bill is an example of that change and how it has implicated and affected our lives.

The bill is a response by the government to some very unfortunate and unnecessary incidents that received publicity and, most importantly, tied up valuable emergency services personnel and resources and created a level of disruption in the community that was in no way, shape or form justified. But it raises a few questions.

The first is if we are talking about costs and recovering costs, who should benefit? Under the bill the costs incurred by emergency services personnel will be recovered by the government and go straight into consolidated revenue. There is no suggestion in the bill or by way of response from the government that those agencies that are affected as a result of an incident will be able to claim back the expenses they are well and truly due for and which they can well and truly justify. Equally, there is no consideration regarding victim costs. That far more vexed question can be dealt with through this debate but it needs to be dealt with and explored through other debates that allow for sufficient time to explore all the implications.

As a result of some of the incidents that have been brought to the attention of the house today, undoubtedly victims, individuals, corporations and businesses have been affected. There has been a loss of wages and earnings, productivity, efficiency and confidence — all of which have a cost the bill gives employers no opportunity to recover. It does not preclude any employer taking civil action but we must face reality. If the government decides there is a demonstrable need to recover costs for an emergency service provider it must ascertain that the individual or individuals from whom they are recovering such costs are able to fulfil their debt.

I again make the point that it does not preclude individuals or corporations from seeking civil litigation for recovery of costs incurred as a result of the incidents. It places the justification firmly on the offender and how the offender would have the means to repay the debt incurred. For that reason the bill is almost impractical. But we cannot suggest that because of the practicalities it will be ineffectual. Any legislation that provides the means by which emergency services agencies, law enforcement authorities or the government can provide better levels of protection and service to the community must be considered but they must be considered in conjunction with the other means that are available.

I bring to the attention of the house the legislation that already exists at state and commonwealth levels that could well and truly be used to initiate proceedings and ultimately to recover costs against such people, which is what this bill is trying to do.

As Mr Lucas said, the government had to be seen to be doing something. There had to be a response from the government because of the publicity associated with some of these incidents. The government wanted to portray itself as being a leader and to show it was responding to community concerns, but by doing so I believe it has done itself a disservice.

In my opinion there are a number of other pieces of legislation that it could be argued deal with the situation even more adequately. At the commonwealth level there is the post and telecommunications act, which deals with threatening letters or articles or threats made by way of communication devices and imposes severe penalties. It also enables the providers of such methods of communication to investigate those types of offences and subsequently recover costs incurred as a result of an offence. By way of example, if Australia Post were a transmitter of threatening or offensive articles through its mail and that resulted in harm to Australia Post's reputation or harm to any others, under the commonwealth post and telecommunications legislation Australia Post would be able to use the provisions of that act to recover costs. Those provisions

are almost a duplication of what the government is trying to achieve in this bill.

Sections 248 and 249 of the Crimes Act refer to the contamination of goods. The offences deal predominantly with goods that are tampered with or interfered with or products designed for human consumption that are contaminated in some way. The provisions came into effect in 1998 when a degree of publicity surrounded people who were tampering with food to try to extort financial advantage from the companies selling the products and the manufacturers of the products. But that does not preclude the government from using sections 248 and 249 of the Crimes Act to initiate criminal proceedings that would lead to recovery proceedings if there were a guilty verdict. Instances where those provisions would be more than applicable have been highlighted this morning.

The penalties set out in sections 248 and 249 are a maximum of 10 years imprisonment or 1200 penalty units, which equates to $120 000, or both. They are severe penalties, but at least those sections are a mechanism that already exists to enable proceedings to be initiated against people in the sorts of cases that have been referred to recently.

Section 317A of the Crimes Act refers to bomb hoaxes. I have had some personal involvement with bomb hoaxes and can comment first-hand on the detrimental effect they have on an establishment that is subject to a bomb hoax. I highlight to the house that the penalties are as severe as those in the Crimes Act I have mentioned. The maximum penalties for a bomb hoax are five years imprisonment or $60 000 or both.

A bomb hoax is defined in such a way that an article does not necessarily have to contain an explosive substance. It does not have fit the generic description of a bomb. Section 317A(1) states:

> A person must not —
>
> (a) place an article or substance in any place; or
>
> (b) send an article or substance by any means of transportation —
>
> with the intention of inducing in another person a false belief that the article or substance is likely to explode or ignite or discharge a dangerous or deleterious matter.

I turn to the example of anthrax, which is the main consideration in the legislation before the house. Although anthrax is not an explosive substance, on my interpretation of this section it would well and truly fit within the current definition of discharging a dangerous or deleterious matter. That is exactly what anthrax or other products such as viruses or bacteria are. Under this section, on any interpretation, there does not have to be an explosive substance. I reiterate that there are provisions under existing state legislation that can be utilised if such an occurrence arises.

The *Macquarie Dictionary* defines anthrax as:

> A malignant infectious disease of cattle, sheep and other animals, and of humans, caused by Bacillus anthracis.

Undoubtedly that gives credence to the definition contained in the Crimes Act that can be utilised if a package containing such a substance were discovered.

Sections 22 and 23 of the Crimes Act define conduct endangering life and conduct endangering persons, and section 31(2) provides a definition of assault. By way of brief explanation, if a person is threatened by either direct or implied contact by an individual, if that individual is in a position where the victim feels the threat can be carried out, that constitutes an assault. In some of the circumstances we have discussed this morning those provisions may be able to be applied.

I submit to the house that quite clearly there are alternatives, notwithstanding that I believe this legislation symbolises at the very least a step in the right direction. I suggest the government needs to give consideration to the existing mechanisms to ensure that it is not overreacting and that it is being completely practical in the circumstances.

In the time available I want to conclude by giving a brief description of a situation I was involved in in the early 1990s at the Frankston Hospital when I was still a member of the Victoria Police. A sports bag containing some identifiable substances was left in a clearly visible position in the middle of the loading dock at the rear of the hospital. Undoubtedly for a facility such as a hospital, it would have aroused considerable suspicion. As the general duties divisional van, we were the first to respond to the call. In the Victoria Police at that stage a number of criteria needed to be satisfied to take the next step. The first criterion was identification of the parcel, then consideration of any threatening notes or accompanying communications from the would-be hoaxer or bomber to discover whether it was legitimate.

In this situation there was such notification from an individual who had prior offences for explosives. We took the matter quite seriously. Four wards of the hospital were evacuated, which took a number of hours. It was an extraordinarily cooperative effort by the emergency services — the police, the fire brigade, ambulances, the State Emergency Service, the special

operations group and the bomb squad. It was one of the most significant incidents I can recall in my police career.

I have provided that description because I understand the costs associated with such a hoax. I understand the frustration of emergency service personnel and their departmental managers at the level of resources that have to be used and appropriated to deal with those types of situations. Notwithstanding that, it is their responsibility to do so. However, when such hoaxes are deliberate, malicious and conducted in a way that creates real risk to the community, any attempt to recover costs and resources needs to be welcomed and supported. I could go into further detail about how significant the incident was, but in the time available I will conclude by suggesting that although the principle and the symbolism of the legislation are welcomed, it does not give what I consider to be thorough consideration to existing legislative implications and the practicalities that such cost recovery will lead to.

The opposition does not oppose the bill but firmly places on the record that the government's intention in introducing such legislation may in fact be misleading.

Sitting suspended 1.00 p.m. until 2.02 p.m.

Hon. R. H. BOWDEN (South Eastern) — I rise to make my contribution on the Sentencing (Emergency Service Costs) Bill. I believe this is a natural extension of a platform of legislation that is regrettably necessary. On this occasion in its legislative intent it is very necessary indeed.

Following the awful events in the United States of America on 11 September and incidents elsewhere it is fair to say that the world will not be the same. Throughout history we have had unfortunate incidents involving terrorism and other criminal acts which have been quite antisocial in their net result. Over the centuries they have caused a great deal of concern to many nations. However, the dreadful events of 11 September used a change of technology and a change of approach for the first time. The response already put in place on many levels needs to be reinforced by adequate, considered and measured legislative programs and pieces of legislation such as this one. There is no doubt that the results of the terrorism we are all familiar with and indeed terrorism before 11 September make it necessary for legislatures such as this Parliament to ensure that our community is protected, that we have the appropriate mechanisms and that we have the ability to, as best as we can, deliver a correct level of measured assurance to our community.

In the past few months we have seen different types of hoaxes, different types of attacks and different types of intimidation. Intimidation can be simply fear — fear unreasonably instilled in members of a community, regretfully our community. While we were not subject to the same dreadful circumstances as those in New York and Washington and aboard aircraft in the United States in September, we have also had anthrax scares associated with that surge in concern and those problems. Anthrax itself can take several forms. One of the interesting aspects of anthrax is in most countries, including our own, it exists in rural areas in the soil and is associated with animals. The production of carpets has presented the possibility of anthrax difficulties for decades because the early importation of goat hair was a medical problem. Goat hair from several countries in the near and Middle East had to be processed with cobalt and irradiated to neutralise the possibility of anthrax entering our community.

The possibility of anthrax contamination is not new, but what is new, regrettable and unacceptable is the use of the anthrax powder and its inhalation capabilities which can cause dreadful results for those who are exposed to it. When we have the types of hoaxes we have seen post 11 September, where productivity has been disrupted and buildings have had to be emptied and where there has been a huge cost of the necessary and correct response by our emergency services, and when we consider the fear and natural concerns of people and the need to assist those who believe they may have been exposed, we have no choice but to introduce, debate and support the enacting of legislation such as the bill before the house.

I do not want to concentrate overly on anthrax because hoax calls are not confined simply to the possibility of chemical contamination. We would all be familiar with the difficulties faced by producers and the costs of recalling contaminated food because of hoaxes and scares. We are all familiar with hoaxes associated with aircraft and fire and all the other things that have gone on long before this year.

My personal view is that the emergency services in Victoria have served the state and community very well for many years. The members of those services are professional, and whether they are full time or volunteers, the quality, support and professionalism that our emergency service workers provide to the people of Victoria should be recognised and appreciated. There is an estimation that Victorian taxpayers incur a cost of approximately $60 000 every time someone decides to perpetrate a hoax. That could be the cost of turning out the fire brigade and the police, the facilities they require and whether ambulance services are involved. The total

cost is estimated at $60 000, but on many occasions that may be a conservative figure. Therefore, apart from the emotional cost and the concern to the individuals themselves, we also have a financial cost to the taxpayer, which is totally unacceptable.

We in this Parliament, among several responsibilities, have a basic responsibility: as best as we can we must legislate to ensure a safe and secure community. I really do believe that. This bill is certainly compatible with the ongoing and fundamental responsibility we have as legislators in Parliament.

It has been indicated that we should communicate to those people who do not respect their fellow citizens and are prepared to intimidate and unreasonably interfere with other peoples' lives that there is a financial disincentive. The bill applies a financial disincentive to those people who are uncaring and unthinking in their relationship with the community of which they are also a part. With the enactment of this bill, where hoaxes and terrorist acts are proven through our justice system, it will be possible for an order for the recovery of the costs associated with the emergency services to be awarded against a defendant. We believe that will prove to be a further disincentive that, rightly so, the community can bring against people who are just not responsible.

The orders can be in the form of judgment debts. That means that under the court process where a case is proven and there is a judgment against a defendant, the defendant may be required to repay the costs to the community of these unnecessary imposts by the sale of assets or by the garnisheeing of wages and salaries.

There are already aspects of the law which provide for severe penalties for hoaxes, intimidation, terrorism and other associated irresponsible acts. In this legislation we are mostly considering deliberate false alarms and hoax calls. It is an offence to contaminate products, goods or foods. It also is an offence for people to incite others to do that. It is an offence to falsely report the contamination of a wide variety of goods, foods and other supplies. It is an offence to trick or persuade people to falsely report those things or to cause other people to make hoax calls and cause economic loss through those actions.

One of the most difficult circumstances is a bomb hoax. Regrettably in the past we have had them in this building. Other people have experienced them in transportation and other circumstances, particularly in other buildings. If we can further reinforce the legislative tools, the tools of the courts, by doing our best to provide the disincentive I mentioned earlier, we are helping to overcome this problem.

The bill amends all the offences outlined so that a person convicted of committing any one of them can be ordered by the court to repay the emergency services' reasonable expenses relating to the servicing of that hoax or emergency.

I want to make three quick points. One is that there is an understanding that an emergency service provided by local government can also be covered. It is my understanding that that is so and that, in turn, those reasonable expenses for the services supplied by councils can be recovered.

It is certainly the intention of the legislation that the costs associated with our normal professional emergency services, such as the fire brigade, the police, ambulances, et cetera, are well and truly delineated in the act. But my view is that the government should further consider volunteers for possible future amendments to the legislation. We have had a fine service history with the tens of thousands of volunteers who are at times put at risk, and substantial physical risk, by the hoaxes and unnecessary difficult circumstances. The government could also give consideration to the costs of the volunteers, who have to give up their jobs to respond in emergencies, being recompensed.

There is one aspect that should also be reconsidered — that is, that the costs that are recovered are fed back to consolidated revenue. While the bill makes it is quite clear that the recovered costs are transmitted back to the government and the community through consolidated revenue, it would not be unreasonable for the government to consider, perhaps for future amendment, those costs being reassigned back to the service that provided them. There is a basis for that consideration to be given. But that is not in the bill; I just suggest that as a future point to consider.

It is clear that the community is taking the necessary approach to signal harsh reaction to unnecessary hoaxes. The commonwealth government has done this on several occasions in the past. The commonwealth postal and telecommunications acts contain broad and unambiguous provisions through which offences such as the types of offences we are considering today can be well and truly dealt with. They contain very specific provisions to provide for the intention that we are reinforcing through this legislation in the Parliament of Victoria.

In conclusion, I say that I am pleased to see that the criminal offences we are concerned about are covered and that through this bill Parliament is sending a message to those people in our community who believe they should not behave reasonably. That message is that they are totally antisocial and that it is totally unacceptable and completely beyond what is considered reasonable behaviour to make hoax calls and to falsely carry on with reports indicating there are problems when there are no problems at all.

I believe the recovery of such costs deserves to be given support. I suggest that in due course the proposal to return the money to consolidated revenue should be reconsidered so that it is applied back to the service. I think volunteers could again be considered in a future review, whenever that is to be made.

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 doing so I thank the Honourables Carlo Furletti, Roger Hallam, Jenny Mikakos, Neil Lucas, Jeanette Powell, Cameron Boardman and Ron Bowden. Before I finish I would like to address a couple of questions that were raised in the debate.

The Honourable Jeanette Powell raised the question of whether the Country Fire Authority would be covered in general terms for losses and costs. It certainly is under this bill.

The Honourable Cameron Boardman raised the issue of the Crimes Act. For the record I want to assure honourable members that that has occurred and that this bill links to the Crimes Act.

In relation to the question of the moneys being passed on to the emergency services agencies that take action, during debate on the bill in the Parliament on 21 November the Premier gave a commitment that the moneys would be repaid to the emergency services agencies involved. That clarifies the questions that were raised during the debate.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

WATER (IRRIGATION FARM DAMS) BILL

Council's amendments

Returned from Assembly with message disagreeing with Council amendments.

Ordered to be considered next day.

HOUSE CONTRACTS GUARANTEE (HIH FURTHER AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

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

FAIR TRADING (UNCONSCIONABLE CONDUCT) BILL

Second reading

Hon. M. R. THOMSON (Minister for Consumer Affairs) — I move:

That this bill be now read a second time.

The bill before the house fulfils the government's small business election commitment to introduce unfair and unconscionable trading clauses to the Fair Trading Act 1999 to provide a safety net against predatory trading practices.

The bill effectively replicates section 51AC of the Trade Practices Act 1974, which prohibits unconscionable conduct in business transactions of $3 million or less, and inserts it in the Fair Trading Act 1999.

Without section 51AC of the bill, the equitable doctrine of unconscionable conduct developed by the courts is the only prohibition on unconscionable conduct in business transactions.

Under the equitable doctrine, a small trader must establish that he or she suffers from a lack of English or a special disability, such as drunkenness or other incapacitating condition, and that the stronger party unconscionably took advantage of that disability.

Under section 51AC and the provision inserted by the bill, a wide range of matters, including 12 listed matters, can be considered. The case law on section 51AC indicates that it is not limited by the concepts developed under the equitable doctrine, such as special disability.

The draw-down of section 51AC will mean that at least three additional important matters will now be able to be considered in establishing whether unconscionable conduct occurred. These are the requirements of any applicable industry code, the extent to which the small trader could have obtained a better deal elsewhere, and the extent to which the stronger party was prepared to negotiate the terms of any contract.

A number of cases have been brought under section 51AC since it was introduced in 1998 and there have been several significant victories for small traders. In particular, in the Simply-No-Knead case *(ACCC v. Simply No-Knead (Franchising) Pty Ltd (2000) 178 ALR 304)* the Federal Court extended the meaning of unconscionable conduct to include such actions as a franchisor authorising an incursion into a franchisee's territory, omitting the names of dissenting franchisees from advertising material and refusing requests to negotiate disputes over the terms of the franchise agreement.

The bill will apply to all persons and effectively bring into the net any unconscionable conduct by an unincorporated trader against another unincorporated trader. Previously this situation was not covered by section 51AC because of the commonwealth's constitutional limitations.

More importantly, a dispute under the bill will be a fair trading dispute under the Fair Trading Act 1999. This means that small traders, including retail tenants, can take these disputes to the Victorian Civil and Administrative Tribunal. The tribunal is an alternative to a court and has less formal procedures, cheaper application fees and a strong emphasis on mediation.

The combination of section 51AC and the bill should increase the competitiveness of small businesses by providing the full range of remedies under the Trade Practices Act 1974 and the Fair Trading Act 1999. These remedies are available to them to combat unconscionable conduct that destroys their business or damages their competitiveness. Small businesses will also have access to the full range of courts and tribunals.

The fulfilment of the government's election commitment, through this bill, has been delayed pending the commencement on 28 June 2001 of the Trade Practices Amendment Act (No. 1) 2001. This act clarified that state versions of section 51AC can operate concurrently with section 51AC. The government is therefore taking the earliest opportunity to fulfil its commitment to small business.

I commend the bill to the house.

Debate adjourned for Hon. C. A. FURLETTI (Templestowe) on motion of Hon. K. M. Smith.

Debate adjourned until next day.

SECOND-HAND DEALERS AND PAWNBROKERS (AMENDMENT) BILL

Second reading

Hon. M. R. THOMSON (Minister for Consumer Affairs) — I move:

That this bill be now read a second time.

The bill implements the recommendations flowing from a review of the Second-Hand Dealers and Pawnbrokers Act 1989 (the act), which was undertaken as part of the government's commitment to consumer protection. The review examined adequacy and effectiveness of the various information and other mechanisms in the act intended to protect the rights of people who pawn goods, noting that often these people are disadvantaged and amenable to exploitation. Extensive consultation with representatives of consumer and pawnbroker organisations was undertaken as part of the review.

It concluded that non-compliance by some elements of the pawnbroking industry has given rise to a need for better identification of who, in the marketplace, is conducting the business of a pawnbroker, and for improved enforcement mechanisms to enhance compliance with the act. Accordingly, it recommended that a registration scheme be introduced to distinguish pawnbrokers from second-hand dealers, and strengthening of the enforcement mechanisms in the act.

The bill provides for the separate registration of pawnbrokers, which will be effected by providing those second-hand dealers who wish to also trade as pawnbrokers with an authority, endorsed on their second-hand dealers certificate, to conduct the business of a pawnbroker.

The bill also introduces powers of inspection for Consumer and Business Affairs Victoria. These powers

will enable inspectors to monitor compliance by pawnbrokers with the signage, notification and record-keeping requirements imposed by the act. These requirements help in tracing stolen goods, and ensure that consumers of pawnbrokers services are informed of their rights and responsibilities.

The bill contains a number of measures to improve enforcement. It increases certain penalties that apply to signage and other notice requirements under the act in order to improve compliance, and introduces the power to issue infringement notices for some offences. The bill empowers the Business Licensing Authority to impose conditions on second-hand dealer registration and pawnbroker endorsement. It also enables the Victorian Civil and Administrative Tribunal to discipline second-hand dealers and pawnbrokers in relation to their conduct and the conduct of their business.

The bill reinstates the entitlement of a person who has pawned goods to claim any residual equity in their goods, if they do not redeem the goods and the pawnbroker subsequently sells them. The residual equity is the amount remaining after the reasonable costs of selling the pawned goods and the amount owing under the loan contract have been deducted from the proceeds of sale.

The customer will have the right to claim the residual equity payable within 12 months of the goods being sold. The bill makes it an offence for a pawnbroker not to pay the residual equity to the customer upon request, and empowers the court to order the pawnbroker to pay the residual equity to the person entitled to it.

The bill also prohibits the pawning of motor vehicles to stop the practice identified in the review, of pawnbrokers advancing disproportionately small amounts of money on the pledge of a motor car of potentially much higher value as security. The review also concluded that it is inappropriate to allow for the pawning of motor cars because they are in many cases one of a person's most valuable assets.

Finally, an additional purpose is added by the bill to clarify that the act is intended to protect the rights of customers of pawnbrokers and second-hand dealers as consumers.

This bill is an important initiative that protects the rights of consumers without imposing an unreasonable burden on the pawnbroking industry.

I commend the bill to the house.

Debate adjourned for Hon. C. A. FURLETTI (Templestowe) on motion of Hon. K. M. Smith.

Debate adjourned until next day.

LIVESTOCK DISEASE CONTROL (AMENDMENT) BILL

Second reading

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

That this bill be now read a second time.

The objectives of the Livestock Disease Control Act 1994 are to control and minimise livestock disease, and to monitor and eradicate exotic livestock disease. A key objective is also to protect the public from diseases which can be transmitted from livestock to humans. Recent incidents of mad cow disease and foot-and-mouth disease in the UK and Europe show how an outbreak of livestock disease can quickly escalate into a widespread and damaging event, with effects on consumer confidence and industry profitability. Measures to rapidly identify and contain a disease outbreak are essential to deal with these challenges effectively. The proposed amendments enable new strategies and technologies to be applied in a preventive, flexible and cooperative approach with industry. The bill establishes a framework to enable the permanent identification of cattle, and for related matters concerning monitoring and control of livestock diseases. It can be applied to other livestock where appropriate by regulation and following industry consultation. In addition, the bill enhances controls on the grazing of cattle on sewerage farms and allows penalty infringement notices to be issued for some offences.

As part of its commitment to effective partnership with industry, on 8 August 2001 the government announced that Victoria would be the first state to fully implement a mandatory version of the National Livestock Identification System, which I will refer to as NLIS. This initiative will require permanent electronic breeder or post-breeder devices to be attached to cattle for identification, and will ultimately enable recording of livestock movement on a central database. NLIS was originally developed by and for the beef and dairy industries for use on a voluntary basis. There has been close and ongoing consultation with industry, and as a consequence the legislative framework includes the option of including compulsory measures. The framework allows flexibility, limited application where appropriate, and a collaborative and phased approach to

implementation. The features of the new technology and the permanency of the tagging methods will enable the old transaction tagging requirements to be wound back, lessening the burden on producers.

Given the magnitude of the threat which a disease outbreak presents, there is broad consensus that timely implementation of the NLIS using this framework is justified. This applies particularly in relation to public health, and the production of disease-free livestock and livestock produce and the need to protect the reputation of our livestock industries. The ability to demonstrate contamination-free and disease-free livestock and livestock products will protect and expand our access to valuable markets and provide Victoria with a competitive advantage in the market place. Red meat accounts for 20 per cent of Victoria's food exports and is the state's second-largest food export. The implementation of the NLIS in this legislation also supports the government's objective of sustained food and agriculture export growth.

An effective strategy for disease prevention and control has at its core efficient, accurate permanent identification and accessible records of stock identification and movement. The technologies and systems which form the basis of NLIS apply significant advances in many aspects of livestock identification and tracking. They enhance and support quality assurance, genetic improvement and residue and disease control programs. Direct benefits to producers include improved arrangements for preventing stock theft and identifying stolen cattle, and improving on-farm productivity by facilitating better herd monitoring and management. It also allows better control of endemic diseases such as Johne's disease, and will support Victoria's status of its cattle being free of mad cow disease and tuberculosis. The scheme will improve the efficiency of information exchange between producers, saleyards, feedlots, processors and government agencies, including carcase feedback data, and market eligibility and residue and disease status information.

It is expected to take approximately five years to fully implement the NLIS in Victoria for cattle. This reflects the life cycle of the livestock, the need to provide a phased approach to implementation and to provide transparency and comprehensive application to industry. Most of the legislative framework is expected to commence on 1 January 2002. Under the first implementation stage, cattle born after the commencement date in Victoria will need to be permanently identified with an NLIS compliant device before they leave their property of birth. This will enable their movements to be recorded on the central NLIS database at a later stage. NLIS can later be extended to other species and categories by means of regulation. A committee of key industry stakeholders has advised and will continue to advise the government on key issues, which include milestones and implementation timing. There will continue to be close consultation on this phased approach to implementation.

Financial assistance has been provided to industry to make the necessary structural changes. The NLIS business plan, which was finalised by Meat and Livestock Australia in June 2001, provides funding to saleyards and abattoirs throughout Australia. This will make a significant contribution to the costs of installing NLIS infrastructure. To facilitate the introduction of the NLIS, this government has provided grants to saleyards, domestic and export abattoirs and feedlots for the installation of tag-reading equipment. The government is also assisting the Australian Dairy Herd Improvement Scheme and herd improvement centres to promote the NLIS to dairy farmers involved in herd recording.

Saleyards and domestic and export abattoirs throughout Victoria have installed or are currently installing NLIS-reading equipment and links to the NLIS database. By early 2002, 80 per cent of abattoirs in Victoria will have the capacity to scan for NLIS devices on cattle being processed for slaughter.

Under proposed section 6(3A), exemptions may be made by means of a Governor in Council order to the operation of the act or regulations. These exemptions may apply to any livestock or class or species of livestock, or any person or class of person and will allow appropriate limits to the operation of the scheme. Under new section 6(3B), an exemption can be made unconditionally, or on specified conditions, or in specified circumstances. Exemptions will be immediately made on commencement and then progressively removed, until full implementation of NLIS in relation to cattle is achieved with a smooth transition. Some circumstances may justify exemptions which are ongoing. The power to make these exemptions is similar to that operating in section 5(2) of the Meat Industry Act 1993. When considering the merits of an individual exemption, the objectives of the act and the need to ensure the integrity of the identification and tracking system will be taken into account. Relevant matters might also include situations such as changed market conditions, or drought.

The exemption-making power, combined with the powers to prescribe and regulate, will enable a smooth implementation of the scheme in phases and in

accordance with a timetable initiated by industry. Where appropriate it can limit the compulsory aspects of NLIS. This flexibility reflects the cooperative nature of the scheme and enables ready responses to be made to industry concerns and changing conditions.

The more traditional methods by which livestock have already been tagged (for example tail-tags), will still operate in some circumstances. There will be a unit cost of around $2.50 for each cattle to be identified. Accredited suppliers only will be allowed to supply identification devices to producers. These devices are designed to remain attached to cattle for their lifetime. The devices will not be permitted to be removed other than by authorised persons such as abattoir and knackery staff, and cannot be recycled, reused or sold without government permission.

Amendments to section 94B represent the final element of the implementation of the NLIS framework applied to cattle. This involves the requirement for abattoirs and knackeries to record and notify the identification details of cattle slaughtered, and has a commencement date in the legislation of 1 January 2005, if not proclaimed earlier.

When appropriate, regulations will be progressed in consultation with industry to require information to be recorded by them onto the database or to other persons for recording on the database. For example, at a later implementation stage purchasers of cattle from a saleyard may be required to notify the selling agent of the property identification number of the property to which the cattle are destined before they leave the saleyard. Producers receiving cattle for further grazing may be required to notify the database of the property identification number of the property on which the cattle are grazing. Knackeries may be required to notify the database of the processing of each animal.

Section 10 has been amended to more clearly empower prosecution of the owner or consignor when diseased livestock is introduced without a licence, and for conditions to be imposed on the licence issued under this subsection, such as permanent identification. This also allows for a freeing up of trade where the risks associated with disease livestock can be managed under specified conditions.

In the interests of public health it has been necessary to tighten the controls in sections 43 and 44 the act. Approvals must be sought from the secretary to allow grazing of cattle or pigs exposed to sewage, and the proposed amendment will enable this approval to be subject to conditions. An application for approval will need to address specified matters. Further, the provisions allowing immediate removal of cattle exposed to sewage by a sewerage authority for slaughter were originally intended to be applied only in emergency circumstances. Conditions will be able to be imposed on the approvals.

Compliance is also facilitated by the ability to issue penalty infringement notices for new provisions. This means fines can be issued without the costs, delays and uncertainty associated with prosecutions.

I commend the bill to the house.

Debate adjourned for Hon. PHILIP DAVIS (Gippsland) on motion of Hon. K. M. Smith.

Debate adjourned until next day.

HOUSE CONTRACTS GUARANTEE (HIH FURTHER AMENDMENT) BILL

Second reading

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

That this bill be now read a second time.

The House Contracts Guarantee (HIH Further Amendment) Bill addresses a number of issues that have arisen in respect of the operation of the state's HIH builders' warranty insurance package since its implementation in June this year.

As honourable members will recall, after insurance companies in the HIH group were placed in provisional liquidation in May, the government acted promptly to assess the impact of the collapse on the state and on the people of Victoria. The relevant departments encountered extreme difficulty in obtaining access to much information held by HIH because of both the inevitable disruption the provisional liquidation caused to HIH's operations and the pre-existing chaotic state of HIH's files, particularly in relation to builders' warranty insurance.

The House Contracts Guarantee (HIH) Act 2001 was necessarily prepared and passed quickly to prevent hardship to home owners and builders affected by the collapse. I record again the government's gratitude for the assistance provided by all parties at the time. The speedy passage of the bill has meant that over 800 claims have been able to be lodged. Around $2 million has been paid to affected home owners.

The act was developed in a very short period, given the complex issues arising from the collapse of an

insurance group and the nature of the builders' warranty product. It was developed on the basis of the best information that could be obtained at the time, and the most thorough due diligence that could be conducted given the state of HIH's files.

Despite continuing difficulties in obtaining information from HIH files, the act is generally operating very well. I want to make it clear that these difficulties do not arise through lack of effort on the part of Victorian agencies or building associations, nor through lack of cooperation by the liquidator. They are the result of the poor state of HIH's files, and the logistical difficulties of dealing with companies in liquidation.

However, some problems have emerged that could not have been anticipated when the act was prepared. These problems arise mainly from the nature of some HIH insurance policies and the way in which the builders' warranty insurance scheme operated before the current ministerial order was implemented on 1 December 1998.

The problems that are addressed by this bill relate to:

excluding claims by property developers;

excluding claims unrelated to builders' warranty insurance;

enabling claims by home owners whose policies lapsed when HIH ceased to trade;

precluding HGFL from being obliged to accept claims simply because they were lodged with HIH more than 90 days previously; and

enabling direct claims on HGFL, as agent for the state, by home owners under HIH policies where the builder was the insured.

Claims by developers

The first of these problems relates to the ability of developers to claim under the state's builders' warranty HIH indemnity scheme. The indemnity scheme was developed and implemented with the intention of assisting home owners, not commercial promoters of residential developments. In the second-reading speech on the act, I stated that:

> The government accepts that, while the state does not have a legal obligation to assist home owners who are no longer adequately covered by builders' warranty policies issued by HIH, it nonetheless has a moral responsibility to do so.

A close reading of the parliamentary debates on the act confirms that all parties shared the view that the scheme was intended to benefit families and individuals.

The government did not believe then, and does not believe now, that the state's moral duty extended to assisting property developers. This view is consistent with that of the other states and the commonwealth in implementing their various HIH rescue packages. For example, the commonwealth has imposed an income test on claims by individuals under its scheme, and has completely excluded claims by corporations with more than 50 employees.

However, because developers were covered by builders' warranty insurance under some HIH policies, the act unintentionally created a legal obligation for the state to indemnify developers with builders' warranty claims against HIH. Some developers' legal advisers have already stated their desire to lodge claims against the state through HGFL.

This bill excludes developers from being entitled to an indemnity from the state. The bill explicitly provides that this exclusion is retrospective to the establishment of the state indemnity scheme on 8 June 2001. The bill also explicitly provides that this exclusion is intended to apply to matters that are currently the subject of legal proceedings.

Honourable members should note, however, that this exclusion from the state indemnity scheme in no way affects the rights of developers under their insurance policies. Developers are fully entitled to pursue their claims with the liquidator. This places them in the same position as other businesses who held policies with HIH. Nor does the exclusion affect in any way the rights of home owners who have purchased homes that were originally owned by developers to claim under the state scheme.

The whole of this bill has retrospective application, as it is deemed to have commenced in its entirety on 8 June 2001, the commencement date of the major provisions of the House Contracts Guarantee (HIH) Act 2001 that implemented the state scheme. This bill will therefore provide retrospective benefit to some home owners, while restoring developers to the position that they were in between HIH entering provisional liquidation in March this year and the commencement of the state scheme.

The government shares the view that has been expressed by the Scrutiny of Acts and Regulations Committee over many years that retrospective legislation is not a step that should be taken lightly. The

government considered carefully the arguments for and against retrospective legislation, including seeking legal advice.

The Victorian Government Solicitor has provided advice that:

> There is a well-known assumption that legislation is not retrospective in the absence of some clear statement to the contrary … I consider there is clear power for the Parliament to pass retrospective legislation in the terms proposed and moreover that such legislation and the retrospectivity would be considered reasonable in the circumstances.

Provision of insurance other than builders' warranty insurance

The bill provides that the government's indemnity is restricted to claims that relate to builders' warranty insurance. The act provides that the state's indemnity is the same as that provided by HIH under a HIH policy. However, it has become apparent that HIH issued some bundled policies in which other types of insurance, such as public liability, were provided as well as builders' warranty cover.

While no claims have yet been received by HGFL in relation to insurance other than builders' warranty, the bill will ensure that the state is not obliged to meet claims that do not relate to the state's statutory builders' warranty scheme. Claims in relation to other HIH insurance matters are generally the responsibility of the commonwealth under their scheme.

Claims accepted after 90 days

The ministerial orders provide that if a claim is received by an insurer and that claim has not been determined within 90 days of its receipt, the claim is deemed to be accepted. Generally, this is an admirable provision that is designed to prevent insurance companies from delaying their handling of claims. However, this provision creates particular problems for the state indemnity scheme that is intended to provide social relief in aberrant circumstances.

As the scheme is voluntary, it remains possible for home owners to lodge builders' warranty claims directly with HIH. Understandably, such claims do not rank high on the liquidator's current priorities, as he will most probably not be making any payments to creditors for at least two years. It is quite likely, therefore, that a claim made direct to HIH will not be determined within 90 days of its receipt.

Should the home owner subsequently lodge a claim with HGFL, the act requires the state to provide the same indemnity that HIH does under the policy. However, if 90 days have elapsed since a claim was received by HIH, HIH may be deemed to have accepted the claim and therefore to have provided an indemnity to the home owner. Consequently the state may also have automatically provided an indemnity, before the merits of the claim have been established and, in all likelihood, before HGFL has even received the claim.

To avoid unnecessary cost to the taxpayers and the risk of litigation on purely technical points, the bill provides that an indemnity from the state is not created solely through 90 days having elapsed since a claim was received by HIH.

'Cease to trade' provisions

Previous ministerial orders enabled insurers — including HIH — to include in their policies a frankly extraordinary provision that the policy's cover ended if the insurer ceased to trade. HIH ceased to trade when it entered full liquidation on 28 August this year. Consequently, any such policies are now effectively worthless.

While I am advised that claims already made under such policies before that date must be honoured by HIH, claims made after 28 August will not be. Under the act as it currently stands, there would be no indemnity from HIH to any home owner lodging a claim under such a policy after that date. Consequently, there would not be a state indemnity either.

The government's intention was never to exclude these home owners because of the fine print in their insurance policy. The bill therefore provides that the state's indemnity is available to home owners whose claims are made under a builders' warranty policy with such a provision, despite the home owner — and consequently the state — having no entitlement to claim against HIH.

Builder, not owner, the insured

Some HIH policies provided that the builder, not the home owner, was the insured. Under such a policy, a home owner seeking to have a home completed or a defect corrected, had to seek restitution from the builder, and then claim against HIH if the builder failed to meet his obligations.

Since the act explicitly provides that a builder is not entitled to an indemnity under the state scheme, a home owner covered by such a policy can only lodge a claim against HGFL after pursuing legal action against their builder that has succeeded in establishing the home owner's right to restitution from HIH. With HIH in liquidation, such legal action is likely to be extremely

protracted, with the home owner therefore not obtaining satisfaction for their claim for some years.

The bill therefore provides that where the HIH policy indemnifies the builder, not the home owner, a state indemnity exists to the home owner. Home owners covered by such policies will therefore be able to have their claims handled expeditiously by HGFL.

Mr President, I advise the house that, if enacted in their entirety, the provisions of this bill will not change the cost estimates of $35 million for the state indemnity scheme. The original actuarial projections assumed that all genuine claims by individual and family home owners would be met by the state. These projections therefore did not allow for claims by developers; but nor did they assume that some claims by home owners would be denied through the technicalities of 'cease to trade' and 'builder, not owner, the insured' clauses in HIH policies. This bill will restore the actual operation of the scheme to its original intentions.

In closing, I would again like to thank those organisations and individuals who have assisted in the rapid development of this bill, and in particular the Housing Guarantee Fund Limited, which as I have said has to date paid out around $2 million in claims. I cannot overemphasise the administrative complexities faced by HGFL because of the inadequate state of HIH's documentation. HGFL is doing its very best to assess claims fairly and quickly.

Honourable members should be sensitive to the fact that in many cases problems in claims management for distressed home owners result from the appalling state of HIH paperwork on which HGFL has to rely, and in some cases the total absence of records of policies against which home owners are seeking to claim.

I also again extend the government's appreciation to the cooperation of all parties who have agreed to fast track this bill so that home owners will obtain the relief intended when the original legislation was enacted.

I commend the bill to the house.

Hon. D. McL. DAVIS (East Yarra) — I wish to make some comments on behalf of the opposition. In doing so I acknowledge that the house is aware of the difficulties created by the HIH collapse and the havoc it has created throughout the business and building community, in particular, and the hardship it has created for home owners across the country and not just in Victoria.

The house has dealt with a number of matters relating to this issue recently. There is bipartisan agreement in this place and agreement in the broader community that a number of careful changes need to be made to our arrangements to ensure these things do not occur again and that home owners, in particular, are not left exposed. The building industry and other industries affected so dramatically by the HIH collapse deserve judicious government assistance in getting them back to a reasonable position. I do not necessarily mean financial assistance, but I mean a cooperative government that is prepared to work with industries and to make sure its arrangements are not an impediment.

It is important to note that the opposition did not oppose and supported the principles of the House Contracts Guarantee (HIH) Act, which passed through this chamber some months back, in that it recognised much had to be done to ensure Victorian home owners in particular were not disadvantaged and that the building industry was given reasonable assistance. In that act the government ensured that people with outstanding claims were not penalised.

The government seeks to amend the House Contracts Guarantee Act in a number of ways. It excludes property developers from claiming on the HIH Housing Guarantee Fund. It does that because it was not the original intention of the government. The bill also excludes claims for matters not required to be included in the builders warranty insurance policy. It enables claims by people with HIH policies that provided that their cover ceased if HIH ceased to carry on business — the so-called failure-to-trade provisions, an extraordinary set of provisions. It prevents the Housing Guarantee Fund from being liable to pay something because HIH did not deal with the claim within the period required under the HIH policy if the claim was lodged with HIH on or after 16 December 2000 and enables building owners to claim on the HIH fund in cases where the builder, rather than the building owner, was the party insured under the HIH policy.

The government has made a number of errors with the previous legislation. This issue was debated at some length in the other place. The government introduced a bill that had provisions that were not as sharp or clear as they ought to have been. That has left some doubts and concerns and perhaps some rights that the government did not intend to confer in the first instance. The opposition is prepared to assist in this case to the extent that it acknowledges it is important that property owners who have had difficulties in being able to claim and property owners who have been disadvantaged by the complex provisions in the policies HIH had written ought not be left in a position where they are dramatically disadvantaged.

As the HIH issue has progressed the confusion surrounding the insurer, the business practices with which it is associated and the information it kept has become deeper and murkier. The opposition was provided with a good deal of information during the briefing provided by the government, for which I thank it, about the state of the HIH files. The community understands that the government and other insurers have tried to make assessments about the risks associated with particular clients. Those who have attempted to estimate the risks and the exposure of the government have faced great difficulties in doing so. The opposition is not unsympathetic to that because it is a difficult situation.

It is important to note that at the end of the day the government has a responsibility to get things right. It has a responsibility to ensure that when it brings a bill into the house it has adequately calculated the exposure that the finances of Victoria have to the issues involved. In the future it ought to do these things in a more systematic way, notwithstanding the difficulties it faces.

Having said that, the opposition has some concerns about the bill. I foreshadow a suggested amendment that the opposition will move during the committee stage. The legislation has an element of retrospectivity about it that concerns the opposition. I place on the record the opposition's concern about the government's procedure and its decision to attempt to expunge retrospectively the potential rights that a number of individuals may or may not have.

It may well be the case that there are claims or cases, but I cannot give a definitive answer. I will be interested to hear the minister's response when I ask her questions during the committee stage. However, clause 5 inserts proposed section 36A, which specifically provides, according to comment made by the Scrutiny of Acts and Regulations Committee, that it is the intention of the legislation to affect the rights of parties to proceedings that are currently before any court or tribunal.

I know members of the Scrutiny of Acts and Regulations Committee and honourable members from both sides of the house have legitimate concerns about the expungement of rights in proceedings before a court or tribunal. It is important that the house expresses a view on those matters. It is also important that the house places on the public record its level of concern for the steps that have been taken or contemplated in the bill. In that context, as I said earlier, the opposition's suggested amendment seeks to preserve the opportunity for individuals who may have a case before the courts to exercise the rights they currently enjoy.

In her media release of 14 May, when the principal act was introduced, the Minister for Finance in the other place said that the measures would:

> … keep the building and real estate sectors moving by removing doubts over the status of builders' warranty insurance policies.

A great deal of uncertainty, doubt and confusion has remained.

The bill, which seeks to retrospectively remove cover from building owners who have had three or more homes built on one site or under one contract, would in many ways add to the confusion. The bill seeks to narrow the range of items for which a building owner with a HIH building work policy could obtain reimbursement from the fund.

I know it is difficult to make a decision in many cases given that there is a great need for speed in these matters. People need to have access to this fund in the proper and intended way, but it is important that the house deal properly and completely with aspects that relate to rights or proceedings that people may have.

The opposition does not oppose the spirit of the bill, but it makes the point that the bill would retrospectively remove the rights of people to continue proceedings they may well have begun. In that context it is correct to foreshadow a suggested amendment that would guarantee the right of those who had claims afoot before courts or tribunals to pursue their legal rights as they exist today.

Hon. R. M. HALLAM (Western) — I rise on a difficult brief today. Given the forms of the house and the intention of the other place to rise today for the summer recess, this house is required to process this bill in a very short time. Yet it involves a whole range of very important issues of principle about which I feel strongly. However, given the time frame I shall be as succinct as I can.

The National Party was very saddened but not surprised to receive this bill given the background against which it has been framed. The House Contracts Guarantee (HIH Further Amendment) Bill is rather predictable and its purpose is relatively simple. It is designed to remedy a number of practical problems that have emerged in the administration of the government's assumed warranty liability to protect home owners who had been exposed by the collapse of HIH. Thus, this bill is designed to restore the original intent of the House Contracts Guarantee (HIH) Act 2001, the original bill we debated only some months ago.

The National Party has resolved that this bill should be allowed to pass. The reasons for taking that decision are that we have assessed the bill to do nothing more than restore and clarify the original intent and undertaking of the government given at the time the original bill was passed to provide a warranty of last resort for those home owners in the state who were caught up in the HIH debacle.

We well remember that due to the very nature of the problems that Parliament was asked to address, time was of the essence. We did not have the luxury of being able to spend much time considering the previous bill. I acknowledge that the opposition parties on that occasion were well briefed; the minister made it convenient for us to catch up on what was the government's intent. The bill was then handled expeditiously.

We then had a building industry in crisis. It was required that Parliament handle it in a way that recognised the plight of those who had been affected by the HIH collapse, particularly when thousands of builders in the community were without the required cover and therefore unable to trade. In those circumstances time was more important than the crossing of the last t' and dotting of the last i'. We should have expected that some bits would fly off; this is Murphy's Law at its best. Therefore, we are not surprised to see Parliament again required to address the original issue. We also acknowledge that the complications addressed by this bill could not have been predicted to the extent that they arise from what I described as some weird clauses in some of the HIH house guarantee policy documents. Those weird clauses have really only emerged as the claims have come in; they could not have been anticipated.

I shall provide some examples of those clauses. The first is that some of those HIH policies were written to include a clause that provided that the cover was extinguished should the company cease trading. I have never heard of such a clause before. In my view that is absolutely unconscionable but it is also a fact of life, and we are now told that there may be several thousand policyholders affected by that most extraordinary fine print.

We were then told that other policies were written to specify that the cover related to the builder rather than the home owner. The bill says that even in those circumstances the government's warranty shall apply in each case because it was the original intent of the Parliament that it be the home owner who is covered in the circumstances. Again we highlight the fact that some weird circumstances are emerging in the administration of the government's warranty.

We are at a loss to understand why the policy would have been written in the first place to effectively cover the builder, but we take that point no further. We simply drew the conclusion that HIH must have lost the plot completely, because not only were the premium levels obviously less than competitors — the market distortion that has emerged since the collapse of HIH is a fair indication of that — but we also came to learn that the record keeping of HIH was a disgrace for an organisation that claimed to be a leader in its industry. We are not surprised that the application of the government's warranty of last resort had to be finetuned to meet the reality of the circumstances confronted in the administration of a warranty.

We also acknowledge that the bill will close a loophole that a few of our smart lawyer friends had found in respect of the deemed acceptance of warranty.

Hon. Jenny Mikakos — Here we go again.

Hon. R. M. HALLAM — I know you will enjoy this Ms Mikakos.

Hon. Jenny Mikakos — It is a regular theme of yours.

Hon. R. M. HALLAM — I am inclined to tell the truth, and the truth is that some of your smart colleagues found a way whereby claims could be lodged with HIH in the full knowledge that they would sit on the bottom of the pile and probably not be processed for two years, then after the expiration of 90 days they could slip the claim in to HGFL and rely upon the deemed acceptance which is in the contract — very smart indeed. The bill says, 'This is an ex gratia gesture by government, and we are not going to be held up by the deemed acceptance'.

If you want to run that gauntlet we have to be convinced as to the merits of the claim. I think that is a fair call. I am not the slightest bit embarrassed in saying that I am prepared to close that loophole. The bill says that the indemnity is not necessarily created just because of the expiration of 90 days, that the merits of each claim must be taken into account, and that is fair enough. All of that is fair enough, but it brings us to the one point that is controversial — that is, the question of whether developers should be excluded from the cover of the warranty and whether this bill should be backdated to the date of effect of the original bill. It is a major change because the bill specifically excludes developers from the government's assumed warranty,

and we are told that that is consistent with the original intent and that therefore the retrospectivity is justified.

I say at the outset that one of the things the National Party took into account was that in that context the definition of developer has been softened so that we do not disadvantage an average person in the community who is building two flats with the intention of retiring in one.

We have the contentious issue of whether developers were included or excluded the first time around, and the even more contentious issue of the retrospectivity of the bill — in other words, whether we should backdate the effect to 8 June when the original warranty undertaken by government took effect. I start from the premise that the National Party finds retrospectivity in any circumstance to be repugnant, and lately I have had the need to make that comment in this chamber on a couple of occasions. We think it is of critical importance that the community is able to rely upon the law as it stands from day to day, and that no-one should be disadvantaged by a retrospective change to the law. However, in this case we believe there is justification for retrospectivity.

I turn to the facts, to the original bill and the second-reading speech. We were told by government that the intent was clear. I must say that I am not persuaded about that; I find it a difficult pill to swallow because the original second-reading speech did not exclude developers. We are dealing with an oversight at least to that extent. It would have been better if the second-reading speech introducing the original bill had put it beyond doubt, but that did not happen.

The minister says the intent of the Parliament is clear, that if you read the second-reading speech and read the debate that led up to the passage of the original bill, the intent of all the parties was clear and the bill was only to include individual home owners as distinct from developers. I went back and looked at the debate, and I find that comment ironic. My assessment is that mine is the only speech where there was any indication to put that issue beyond doubt.

My argument as to why the claims by developers should not be countenanced can fall into the following headings. The first is that the National Party's intent was very clear. We did not envisage that the government's warranty of last resort should cover commercial developers. Maybe we should have made it clearer, but that was our intent and so therefore we start from the premise that this bill is but clarification of the original bill.

We also take into account that no other states, or indeed the commonwealth, have included developers in their salvage schemes. In fact, the commonwealth has an income test on its salvage scheme, and if you have more than 50 people on the payroll do not even bother walking to the door to put in a claim. We also took into account that commercial developers have a commercial relationship with the builder, and that should be compared to the relationship one would expect to see with a once-only home owner where the exposure is dramatically different.

We then took into account the fact that developers would still rank in the liquidation, so their position would be exactly the same today if the bill is back-dated — their position would be exactly the same today as it was prior to the government resolving to step in to provide the warranty in the first place. But beyond all that our position is that it is inappropriate to have private commercial operators becoming beneficiaries of the public purse. We see that as being wrong in every circumstance, and we have consistently run that argument. I run it every time the question of Ansett appears on the agenda. We do not believe the public purse should be used to prop up a private individual, and we differentiate between a commercial developer and someone who is caught up in the circumstances of HIH and had their lifetime dream of a home go up in smoke as a result of that collapse.

In the time I have I want to repeat the points I made last time round to explain why we in the National Party were prepared to break that golden rule and say that in these circumstances and within these restrictions we were prepared to bend the rule and make an exception to allow individual home owners caught up in the HIH collapse to benefit from the government's warranty and therefore a distribution from the public purse.

These are the factors I put on the record last time round; I will be careful how I paraphrase them. The first was the National Party took account of the fact that it was Parliament which said that without this warranty insurance cover builders could not build, councils could not issue building permits, owners were not protected against builders' defects and property owners were not able to sell or pass on good title. It was the Parliament which said we should step into this marketplace and protect the home owner because of their vulnerability and susceptibility and on those grounds and those grounds alone make an exception to the golden rule that there be no bailout from the public purse. That was the first thing.

The second point we made was HIH had secured a very substantial share of the market. We could not ignore the

fact that HIH had found its way into a 30 per cent share of the house warranty market and that thousands of Victorians would be caught up in the collapse. On that basis the National Party saw there being justification. The third point I made was that the National Party thought it pretty tough in these circumstances to blame the consumer, because in the real world the deal was normally done quite remote from the consumer. The deal was normally done between the builder and the insurer, in most cases through a broker. It would not be uncommon for the home owner to not even know where the insurance was written, taking into account particularly that this is a quite unique cover. I will not take the house through it, but it is a unique thing, and the consumer in this case might not have had the chance to influence the location of the coverage.

Beyond that, and this is the point that I am coming to, beyond all that what we in the National Party took into account more than anything else was the store which Australians place in home ownership. I went on to talk about how they feel strongly about that concept, how the purchase of the family home is the biggest single transaction we are likely to make in our lifetime and how that is why it means so much more than perhaps appears on the surface. We all care about our family home. It is the castle, and if something goes wrong that becomes a very big deal, because it represents a lifetime interest and a lifetime saving. To me that makes it very clear that what we were talking about was cover for the genuine home owner and not cover for the developer. It is on that basis that the National Party resolved its reaction to this bill.

The National Party thinks the original bill was designed to exclude developers. That was the National Party's intention, and that view has been confirmed by revisiting all that was said at the time. If it was our intention to exclude developers, then logic says we need to take this bill back to the date of application of the original intent.

I hate to say this; I am very embarrassed to be caught up in this crossfire. This is not a position that I enjoy, but I am not persuaded by the amendment foreshadowed by my colleague in the Liberal Party. The effect of the amendment to be offered to the chamber in the currency of the committee will be to say that we did not intend the warranty to cover developers, we acknowledge that but on the basis of retrospectivity we will only have the new rules apply from the date of the second-reading speech. I think that is the worst of both worlds. If we have agreed that developers were not included, then we have made fish of one and fowl of the other — we have let some through and denied the same right to others. I think the National Party's position is defendable on that basis.

There are a range of other things I would like to say on this bill because it is a very important bill. We have people caught up in this who have their family homes at risk, and we should tread very carefully. However, given the timing in the house and the program we must meet, I shall leave it at that and simply report that the National Party will not oppose the bill.

Hon. JENNY MIKAKOS (Jika Jika) — I rise to make a very brief contribution to the debate on the House Contracts Guarantee (HIH Further Amendment) Bill. As previous speakers have indicated, we have had a series of pieces of legislation relating to the collapse of HIH earlier this year in very unfortunate circumstances. Many home owners have been exposed to a situation where they do not have any builders' warranty insurance available to them or any ability to make claims against HIH, which has now gone into liquidation.

A lot has been said in the other house about this bill, and given the lack of time I will refrain from covering some of the more technical aspects of it. However, I want to make the point that the government clearly indicated when the original legislation came before this house that it was not intended to benefit developers. The $35 billion scheme was based on an actuarial projection that assumed that claims would only be made by individuals and family home owners. It is unfortunate that we have people who are seeking to avail themselves of a scheme that had a very limited scope and was intended for a narrow group.

I agree with the Honourable Roger Hallam that the proposed amendment — the suggestion, as the Honourable David Davis called it — is inappropriate in the circumstances. It is inappropriate that Victorian taxpayers be asked to provide a benefit to developers, a benefit that is not a right but is in fact a gift that would be made by Victorian taxpayers to assist Victorian home owners who have been put in a very difficult situation. As Mr Hallam said, they are people who have had a burning wish and desire to avail themselves of the great Australian dream of home ownership. We need to ensure that the scheme does not blow out, and we end up in a situation where Victorian taxpayers are footing the bill for a debacle which we should remember is related to the failure of the Australian Prudential Regulation Authority to properly supervise HIH.

Essentially the Liberal Party is asking us to fix Joe Hockey's mess. It is important to note that Mr Hockey was demoted in the federal cabinet for his involvement

in the HIH debacle. The bill is seeking to fix up some matters that were overlooked in the earlier legislation; the government is prepared to concede that. However, it is important to note that they relate to ministerial orders made by the honourable member for Pakenham in the other place in his capacity as planning minister in 1998. Those orders allowed HIH to include the most ridiculous and absurd clauses in its insurance policies, clauses that said people would no longer have the benefit of insurance if HIH were to go into liquidation as unfortunately was subsequently the case.

We will be watching with a great deal of interest the position of the Liberal Party on this matter, particularly in relation to what involvement its party had with these developers and what financial benefit they have derived from these developers in the past. It is for that reason that I will support this bill.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1 agreed to.

Clause 2

Hon. M. M. GOULD (Minister for Industrial Relations) — With this piece of legislation the government is fixing up an issue that has resulted from the state of affairs created by the HIH collapse and the lack of documentation. It makes it perfectly clear that the legislation is to protect Victorian home owners so they can get access to the scheme.

Clause agreed to; clauses 3 to 6 agreed to.

Clause 7

Hon. D. McL. DAVIS (East Yarra) — I move:

That it be a suggestion to the Assembly that they make the following amendment in the bill:

Clause 7, page 5, after line 27 insert —

"(7) The exclusion by sub-section (1)(aa) of a developer covered by a HIH policy from an indemnity under section 37 in respect of building work does not apply to a developer who lodged a claim with HGFL before 1 November 2001.

(8) The exclusion by sub-section (1)(ba) of a loss indemnified under a HIH policy from an indemnity under section 37 does not apply to a loss a claim for which was lodged with HGFL before 1 November 2001.".

In moving this suggested amendment I want to make a number of comments. The point of the suggested amendment is to ensure that those who had claims, if any, afoot in a court or tribunal before 1 November 2001 would not have their rights retrospectively removed.

Hon. R. M. HALLAM (Western) — Mr Chairman, I do not intend to canvass all the issues again, other than to say that members of the National Party agonised over the proposition brought to the chamber by the Honourable David Davis. We do not relish the prospect of being involved in a division in this place on the question of retrospectivity, when I suspect we would all share a view that it is repugnant, for the reasons I outlined in the course of my second-reading contribution. On that basis we have not been persuaded by the Liberal Party's argument that simply changing the date of application makes the bill any fairer.

Our view is that the intent in the first place was that developers not be included. On the basis of that being the fundamental decision we took, it is appropriate to have this bill taken back to apply from the date of application of the original bill. I wish it was different. I would love to say to my Liberal colleagues that we will support them on this. But we have taken the decision that in all the circumstances the fairest thing to do is to have this bill apply from the date of application of the first bill.

Hon. D. McL. DAVIS (East Yarra) — I respect the comments of my colleagues in the National Party, but it is important that we respect the right of individuals who may have begun some claim or action before a court or tribunal. I think it is a fundamental point that most in this house — certainly most Liberals in this house — would be very concerned to see the rights of people removed retrospectively. I know the government when in opposition had a strong view about restoring the rights of Victorians — or it claimed that it had a view that it wanted to restore the rights of Victorians. I want to quote just one section from the Labor Party's policy before the last election. Under 'Labor's plan to restore your rights' it says:

> Enhancing the rights of Victoria's citizens and improving our democratic institutions will be one of the top priorities of a Labor government.

I make the point that in this context it is far from acceptable to see the rights of Victorians removed.

Suggested amendment agreed to; clause postponed.

Progress reported.

Suggested amendment reported to house.

Report adopted.

Ordered to be returned to Assembly with message intimating decision of house.

ACCIDENT COMPENSATION (AMENDMENT) BILL

Second reading

Debate resumed from 28 November; motion of Hon. M. M. GOULD (Minister for Industrial Relations).

Hon. P. A. KATSAMBANIS (Monash) — The Accident Compensation (Amendment) Bill makes even more changes to Victoria's workers compensation system. It is unfortunate that for a great period of time now — since the Labor government came to office — we have continued to revisit the workers compensation system.

On far too frequent a basis we revisit all the acts that contain the nuts and bolts of the operation of that system, which highlights to this place and the Victorian public that the government has simply got it wrong. It did not know what it was doing when it came to power and introduced the original changes to the system, and it still does not have much of an idea of where the system is heading. Beyond that the bill also tends to show not only that the government has no idea what it is doing, but in the process has confused itself and wrapped itself up into a little ball, until the left hand does not know what the right hand is doing any more.

The bill contains changes to various elements of the workers compensation scheme and I will initially concentrate on the changes proposed in part 2 which amend the procedure involved in voluntary settlements. I concentrate on part 2 because it, more than anything else, highlights just exactly how confused the government is and how in many ways it is reneging on a series of promises made when it was in opposition. Once more it is showing that since it has come to the government benches it has treated the commitments that it made in opposition with a good deal of contempt. Such contempt gives rise to questions as to whether the government ever had a legitimate intention to fulfil the commitments and promises it made when in opposition, or whether those commitments and glib sayings at the time were adopted as a means to get it to the Treasury bench rather than as ends in themselves.

The Accident Compensation Act 1985 has always contained provisions for voluntary settlements. Voluntary settlements provide the opportunity for injured workers to convert their future weekly payments into a lump sum payment in order to get out of the system. Under section 115 that power has been available for a long time. No-one pretends it is an easy section. No-one pretends that the system introduced under section 115 is anything other than a complex formula. It is fair to say that it is not used too often.

The intention behind voluntary settlements is to pay out those people who are suffering from a serious long-term injury and who have no foreseeable capacity to return to work either currently or in any indefinite period in the future. They have to be seriously injured with no current work capacity, and generally have been on weekly benefits for at least 104 weeks — at least two years. The debate on whether voluntary settlements or lump sum payments of any kind are a good thing or not in a workers compensation system is on one level a philosophical debate. However, it is also an axiomatic issue that goes to the heart of the compensation system and the incentives built into that system.

For a long time Liberal Party members have argued that lump sum payments provide negative signals to injured workers and encourage a compensation culture in workers compensation, rather than a safety, rehabilitation and return-to-work culture. We have argued for a long time that any system based on lump sum payments will continue to haemorrhage as people see the obtaining of lump sum payments as some sort of goal in itself because of the big dollar amount attached to a lump sum payment. Later in my contribution I will talk about whether that big dollar amount is adequate compensation and in doing so will show exactly what the government is about.

The argument that we need to promote a culture in workers compensation that encourages prevention first through safety in the workplace, a system that encourages rehabilitation and a return to work is most appropriate. It is the fairest system for all concerned — for employers, employees and the Victorian public. I do not resile from that at all. In government we introduced that among many changes, culminating in the amendments in 1997, and the Victorian public has come to accept that it is a better alternative than the culture of compensation encouraged by big-ticket lump sum payments.

The fact that section 115 has been rarely used in the past is a good thing. There may be some circumstances where injured workers can come in and say, 'I would like my entitlements converted into a lump sum because it will help me in my individual case', and if they make out the threshold test for getting out of the weekly payments system and into this compensation culture lump sum system, then they can receive the

payments. As I said, that high-jump bar should be a high one.

However, in the period between 1997 and 1999, this government, when in opposition, sang from a completely different hymn book. This government encouraged workers, and many injured workers, to believe that should it come to power — which unfortunately in the end it did — it would provide seriously injured workers with an opportunity to access lump sum payments. With respect to those workers injured after November 1997 and before the government's changes took effect retrospectively from October 1999 when the Accident Compensation (Common Law and Benefits) Bill was passed, the government promised it would look after them. It introduced the intensive case review program and in April 2000, while we were debating the Accident Compensation (Common Law and Benefits) Bill, it promised to introduce a system where those workers could effectively obtain a cashing out of their weekly lump sum entitlements because with their lump sum payments they were not entitled to access common-law claims for damages.

The government gave that commitment and indicated in April 2000 that it would introduce an appropriate scheme by August 2000, over 18 months ago. But did it introduce what it deemed to be an appropriate voluntary settlement scheme for those injured workers? Remember we are talking of workers who were seriously injured in the period between November 1997 and October 1999. The answer is, no, it unfortunately did not introduce that scheme in August as it had promised.

I can understand the argument that the government said it thought it had the power under section 115 to introduce such a scheme and only later found out that for one reason or another it could not do it by regulation under that section. I do not necessarily accept the argument but I understand it. Either way, if that was the case, why did it not come back to this house in August, September, October or even mid-November of 2000 and make the necessary legislative changes? Why did it not come in and say, 'We promised to introduce a particular regime and thought we could do it by regulation but found we could not.'? I do not accept for 1 minute that the government's argument is right; but accepting for a moment for the purpose of my argument that it is, the government had all that opportunity — but no, it has taken 18 months to make those changes.

It promised those people in the lead-up to the September 1999 election that it would look after them and give them access to common-law rights. Then when it came into power it decided it was going to be a little too expensive to deliver on that promise so it barred those workers from getting access to common-law rights and failed to uphold its promise to them.

Admittedly it did say, 'We will not give you access to common-law rights but very soon we will introduce a new regime where you can get lump sum payments anyway'. It has taken the government 18 months from the time it reneged on its original promise to fulfil the promise made in April 2000.

And what a way it has chosen to fulfil it! The schedules to the bill, especially schedule 1, provide that the payments to be made will be at best unfair and at worst simply an indication that the government is being mean-spirited and deliberately attempting to reduce the liability for the promises it made while in opposition.

The multiples contained for injured workers look attractive. Workers can get their weekly earnings for a certain number of weeks based on their age as compensation in a big lump sum, and the big dollar amount looks enticing. But when you compare that dollar amount with the real value of continuing weekly payments under the 'normal' accident compensation routine you quickly realise that these workers are being duped. The dollar amount looks big, really big, but in actual fact when you analyse it that can be as little as 20 per cent, 30 per cent or 50 per cent of the real discounted value of the payments those workers would have received if they chose to stay on weekly payments. It is not a generous scheme; it is mean-spirited and stingy.

The government will say, 'That is great because we want people to stay on the weekly payment scheme'. They say they want to encourage people to stay on weekly payments and continue to rehabilitate themselves with a view to returning to work rather than get their big lump sum and go away out into the ether. That is great! But what a change from the rhetoric of the Labor Party in opposition to its rhetoric now in government! The Labor Party promised those workers seriously injured between November 1997 and October 1999 access to lump sum compensation through common law. The government is doing another backflip.

Hon. T. C. Theophanous — Didn't you vote to get rid of common law, Mr Katsambanis?

Hon. M. R. Thomson — Don't worry, he is just being hypocritical. It's okay.

Hon. P. A. KATSAMBANIS — Thank you very much, Minister, I was just getting to that. It is this government that is hypocritical. It is being exposed as a group of individuals prepared to say anything to get into power and yet once on the Treasury bench is prepared to jettison all those so-called principles, high values, commitments and promises. The public of Victoria is starting to wake up to the fact that the government cannot be trusted at its word. What it says today is not necessarily what it will do tomorrow.

That is the unfortunate impact on the group of workers injured between November 1997 and October 1999 who were promised access to lump sum payments, yet when those lump sum payments were finally authorised after so much waiting they were mean spirited and stingy and put those people in a worse position than they would have been if they had stayed on weekly benefits.

In the main injured workers will stay on weekly benefits because the opposition parties do not want to deny them the ability to be properly compensated through a workers compensation system that is not only affordable but provides appropriate levels of compensation for those unfortunately injured in workplace accidents. The government has been hypocritical once again. It has performed another backflip and disappointed a group of people it promised so much to in the lead-up to the 1999 election.

Part 2 of the bill does not simply apply to those workers injured between 1997 and 1999; it applies to different classes of injured workers. One class of injured workers is a throwback to the old workers compensation system before the introduction of the original and ill-fated and bankrupt 1985 Workcare scheme. A small number of workers who were injured before the commencement of the Workcare scheme in 1985 are still receiving lump sum payments, for which there are specific provisions. Unfortunately, those provisions are even more mean fisted and mean spirited. The youngest person will probably receive 80 times their weekly earnings, and someone who is on the verge of retirement will receive next to nothing. Eighty times weekly earnings is a little more than a year and a half, so for 30, 40 or 50 years the government will give them one and a half years earnings as a substitute for cashing out their weekly payments. What would someone who is entitled to weekly payments for the next 15 years of their life think of a government that says, 'We are now passing a legislative scheme that enables you to cash out your entitlements to those weekly payments but you will receive just over a year and a half's worth of payments for the next 15 years'?

Who would be attracted to such a payout? One group would be the terminally ill because on the balance of probabilities the one and a half year lump sum will probably be more than they would have received if they had stayed on weekly benefits. It is only a small number and only a hypothetical, but if those people exist they are in such unfortunate circumstances that everyone's best wishes are with them. However, they are not the vast majority of the people that the scheme is pitched at.

Another group of people might take the risk that if they take the lump sum payment they may get better in the next few weeks and then go back to work, but it would be a small group of people. This bill is about seriously injured workers with no current work capacity for an indefinite period who have been on weekly benefits for a long period.

The only other group that might be enticed to take the payment — the most unfortunate group — is the one that might have financial difficulties at that particular time. Although they know that the payment is a mean and stingy one that will not look after them into the future, some pressing financial matters at that time may make it attractive to take the small lump sum because it is more than they have in the bank to pay for their upcoming commitments, such as a financial problem they have got themselves into, or myriad factors that makes a quick payment of a lump sum attractive because they only see the near rather than the far — the immediate problem. What will happen to them? They will receive the payments offered under the system and when it comes to the future and the money runs out they will be dumped onto the social security system in exactly the same way as those I referred to earlier, those workers who were seriously injured between November 1997 and October 1999.

That may be smart from an actuarial point of view and reduce the commitment of the Victorian Workcover Authority, but unfortunately it is a blatant cost shift and one that will not help anybody in the long run. It sends exactly the wrong signals. It sends the message that the government is uncaring and is not prepared to meet its obligations to its seriously injured workers, that it is a government that would rather pay them what looks like a big dollar amount to get them out of the system because it will save money in the long run. It is a system not about looking after seriously injured workers, providing them with adequate levels of compensation or ensuring that their financial wellbeing is looked after; rather it is a system that is primarily concerned with getting a quick dollar amount up front, something that looks good but when you work it out those people in a few years will be landed onto the

social security system. It is a blatant cost shift from the state government to the federal government and a clear indication that the government does not have the best interests of injured workers at heart. If the government were serious and believed its own rhetoric, it would not be introducing such changes.

The Liberal and National parties told the government that the culture of compensation that is being introduced in this bill will have those consequences. The proof is in the pudding because over the past two years the liability of the Victorian Workcover Authority has blown out of all proportion. If the government is saying, 'We can have a voluntary payout system but what we really want to do is to encourage people to stay on the weekly payments system', why did it reintroduce access to common law in the first place? It cannot have its cake and eat it too!

If the weekly benefit system — the return-to-work culture, the rehabilitation culture — is the culture they want to encourage, they cannot do that and at the same time have a workers compensation system that continues to have a gaping common-law hole in it. They were warned, they were told, yet they persisted.

I know part 2 will be used by very few people, because they will do the sums. The vast majority of the members of the public are not the simpletons this government takes them for. People will rationalise it and realise it is a bad bargain offered to them by the government in bad faith. But there will be that unfortunate minority, as I said, who despite knowing it is a bad bargain that is made in bad faith will for financial reasons at the time choose between two evils — the two devils — the first, bankruptcy and losing their home, and the other, accepting this measly amount the government is offering — and take the lesser of the two evils: the small lump sum being offered in this part of the bill to their detriment and to the detriment of the taxpayers as a whole, because they will end up lumped in the social security system when the pittance the government has paid them runs out. They are the people I feel most sorry for, be they the workers who were seriously injured between 1997 and 1999, the workers who were seriously injured prior to 1985 and are on long-term weekly benefit payments or any other class of workers eligible under part 2 and the schedules to be included in these voluntary settlement schemes.

It is disappointing. Once again it exposes this government as one which at end of the day is heartless and uncaring. Not only has it brought in these measly compensation amounts, but it has blatantly — I stress blatantly — decided that it will jettison the commitments it made to large groups in the community in the lead-up to the 1999 election. This government got where it is in large part by making commitments it is now running away from at a million miles an hour. That is something the people of Victoria will judge this government on in due course — and make no mistake about it, they will judge the government very harshly.

Beyond part 2, many other changes will be made with this bill, and many of them will be good changes. The establishment of the Accident Compensation Conciliation Service is a good thing, and the opposition does not see a problem with it. Making it independent of the authority is also a good thing. There has been a conciliation process operating, but it has been seen to be too close to the authority. Giving it independence and an umpire role, if you like, by legislating to establish it as a separate body is a good thing if it leads to resolution of disputes more expeditiously and at a lower cost to all concerned — not just in terms of financial cost, mind you, because with injured workers the longer the process takes the greater the mental strain on them, which is just as taxing as any financial imposition on the Workcover system. Sometimes we forget the mental anguish that seriously injured workers endure to just navigate through a very difficult and time-consuming process. If the new conciliation service reduces financial costs and the time it takes to settle disputes and leads to a culture in which injured workers and their representatives and employers and their representatives get together to resolve their issues, it will be a very good thing.

There are lots of other amendments contained in part 4, and the opposition has no problems with them. The definition of remuneration has been amended to bring it into line with the Pay-roll Tax Act, which is a good thing, and the opposition will not be raising too much of a hackle about that. We do not see any problem with that at all.

However, part 5 does cause the opposition some concern. It deals with a difficult issue that has arisen recently as a result of some judicial decisions made in Victoria's courts. The provisions of part 5 amend the Accident Compensation (Workcover Insurance) Act 1993. The amendments deal predominantly with issues relating to industry classifications. In the main they provide that when an employer or workplace has been wrongly classified under the Workcover industry classification so that the wrong premium rate has been applied to that workplace and it registers for Workcover, usually with the insurer or the agent — nowadays it is really the agent — the agent makes a determination on what industry classification to apply to the particular workplace based on the information the

employer provides to it. When the industry classification is worked out the premium rate is struck based on a combination of factors: the smaller the business is the closer the rate will be to the industry rate, and the larger the business becomes as time goes by the more the determination of the premium will rely on a combination of the industry rate that it falls under and its own experience and safety history as a business.

That reflects the basic nature of the insurance contract between the Victorian Workcover Authority, the agent and the employer.

Unfortunately, over time many businesses have been wrongly classified — some because, based on the best will at the time, a mistake was made; other businesses because over time the nature of the work has changed. Anecdotally one hears about some small, minor instances of deliberate actions that have led to wrong industry classifications, but I do not have knowledge of people deliberately masking the industry in which they are involved.

Over time where people were found to be wrongly classified reassessments were made. Over the past few years the authority has employed third-party private auditors who have been actively looking at whether businesses were properly classified under the industry classification or whether they should fall under a different classification and attract a higher Workcover premium. Anecdotally it is said that the private auditors are paid a performance-based fee rather than being paid on a fee-for-service basis. The more money they recoup on behalf of the authority the higher their recompense is. Again that is something which I cannot prove.

If that is the case — there is anecdotal evidence of that occurring in some industries, but I am not saying it is a fact — it is an unfortunate occurrence and I hope the authority reconsiders that element of its work. If it is employing private auditors because it believes there is a raft of companies wrongly classified, that is well and good, but those auditors should be paid on a fee-for-service basis so they make an objective assessment of the classification. It would be sad if they were paid on an incentive basis to increase the premium rate returns of the authority and therefore increase their remuneration, because that would lead to a breakdown in the way the authority and its actions are perceived by employers and the community. I have no way of proving it up, but I put it on the record because the perception is out there in the community. If it is not quickly corrected it is likely to lead to the diminishing standing of the authority in the eyes of the people it is serving — the public and employers of Victoria.

In relation to the classifications, a series of court decisions over the past few months have created a problem for the authority. I refer to *Victorian Workcover Authority v. I. R. Cootes Pty Ltd* (2001) VSCA 85. The employer had been reclassified from a petroleum products wholesaler to a long-distance intrastate freight transport distance, which led to an increase in premiums. In the first instance the County Court judge found that the change in the classification was wrong and that the company should not have been reclassified. His Honour also found the authority could not obtain premium adjustments and could not enforce those premium adjustments in respect of past years. So even if the classification had been wrong and the reclassification was correct, the authority could only obtain premium increases based on that reclassification prospectively and could not go back and recover premiums increases retrospectively. The authority appealed the decision to the Court of Appeal, the highest court in Victoria, and in a majority decision the court found the reclassification was correct, so it overturned the decision of the County Court on the classification question, whether the employer should be a petroleum products wholesaler or a long distance intrastate transport business. However, the Court of Appeal unanimously found that the authority could not claim premium adjustments for previous years and could only claim premium adjustments prospectively from the time the reclassification had been made. To its credit, the authority had suspended the clawbacks, which remain suspended, because of the difficulty with the Cootes decision.

A few months ago Justice Gillard of the Supreme Court created more confusion in *SBA Foods v. Victorian Workcover Authority* (2001) VSCA 276. That case dealt with the transmission of a business from an existing owner to a new owner. The new owner did not want to be lumbered with the premium rate of the old business and argued that the business should be deemed a new business so that he could obtain the industry rate rather than the higher rate that was based on the experience of the previous owner. The facts of the case are irrelevant to the issues that the house is dealing with today, but Justice Gillard found that the authority could go back and recoup premium arrears once a new and more accurate industry classification had been struck. In other words, the decision of Justice Gillard was directly opposite to the three justices of the Court of Appeal in the Cootes case. Legal confusion reigned.

That is why part 5 is introduced to clarify the issue. Where the Victorian Workcover Authority discovers a business is wrongly classified and is given the wrong Workcover industry classification, upon the discovery of the fact and the correct classification being

introduced, the authority, under the provisions, will be able to claw back some of the premiums that were owing from previous years. That provision raises some philosophical issues that the house could debate until the cows come home. The authority should not be able to have its cake and eat it too. It is hard to get a system that is quick, effective and not too expensive, but that will enable an accurate, foolproof industry classification to be made in every circumstance immediately a business starts up. I know the more intrusive it gets the harder it gets. Sometimes the authority needs provisions where it can claw back some premium increases and say, 'Hey, you got it wrong'.

In the main we know that if we go into the real world and want to pay a competitive premium for, say, car or house insurance, we ring up a broker or insurance company; they give us a quote. We may haggle over it for a while, but at the end of the day whatever bargain we arrive at is what we pay for that year. If the insurance company got it wrong, it may be able to claw it back in later years. But the contract in the year over which the bargain was struck cannot be renegotiated. That's it: you buy your contract of insurance and move on.

Sometimes the insurer gets it right. At other times the insurer could get it wrong to its benefit, while at other times the benefit could be to the insured party. But on the swings and roundabouts it usually balances out, and people move on. If you get it wrong, you fix it up in later years. Philosophically that is the soundest position of all. In an ideal world we could have a workers compensation system that reflected the situation that once you get a premium rate for a year, that's that.

I understand that it is a difficult task to find the mechanism that would enable us to have a fail-safe Workcover industry classification so that that sort of situation could work. While we are stuck with the system of self-classification — I place 'self-classification' in inverted commas — in that the business owner tells the agent what he thinks is his or her business, and the agent strikes an industry rate, we will need to have some claw-back provisions. The authority needs some power to claw back the situation. That is why these provisions are being introduced in the bill.

In conjunction with the provisions being introduced, the authority and the minister have said they would have a moratorium. Businesses that are wrongly classified — either businesses that are assessed as being wrongly classified and are sitting in limbo in the interregnum because of the uncertainty with the law after the decisions in *re Cootes* and *re SBA Foods* or those that may be sitting on wrong classifications and have not yet been found out through an audit process and which have not been prepared to put up their hands and say, 'We want to change that for the future' — will be the subject of the moratorium announced by the minister and the authority for the remainder of this year and the early part of next year.

Those businesses will be able to come in and have new and appropriate industry classifications struck for them with no retrospective penalties. That is a good thing. I also commend the minister in the other place for putting on record information requested by the opposition that goes to the heart of the operation of the moratorium, which clarifies it for employers and Victorians.

Also, while the bill was between the other place and this house issues were raised with the Liberal Party by employers. I note that the minister representing the Workcover minister in this place will in due course put on record some form of words that will answer — I am not sure that they will satisfy — fully the questions I was asked to put to the minister. I thank the minister in this place and the Workcover minister in the other place for their cooperation in putting those points on the record so there is clarity and certainty among employers as to the way the moratorium will operate under part 5 of the bill.

Some of the other changes made by the bill are non-controversial. Changes made by part 6 will lead to the responsibility for safety in mines in Victoria being removed from the Department of Natural Resources and Environment, which until now has had that role. That responsibility will be entrusted to the Victorian Workcover Authority. That is not bad; in fact, it is good that all the workplace safety issues be concentrated in one body rather than having various government departments being responsible for them. That consolidates the role of the Victorian Workcover Authority and the Worksafe arm of the authority, which in the main is doing a good job out there.

So far as I know the only problem is that the Chamber of Mines found out about this provision only when the Liberal Party contacted it and asked the chamber about it. Maybe the government consultation process broke down; I hope the government will take note and ensure that in the future it consults more widely before it introduces legislation.

My colleague Mr Strong has some issues about safety in mines that he has already put to the minister and on which he will touch during his contribution to the debate, so I will not take the house's time or labour the point more than is necessary at the moment.

In conclusion and in summary, the opposition does not oppose the Accident Compensation (Amendment) Bill. Most parts of it are legitimate. However, I highlight the fact that in part 2 the government is introducing a system that is not looking after the best interests of injured workers, but more importantly it again highlights that it is not prepared to implement the commitments it made when it was in opposition. For that the higher authority of the people of Victoria will make up their minds about the bona fides of the government's original commitment, because it has now had ample opportunity over two years and in a series of amending pieces of legislation to implement its commitment. However, every time it has run further away from it.

I daresay that the nature of the workers compensation system in Victoria, being as it is, means this will not be the last amending accident compensation bill the house will debate; I fully expect that in the next sittings of Parliament another accident compensation bill will be debated. I would love to have sittings of Parliament when the house did not have to deal with an amending accident compensation bill. I hope those sittings will arrive in due course, but for the moment I am disappointed that the government has chosen to perpetuate a culture of compensation rather than a culture of rehabilitation, workplace safety and return to work. However, in the main the opposition will not oppose the provisions of the bill.

Hon. G. W. JENNINGS (Melbourne) — I am thankful for the opportunity to contribute to debate on the Accident Compensation (Amendment) Bill, which follows a commitment made by the Bracks Labor Party in the lead-up to the 1999 election to restore common-law rights to injured workers in Victoria. That was followed by a bill, which has now been enacted, introduced here in the autumn sittings of 2000 that saw the reintroduction of common-law rights for injured workers in Victoria.

At that time a commitment was acknowledged by the government during the committee stage of that legislation which was the government's concern for those who fell short of reaching access to common-law entitlements through the provisions of the new legislation introduced in 2000. An undertaking was given that the government would return to Parliament with a method to try to provide some degree of financial support and comfort for those who did not see the full restoration of access to common law at that time. That is one of the key features of the bill.

I will briefly outline the key elements of the bill, which include financial settlement for those who did not gain access to common law with the reintroduction of common-law rights in 2000. The bill tries to provide some clarity on time lines and processes. This is so that different categories of claimant under this act going back as far as 1985 can have a degree of certainty about the time lines and procedures relating to their claims and the method by which settlement may be reached.

The bill provides a wider window of opportunity for the proof of claims for hearing loss, with an increase from one year to three years. The bill also introduces an independent conciliation service. It will be established under the auspices of the act independently of the Victorian Workcover Authority to better meet the needs of injured workers who are making claims against their employers through the Workcover authority. In an attempt to streamline both the time lines and procedures, and the conciliation approach, the government has amended provisions that apply to death claims so that they will no longer be required to go through a conciliation phase before they are considered by the courts.

Amendments to the act provide some degree of certainty for the Workcover authority and for employers about the establishment of the appropriate premiums that apply. They have been subject to a degree of doubt following a number of decisions in the Supreme Court of Victoria. The bill will provide a clear method by which premiums may be established and subsequently adjusted, depending upon the occupational health and safety performance of that employer.

There has been appropriate harmonisation of the definitions used in this bill and the payroll act. This is an example of the way the government is seeking to ensure that businesses operate with a degree of certainty and confidence about how their business affairs will be organised in relation to both Workcover obligations and the business tax regime that applies in Victoria. A number of occupational health and safety matters relate to the safe use and regulation of asbestos, and some occupational health and safety regulations apply to the quarrying and mining industries.

That is a summary of the bill, and I would like to explain those various elements in some detail. As has been indicated in my contribution and by the opposition during the debate, in the autumn sittings of 2000 the government introduced an important piece of legislation to restore common-law rights to injured workers in Victoria. It was acknowledged by the government at that time that there were a number of categories of workers who unfortunately did not fit within those provisions. They fall into a number of

categories. Some workers were injured in the window of time between 12 November 1997 and 20 October 1999, the day on which the reintroduction of common-law entitlements was delivered. It was the day the Bracks government assumed office. The minister gave an undertaking that some remedies would be sought to provide some degree of financial certainty and security to those workers. This bill sets out a voluntary settlement scheme that has been designed to address the needs of those workers.

Although the government has introduced this scheme and provides an opportunity for those workers to obtain lump sum benefits, it is our very clear intention and commitment to maintain the pension-based compensation system. It is a priority of the government to ensure that workers and their families who make decisions whether to take lump sum benefits or to maintain their pension entitlements or their ongoing payments are well informed. They must make the best assessment of their individual circumstances, their ongoing needs and the needs of their families. It is clearly not the intention of the government to walk away from the pension-based system or the need to make the essential focus of the Workcover authority the provision of ongoing rehabilitation and restoration of the working lives of injured workers. It is an unswerving commitment of the government to ensure that workers do not prematurely take their lump sums and give up hope of an ongoing viable working life.

The bill provides specific opportunities for workers in a number of different categories to receive voluntary settlement benefits. They have been classified as groups of workers who fall into what has been known as the intensive case review program. They are workers who were injured in the workplace between November 1997 and October 1999. Lump sum benefits will be available to those workers who, on the basis of the fourth edition of the Australian Medical Association guidelines, are 30 per cent impaired, have been recipients of weekly payments for 104 weeks and are assessed as having no current work capacity into the indefinite future. On that basis that group will be entitled to make a claim for the lump sum benefits.

A similar situation applies to a number of workers who are in the Workcare group category and were injured between August 1985 and 1992, and to a number of other categories that may be determined by the Workcover authority and roped in within the scope of the bill though a Governor in Council listing of their entitlement. The Workcover authority has a limited discretion to refuse settlement, but we suggest that this method would provide injured workers with access to the scheme on relatively clear guidelines and with a clear payment regime that has been indicated in the schedule to the act. In stressing the voluntary nature of the scheme I indicate to the house how the scheme may be put into practice.

The scheme will be put into practice following an expression of interest being made by the injured worker to the Victorian Workcover Authority or the self-insurer. The authority will be obliged under the act to respond with a settlement amount on the individual circumstances based upon a formula including the age of the worker, the weekly compensation and an actuarial factor. As I have indicated, that is included in the schedule in the bill. Once in force the act will see that the financial settlement closes the matter with the exception of ongoing medical and similar expenses. It is essential from the government's perspective that those decisions are based on the best quality advice available to injured workers. It is clearly the government's expectation that that advice will be forthcoming from the authority.

The establishment of the Accident Compensation Conciliation Service in this bill will see an independent body created to provide a conciliation service between claimants and their employers. The government believes it will be a net benefit to the procedures and the confidence underpinning the process of assessing these claims that this body act independently of the Victorian Workcover Authority. Members will note that the senior conciliation officer will effectively be head of this compensation conciliation service. That person and the conciliation officers within the Accident Compensation Conciliation Service will be appointed by the Governor in Council on specific terms and conditions approved by the minister. This will provide ongoing certainty for the appointments in terms of enshrining them as Governor in Council appointments and thereby enhancing the confidence in the Victorian community that these officers will act independently and without fear of favour in accordance with the tenure of their appointments.

Two significant decisions in the Supreme Court have led to a degree of uncertainty about the maintenance of the premium regime that applies to employers in this state. The effect of those Supreme Court decisions has been to bring into doubt whether the Victorian Workcover Authority has the capacity to conduct a retrospective reconciliation of the premiums applying to an employer. Until the court decisions brought it into question, the practice was that the premium applied to a certain employer would be assessed in subsequent years in accordance with their performance in terms of managing claims and the incidence of workplace injury. If the premium was either under or over what it should

have been in accordance with that proven employment record there would be a subsequent adjustment.

This occurred because the intention of the scheme overall is for it to be in cost balance across all employers. Unless there is a capacity for this retrospective adjustment, good employers with a track record of a low incidence of workplace injury will be subsidising employers with poorer track records. This method had been well established within the operations of the Victorian Workcover Authority. However, the capacity of the authority to make those retrospective adjustments was brought into doubt by a decision of the Supreme Court in the I. R. Cootes case, which questioned the validity of those retrospective judgments. That doubt was compounded by another decision of the Supreme Court in *SBA Foods v. Victorian Workcover Authority* which found in the opposite direction leading to some degree of uncertainty within the premium regime in Victoria. The bill reasserts the mechanism for the authority to make retrospective adjustments. The government believes this is a totally appropriate response to provide greater certainty for employers.

I am proud to say that the other amendments in this piece of legislation will properly regulate the use and removal of asbestos in the state. They will facilitate the eventual proper regulation of this substance and lead to an abandonment of its use in the next few years across Victoria and throughout the commonwealth. I must applaud my colleague the Minister for Workcover for the leading role he has played in ensuring that Victoria has moved to this policy position notwithstanding that there may be some teething problems with structural adjustment in the motor vehicle brake industry and a number of other industries. This important initiative has been undertaken by the Bracks government thanks to the stewardship of the Minister for Workcover. I applaud him for that action and certainly support the provisions of this bill which will provide for the regulation of the use of asbestos until it is ultimately banned.

In a similar vein provisions of the bill attempt to regulate the quarry and mine industry. They will lead to greater occupational health and safety regulation and performance in that industry sector. Again, I applaud my ministerial colleague in the other place for his stewardship of this issue. It is a very important initiative in meeting the undertaking the Bracks government gave to working people in Victoria. It is consistent with the approach the government took on the dust diseases bill that has been adopted by the Parliament during the life of the Bracks regime. The government is concerned with the health and wellbeing of Victorian workers and seeks to ensure they have safe workplaces. In the unfortunate circumstance when workers have met their demise through dust diseases caused by exposure to these substances the government has legislated to provide some financial comfort to their families. I am pleased that the bill adds to the regulatory regime applying to those industries.

I conclude by saying that the government acknowledged in autumn last year that some categories of workers did not receive the full restoration of common-law entitlements. At that time the government expressed its concern about the wellbeing of those workers for now and into the future. It made an undertaking to come back with a scheme to address their financial needs. The measures contained in this bill provide the opportunity for those workers to participate in a voluntary settlement scheme and enable them to receive lump sums to invest for their future. While promoting this scheme and making it available the government reasserts its commitment to the pension-based scheme and its emphasis on ensuring that Workcover and its operations provide for the rehabilitation and restoration of the working lives of injured Victorian workers. We do not swerve from that undertaking to injured workers in Victoria. On that basis I support the minister in the work that he has done and support the bill before the house.

Hon. W. R. BAXTER (North Eastern) — This is really quite an extraordinary piece of legislation to be brought in by a Labor government because it seems to fly entirely in the face of the rhetoric from Labor governments that they look after the workers and protect them from being ground down by those nasty employers.

Hon. R. M. Hallam — And exploited.

Hon. W. R. BAXTER — And exploited, yes, Mr Hallam; that is right. I have to confess that I totally misinterpreted the bill when it first came in because of my assumption that this would be a Labor government that would do something to give a pay-off to some injured workers at the expense of the employers and might in fact be undermining the financial viability of the Workcover scheme in so doing. That was my immediate reaction to what I presumed this government would be up to.

However, a close examination of the provisions in the bill finally led me to the opposite conclusion — that the benefits to be offered under proposed new section 115 are very miserly indeed. As Mr Katsambanis so eloquently explained to the house, they are really designed to get some people off the scheme and save

the scheme a lot of money. As a nominal representative of the employers who pay the premiums, I suppose I should applaud that sort of move. But I do not at any stage want to see any employees in this state, particularly those who have suffered a long-term injury, being encouraged to take a financial decision which, in the long term, may well be to their detriment.

Before I look at the provisions of the bill I want to make a couple of other observations and express some disappointments. One of those disappointments is that I am most concerned and alarmed by the language used and the tenor of the chairman's comments in the *Victorian Workcover Authority 2001 Annual Report*, which was tabled in this house a short while ago. The remarks, particularly from a new incoming chairman, are outrageous to say the least. Among other things they suggest that the system has not been properly managed for a decade. What a sweeping statement to make without any evidence at all being included in the report, and what a sweeping statement to make bearing in mind that when the former government came to office the Workcover scheme was in financial disarray, to put it mildly — in fact, very heavily indebted. It was only through the good management of the former government, particularly its Minister responsible for Workcover, the Honourable Roger Hallam, that the scheme was rescued from financial oblivion. Yet this sort of comment was made by the chairman in this year's annual report.

He says in another section, talking about the financial result:

> Of particular note is the fact that as at 30 June 2001, the Victorian Workcover Authority's funding ratio stood at 88 per cent — a significant improvement from the 81 per cent as at December 2000 — and the first time since 1998 that the funding ratio has improved.

It seems to me that on reading that the uninitiated would believe that the best it has ever been was something like 80 per cent, and that in 1998 it was somewhere around that figure but certainly nothing better than that. Of course we all know that the authority was in much better health back in 1998. To see that clearly all we have to do is look at the report of the Auditor-General tabled in Parliament earlier this week, where we find that in 1996–97 it was funded to the extent of 100.1 per cent and that in 1997–98 it was 96.9 per cent, and so on. It is highly irregular that the chairman of the Victorian Workcover Authority should sign his name to an annual report which, if not deliberately in intent certainly in reality, misleads the average reader of the report. I place on record my extreme disappointment that that has been the circumstance. I think the new chairman, Mr Mackenzie, comes into the position with his reputation severely tarnished because he was prepared to acquiesce to that sort of commentary in the authority's annual report.

I am led to the conclusion, based on some other evidence which I will allude to in a moment, that perhaps this is some sort of direction, either implicit or explicit, from the powers that be who run this government that these are the sorts of annual reports we will have.

I refer to last year's annual report of one of the ski resorts, which immensely praised the work of the honourable member for Benalla on behalf of that ski resort. Bearing in mind that the honourable member for Benalla had been a member of Parliament for only seven weeks of the 12 months that report covered, it is difficult to see how in that time the honourable member for Benalla could possibly have given the sort of benefit, advantage and assistance to the resort and its board of management that was suggested. I think that is another example of the obsequiousness that seems to be creeping into annual reports. As I have said, I am not sure whether this is by some explicit direction or whether senior managers in the public service somehow think that under this government they have to write such reports which are not sustained in fact. I would hope we see the end of that in future annual reports.

Let me also say that Workcover premiums are still a matter of extraordinary and deep concern right around the countryside. No matter where I go, it is virtually the first issue raised. It is all very well for the government to be running around the place trotting out, 'Oh, they have only gone up 15 per cent and that is to cover common law and the impact of the GST', and so on. I will not give the house a whole recital of examples, but I will give one — the Workcover premium increases for the Wimmera Health Care Group. In 1999–2000 its Workcover premium increased from $104 000 to $339 000, an increase of 310 per cent. Part of that is due to a slight increase in remuneration; that is granted. That is the largest increase I have come across, but it is not unique; it is endemic. These are the sorts of increases that businesses around country Victoria, and I assume in the city, are having to suffer under this government. That is one of the reasons businesses in this state are going to increasing lengths not to employ people — the costs of employing people are getting out of hand.

I also want to say something about some of the misleading propaganda — I think that is the right word for it — put around by the Workcover authority and some of its supporters. One of those is the claim that Workcover premiums for businesses with a payroll of

less than $1 million are being frozen. I attended a seminar in Wangaratta that gave the distinct impression that those premiums for this year were frozen. I took it at face value, as I am sure did other members of the audience. But one employer has written to me. This is the sort of difficulty you get yourself into. He received his claim review statement, which says:

> The costs of claims shown on this statement will form the basis of your 2000–01 confirmed premium and it is important you review this statement urgently.

Well, he did that. He wrote to his agent and said this:

> I note that the letter states that the claim costs will 'form the basis of your 2000–01 confirmed premium'.
>
> I seek clarification of whether the actual costs for 2000–01 of $22 119 are to be taken into account only or are the estimated future costs to be factored into the calculation.
>
> Bearing in mind that the injured employee returned to paid employment on 7 July, I anticipate the estimate of future costs is now well in excess of what will be actual costs.
>
> Secondly, I understand from a briefing by VWA officers which I attended at Wangaratta on 18 July that claims costs for small employers are to be disregarded in premium calculation for the current year. Clarification of what effect this policy decision will have on our premium would be appreciated.

The constituent got a reply in a letter dated 30 August, which states:

> The entire premium claim costs, including estimated future costs, are taken into consideration for premium calculation purposes.

Then it said that if he wanted to initiate a review he should contact his claims officer, and that is fair enough. The letter further states:

> The determination of claim costs for 2000–01 confirmed premium is currently scheduled for 15 September 2001.
>
> For employers with annual remuneration of $1 million or less in 2001–02 ('small employers'), the latest base premium rate for each workplace in 2000–01 is utilised again in 2001–02.
>
> While the 'small employer' calculation does eliminate the direct impact of claims costs in 2001–02, it does not prevent the flow through of increases in the 2000–01 base premium rate.
>
> Please note that claim number … was lodged during 2000–01 and could not be utilised in the calculation of your 2000–01 initial premium. However, 2000–01 claim costs will be used in the calculation of your 2000–01 confirmed premium.
>
> Where claims costs in the upcoming 2000–01 confirmed premium calculation increase the 2000–01 base premium rate, this increase will eventually be picked up in any 2001–02 premium recalculation that follows.

That is very confusing to read out and the constituent also found it confusing when he read the letter. The letter continues:

> It is therefore advantageous to pursue the reduction of claims costs that will impact your 2000–01 confirmed premium calculation.

This is the point I really want to make. Employers feel they have very little ability to impact on what the future claims costs or the actual claims costs will be. In this case, where the injured worker suffered a shoulder injury and had been off work for more than 12 months, the employer found it difficult to get from the claims agent any sort of response at all to letters he wrote. All he got in the mail were accounts from physiotherapists, doctors, surgeons — all sorts of people — which he then submitted to the claims agent. However, he does not seem to have any capacity to put his twopenneth in about whether the treatment of the injured worker is appropriate and timely, or whether he should be seen by a more senior specialist who might make a different judgment and get the fellow back to work a bit quicker.

This is the sort of frustration being felt by employers around the state. They have an injured worker who is off work for some time and they have an agent. They might ring up the agent and talk to him over the phone, but they do not seem to be able to have much say at all about the sort of treatment, level of treatment or doctors, or about checks or investigations involving the worker's progress. The weeks go by and the costs mount up, and sooner or later it is reflected in the employer's premium, regardless of the government's claim that small employer premiums will be frozen. Yes, they are frozen in a sense, but in reality if you have a claim you will be wearing it. It is time employers had a bit more say in claims management than they have currently.

I also want to comment on another case. From the minister's remarks in another place it appears that some action is finally being taken on this issue. I have a letter to the Honourable Barry Bishop from a small engineering works in Mildura. This letter was written in September 2000 and goes to the issue of an injured worker and whether that worker told the truth or not when he was employed. The letter says this, inter alia:

> In February —

that is February 2000 —

> our company, which might be described as a medium-sized manufacturing concern, advertised for a boilermaker. Candidates were interviewed after first completing a printed application form which included a question seeking details of any Workcare claims and nature of injury. The position was finally awarded to a 37-year-old … who asserted that he had

> no prior claims history. Five months later this employee complained of a sore neck which was diagnosed by the company's doctor as an aggravation of a pre-existing workplace injury. Upon being interviewed the employee admitted to falsely answering the questionnaire and was dismissed for dishonesty and handed a termination payout. Just prior to his dismissal however, he had lodged a Workcare claim. You guessed it, Victorian Workcover Authority (VWA) admitted the claim thereby forcing our company to continue paying the employee at the rate of $574 per week with the value of the claim now estimated at $67 682.40. VWA has further required us to prepare a 'return to work plan', nominate a 'return to work coordinator', and ultimately re-employ him. Penalty for non-compliance is a hefty fine.
>
> The consequences of VWA's admission of … claim are of course both inequitable and absurd and raise serious questions about competency and the manner in which the decision was made. From our perspective … actions appear to have been entirely sanctioned by VWA which seems blissfully unconcerned about any rights we might have had or the financial impact upon our company.

The employer claims there should have been an investigation and that investigation:

> … should also look at the adequacy of existing legislation to protect employers against fraud of this nature and also consider the empowerment of the authority to decline claims in circumstances where fraud can be proven.

I have a great deal of sympathy for that employer. In good faith he asked the prospective employee a number of questions and was lied to. However, at the end of the day he still pays.

I am glad to note in the minister's remarks in another place that he proposes to look at section 82(7) of the Workcover act, which was inserted by the former government — I suspect by the Honourable Roger Hallam — and which enables employers to seek this sort of advice and ensure employers are provided with advice as to what action they can take. Perhaps a pro forma could be issued which employers could have prospective employees complete so the employers have it in writing, and in the event of it being proved that the employers have failed to tell the facts as they are, that they have lied, that compensation will not become a liability of the employer.

There is a great deal of concern among employers, particularly in industries that deal in seasonal work such as those in the area the Honourable Jeanette Powell and I represent — for example, the horticultural and fruit industry where many employees come on for short-term piece work and they do not disclose, despite being asked, earlier workplace injuries. The employer is often then lumbered with an aggravated injury and he would not have taken on that employee if he had known the previous work history and injury sustained.

In the same ilk I refer to how average weekly earnings are assessed in the seasonal work industry, because it is often difficult to establish what a worker's average earnings would have been if he is a fruit-picker.

He may well have been unemployed for the bulk of the year and on social security benefits at whatever level they are. He comes on as a seasonal worker picking apricots at Cobram, pears at Shepparton, strawberries on the Mornington Peninsula or grapes in Mildura. After a few days he puts in a Workcover claim, and then it is difficult to establish what his pre-injury earnings really ought to be.

I will give the house a couple of graphic illustrations. Mrs Powell and I happen to represent a constituent who is a fruit grower, who has given us two examples of what this conundrum leads to. Worker A commenced on 22 January 2000 as a fruit-picker. On 2 February — or 10 days later — the worker lodged a claim based on tenosynovitis of the wrists. I am not speculating about whether it is possible to get that affliction in only one week; I put that judgment aside. The point is that the average wage over the 12-day period worked out at $640 a week. Come September 2001, eight months later, Worker A was still receiving weekly compensation payments based on $640 a week, even though he may not have had an average of that amount for the year preceding his injury. The employer was not able to ascertain his real average pre-injury earnings because he had no right to inquire of Centrelink to see whether he had an income from there or to inquire of previous employers to see what he might have been earning.

The fruit grower's second example is even worse. Worker B commenced on 26 January 2000 as a fruit-picker. On 7 February, just over a week later, Worker B fell from a ladder and submitted a Workcover claim for ankle injury. Payment of weekly compensation commenced based on the nine-day period earnings of $613 a week. Compensation payments have continued to this time. During the short period of employment the employer was unable to ascertain the real average pre-injury earnings. In December 2000 Worker B returned from Queensland under a return-to-work plan as a forklift driver with medical restrictions. He received weekly compensation based on a percentage of his average pre-injury earnings on top of the normal wage for a forklift driver — that is, he was paid more than a worker without an injury employed to perform the same work.

The situation continues to this time. I visited the premises the other day, and it still continues. A forklift driver's wage is $469.39 a week, and Workcover

compensation is $106 57, which is the excess over and above the forklift driver's wage. So Worker B is getting a gross payment of $573.96 every week working in the cool store, even though he is on medical restrictions and cannot fully do the job. The colleague driving the forklift right next to him, however, who has no restrictions on him and is a fully qualified forklift driver is only earning $467 a week. Where is the justice in all that? Clearly we need to be able to identify the correct and true average pre-injury earning rate for workers who are injured after a short time in that employment.

Turning to the bill itself, proposed new section 115, as has been explained, allows for voluntary settlements. I understand that the existing provision has been little used in the past for a number of reasons. One reason was that it was assumed or deemed to apply to those long-term injured claimants who had some prospect, if they had a capital sum, of actually establishing themselves in some income-earning enterprise and there was some scope for it to happen. I think there have been about 30 cases in which that might have been the outcome. By and large, though, it did not go beyond that. Legal advice received by the authority was that if offers were made to a group of claimants similar offers might need to be given to all claimants and it was felt that that would put the financial viability of the scheme at some risk.

I do not object to section 115 being revamped, but it seems that the revamping done by this government is an attempt to get people off the books and, to a degree, to cost shift — that is, to have the federal government pick up the cost of sustaining those claimants' everyday lives. As Mr Katsambanis has explained, the payouts to those people, particularly those on the old Workcare scheme, will likely be minuscule. Mind you, we have yet to see what the new formula is; we are not told what it is because it has yet to be invented.

For those seriously injured after Workcover was introduced in 1992 and common-law right was abolished in 1999 and prior its reintroduction in a restricted form by this government — people I refer to as hiatus claimants — the formula seems to provide such a small payout that anyone taking it up will be short-changed. The proposed scheme will only attract those persons who are absolutely desperate for some sort of capital and will be tempted, persuaded or dragooned by their creditors into accepting the payout. That flies totally in the face of the government's professed concern for consumers.

We hear it every day from the Minister for Consumer Affairs. She attacks pay-day lenders and the like for encouraging people to enter into contracts that do them no good financially, yet the same accusation could be made about the scheme on offer from the government. I feel really sorry for people who, for reasons of desperation, might be tempted to take what the government is offering them and find out later on that it has been a dreadful mistake.

They will simply go on to commonwealth disability support pensions, and therefore to a degree it is a cost shift by the government to the federal government and the taxpayer at large who will pick up the cost rather than the employers.

The so-called hiatus group are being given a somewhat more generous payout under the formula contained in the schedule of the bill. It goes to meet the undertakings the government gave at the time it reintroduced common law in 2000. I acknowledge that this is meeting a commitment the government made at the time, but I wonder why it has taken so long to produce it. A number of people must have been waiting in expectation for quite some time. I do not think it is generous, but it is likely to be taken up by a number of persons. If it assists them by giving them a reasonable sum I do not have any objection to it. I would counsel people to think closely before they take it because if they do the mathematics, unless they perceive that their lifespan is fairly short, it would be a far preferable circumstance to remain on weekly benefits rather than taking this notionally attractive lump sum.

When talking about common-law claimants from now on, I believe the government has engaged in a huge con on the public of Victoria. It went to the election saying it would reintroduce common law for injured workers, completely overlooking the fact that the previous government in its abolition of common law had substituted a very generous no-fault scheme which meant that every injured worker, regardless of negligence, received fair treatment, which got away from the lottery system that common law is. However, the Bracks government was elected, and the reintroduction of common law was clearly one of the things that it took to the people.

I think when they finally wake up the workers of this state and the unions will be thoroughly disappointed and will believe they have been sold a pup. The common-law benchmarks have been made much higher, the drafting gate has certainly been narrowed considerably and fewer people will get through the gate than the government would like the citizens of Victoria to believe. Not too many people will receive common-law payouts.

The government will get some people off the list through section 115 voluntary settlements, it will have less money to pay out in common law than has been suggested will be available, and it will increase premiums on the basis of common-law payouts and GST. Some time into the future the scheme should be financially viable and the government will claim credit for it. However, the credit will not be through anything the government has done to help workers or employers. One should bear in mind that the government has made common law tougher through increased premiums and it is simply a combination of circumstances that will allow it to claim that it is in fact doing very well indeed.

We are yet to see what offer will be made to the fourth group, the section 115 claimants, because it will be done by an order in council. Again one has to accept the legislation a bit like a pig in a poke. You have to accept in good faith that the government will act reasonably and responsibly because we were not able to be told what sort of offer will be made to the fourth group because it will be done by order in council in due course. I express some concern about that.

I turn to the issue of the so-called Coote's case and premium calculations. I approached this with a good deal of trepidation because the last thing I thought the Victorian Workcover Authority should have was power to retrospectively go back and collect premiums where a workplace had been wrongly classified and that classification had been done in good faith. Most people would agree that it would be unfair if that happened. I do not intend to go into the detail of the Coote's case and the other cases because both Mr Katsambanis and Mr Jennings have outlined them in great detail, but clearly the court felt the same thing in terms of the Coote's case.

The outcome that has now come about after much toing-and-froing between the minister, the opposition and the National Party is that the introduction of a moratorium is a fair way to go. Employers will have the opportunity to have their classification rechecked if they are in any doubt, and if it is found to be wrong the premium will be adjusted this premium year only and will not retrospectively be collected back five or six years. If after the moratorium expires and it is found to be wrong there will be capacity for a backdating of four years. All in all it is a compromise we can all live with. I ask the minister that the moratorium be somewhat longer than is currently proposed. I understand that it is intended the moratorium begin from proclamation of the bill until May next year.

From memory, premiums are more likely to be finalised somewhat later in the year than that. It would be fair and reasonable if the moratorium extended to cover the next lot of premium calculations for the bulk of if not all employers, and that those employers be advised that the moratorium exists and that if they want their workplace classification to be checked there is an opportunity for them to do so without penalty. We must clean the slate, draw a line in the sand, and in doing so it has to be done fairly. There has to be adequate time for people to do it.

I share the concern of Mr Katsambanis that we have some cowboys running around Victoria employed by the Victorian Workcover Authority to audit premises. I do not have any objection to premises being audited, but I would much prefer that the auditors are paid on a contract that was simply a fee for service rather than what appears to be the case according to how much extra revenue they can garner.

I have had a couple of examples where some unfair audit findings have been made. One concerned a business which had an office block with 20 people working in it in a country town. That business also happened to own a number of quarries. It was the opinion of the auditors that everybody who worked for that business should be classified at the premium rate applying to quarries, despite the fact that the office workers were not within 50 miles of a quarry and never went there anyway. It is akin to saying that everybody who works in BHP house should be on the same rate as those who work in the Pilbara. We won that argument, but it should never have arisen in the first place. That assumption should never have been made.

There have been other instances where transport depots and their offices have been differently classified, and there has been some toing-and-froing whether they should be classified at the transport rate. There is some opportunity for businesses to be segregated into different workplaces. They are already required to list which workplaces they have, and that if they establish a new workplace they have to advise the authority. If people from a workplace regularly visit the other workplace, which might be a more dangerous environment, that workplace is classified at that rate because it is exposed to that risk, but it has to be horses for courses. I am not certain that that has always been the way it has been applied by some of the audit teams that have been trooping around country Victoria on behalf of the Victorian Workcover Authority.

Finally, this legislation is somewhat surprising. I warn injured workers to be careful in taking up the opportunity that may seem to be there for them. I look forward to the moratorium on workplace classifications

being extended to a time that is more reasonable and covers the next premium calculation period.

Hon. C. A. STRONG (Higinbotham) — The Accident Compensation (Amendment) Bill covers certain areas, which I will go through on a point-by-point basis. The first is the ability for people with a Workcover disability who are taking a pension to cash that pension in so that, in terms of the spin, they are able to avail themselves of a similar facility to a common-law claim. The point has been made by other speakers that it is really a triumph of spin over substance. In truth these payouts are very small; they will attract people at one extreme who may be trying to rort the system; and they are a cost-shifting exercise — they shift expenses from Workcover to the commonwealth government. It really is a triumph of spin over substance.

Reading the spin, the bill purports to give effect to the settlement policy announced by the government during the passage of the Accident Compensation (Common Law and Benefits) Bill in April 2000. It sets up a system for those people who would have had a claim in the period between the time the ability to make common-law claims was deleted from the legislation in 1997 and when it was subsequently reinstated by the Labor government in October 1999. So it seeks to deal with those people who would have had a claim in that period when common-law claims were not allowed. The spin is that it puts those people back on the same basis as they would have been on before 1997 or post-October 1999 when they could have made common-law claims.

The bill also sets certain parameters: people need to have a 30 per cent impairment; they need to have been recipients of payments for over 104 weeks; they need to be assessed as having no current work capacity; and they need to be assessed as being in that situation indefinitely. When they pass those tests they are then able to commute their pension entitlement. Schedule 1 to be inserted by clause 7, which appears on page 38 of the bill, sets out a table to determine the settlement amounts for them to do that. For instance, an 18-year-old who has been in receipt of a pension for over 104 weeks, has a 30 per cent impairment and is assessed as having no work capacity at all, can commute 427 weeks of that pension. In other words, he or she can take that pension right, which would run on for the rest of his or her working life, and trade it in for the commutation of eight years of entitlements. A 40-year-old assessed in the same way could commute 283 weeks of entitlements.

As other speakers have said, you have to wonder who would avail themselves of this level of lump sum payment. I can only conclude that only those people who are facing some enormous hardship and have to have money immediately for some personal pressing need would accept such a terrible deal. For instance, a 40-year-old, who would be looking at being on the pension for another 20 to 25 years, could cash that entitlement in for 283 weeks of entitlements, which is about 5 years. Who would do that? Perhaps somebody who believes they can get back to work would be prepared to cash in their pension, take the lump sum and circumvent the system by double dipping. Alternatively, some people depending on their circumstances could take the lump sum and then go on to commonwealth benefits — so they can have the lump sum to use in any way they like and then go on to some form of commonwealth pension, which is clearly double dipping.

As well as providing the facility for individuals who fall within this window to take lump sums, the bill also stipulates that Workcover recipients can, if they choose, commutate their pension entitlements to lump sums. In the same schedule column 3 on page 38 of the bill details the commutation rates, and they are unbelievable. A 40-year-old person can give up his pension for the next 25 years and commute it to 74 times the weekly benefit. In other words, the person could trade in 25 years of pension entitlement for something like a year and a half worth of lump sum benefit. Clearly, very few people will avail themselves of this provision. It is spin over substance. The government can say it has done it and how wonderful it is for looking after people who have fallen into the gap when common-law claims were not allowed under Workcover, but one wonders who will take it up. I suspect few people will do so.

The bill makes further amendments that are not quite as bad, cynical or spin oriented, and I will deal with them quickly. It separates the conciliation service as an independent body rather than a body responsible to the Victorian Workcover Authority where questions of probity and how people are dealt with may conceivably be raised. The service will be called the Accident Compensation Conciliation Service. It will be clearly independent because the conciliators will be approved and given their terms by the Governor in Council. As I say, it is clearly independent and that will increase the probity of the organisation, and should be applauded.

The third major issue the bill deals with is the so-called Cootes case and its ramifications, which have been dealt with by other speakers in the debate. It is a difficult area that the Victorian Workcover Authority

must protect. It is appropriate that the authority is trying to ensure the Cootes loophole is dealt with and fixed. It is important for the operation of the system that that be done. It is fair that if people are categorised in a way that means their insurance premiums are greater than they should be, they receive refunds. However, if any business is categorised so that its premium is less than it should be, it should be required to meet that cost which it had not paid because of the incorrect categorisation.

There is also the issue of meeting the expectations of those people currently with proceedings afoot as in the Cootes case with similar arrangements where they have an expectation that they will be treated in a similar way. The moratorium is appropriate. It is a way of dealing with the issue fairly. It ensures that people do not have perceived rights taken away from them retrospectively. It is a not ungenerous way of dealing with the issue, and it is appropriate.

I turn now to the fourth major area of the bill which concerns amendments to other legislation. I particularly refer to clause 34, which removes the occupational health and safety provisions from the Mineral Resources Development Act 1990 and puts in their place the requirements of this act. The amendment changes the occupational health and safety regime and the administration and rules for the Mineral Resources Development Act. Given there is clearly the potential to have different rules and regulations under the Occupational Health and Safety Act, it inevitably will be different to the Mineral Resources Development Act. Potentially serious problems could emerge, not just from the administration of occupational health and safety, but from the regulations and what they require mineral developers and miners to do as distinct from what they are doing now.

The opposition has consulted with the Victorian Minerals and Energy Council on this issue, and Mr Chris Fraser, the executive director of the council, emailed the shadow minister, the Honourable Phil Davis. While acknowledging that he has had some broad discussions with the government, Mr Fraser expressed some concerns to the opposition. In the email Mr Fraser states:

> The changes proposed in the bill are in keeping with the discussions we have had with the government over the past 12 months.

Of more importance he states:

> However, they do not give the whole story as some of the arrangements are contained in regulations that are still to be written and interdepartmental agreements that we can only hope have been agreed…
>
> Our concerns relate to the need for revised safety regulations to ensure that unintended outcomes from the application of the OHSA plant safety regs do not result …
>
> The other concern relates to the objective of ensuring that only one set of inspectors have jurisdiction over mines.

He draws a parallel to what apparently happened when similar provisions were inserted to cover the quarry industry. He writes:

> We need to ensure that we do not end up with the confusion suffered by quarries when NRE inspectors would give instructions only to be contradicted by Workcover inspectors and vice versa.

I have had the opportunity of discussing this issue with the minister. She has assured me that procedures are in place to deal with it. She is confident that the issues raised and the problems that are a potential worry to the mining industry can be dealt with. I understand the minister will read a statement into her summary of the debate dealing specifically with the issues raised by the Victorian Minerals and Energy Council. With those few comments, I conclude my contribution to debate on the bill.

Hon. D. G. HADDEN (Ballarat) — I support the Accident Compensation (Amendment) Bill. The purpose of the bill is to amend the principal act, the Accident Compensation Act 1985, to widen the circumstances in which an injured worker can receive voluntary settlements; to establish the Accident Compensation Conciliation Service; and to make miscellaneous amendments to improve the operation of the act.

The bill also amends the Accident Compensation (Workcover Insurance) Act 1993 and widens the regulation-making powers under the Dangerous Goods Act and the Occupational Health and Safety Act, as well as making minor amendments to a number of pieces of legislation as set out in clause 1(d).

The bill gives effect to the policy announced by the government during the passage of the Accident Compensation (Common Law and Benefits) Bill in April last year. The workers who will have access to voluntary settlements include the intensive case review program group, comprising workers who were injured between 12 November 1997 and 20 October 1999. The voluntary settlements have been calculated by the Victorian Workcover Authority's actuaries. That key group of injured workers will have access to voluntary settlements, which is important.

That process and the procedures to access the voluntary settlements are set out in proposed new section 115. A worker can apply for voluntary but not enforced

settlement, and an injured worker must fall within the criteria of having been 30 per cent whole-of-person impaired using the American Medical Association's guides, fourth edition. The worker must have been the recipient of weekly payments for at least 104 weeks and must have been assessed as having no current work capacity indefinitely.

Procedures in proposed new section 115 protect the injured worker should he or she not wish to proceed with voluntary settlement. Proposed new section 115D contains a provision for the injured worker to withdraw a claim and submit a fresh section 98C application. Other groups are provided for in proposed new section 116, as set out in clause 3. The government will give authority to the Victorian Workcover Authority (VWA) board to offer voluntary settlements in the future to workers who were injured between 31 August 1985 and 1 December 1992. This application process can be delayed from the starting point of no later than 1 July next year.

Existing settlement powers will be retained so the VWA board can offer voluntary settlements to non-intensive case review program workers. However, the current requirement for some workers to show that the settlement is for the purposes of an income-producing project will be removed. Proposed new section 116C provides for the Governor in Council to determine a suitable table of payments for this group of workers on the advice of the VWA board within six months of the commencement of the legislation.

The Australian Taxation Office (ATO) currently treats lump sum payments such as settlements provided for in the bill as not constituting assessable income. For that reason the bill uses the net-of-tax income of weekly payments as the basis for settlement calculations. The ATO has said the current policy is under review and the government, while it does not support any change in the ATO policy, believes it would severely disadvantage injured workers and be inconsistent with the policy recently announced by the commonwealth on structured settlements. The bill takes the possibility of the flagged change in federal policy into account and gives options for the government to assist affected workers.

A number of procedural requirements are set out in the bill. They will ensure workers are fully informed of the implications of applying for voluntary settlements. Part 3 of the bill sets out, clarifies and formalises the role and operations of the Accident Compensation Conciliation Service. The bill will make a service that is independent of the VWA. The service is more fully described in proposed section 52A to be inserted by clause 8. It will be a separate corporate entity in its own right. The bill also establishes the role of a senior conciliation officer and deals with the engagement of conciliation officers.

Other amendments clarify the VWA's powers to audit and seek premiums from previous financial years. That provision is in direct response to the Victorian Supreme Court of Appeal decision in *Victorian Workcover Authority v. I. R. Cootes Pty Ltd*, as handed down on 6 June. That decision has created some uncertainty. Employer associations have been extensively consulted, and administrative arrangements will be put into place through the bill to assist employers to get their heads around exactly how that decision and the consequential amendments in the bill will assist them.

In line with the Harvey report, there will be harmonisation of definitions of remuneration for the purposes of Workcover premiums with payroll tax definitions, as set out in clause 37.

I turn to the Cootes decision and its impact on part 5 of the bill. The decision was handed down on 6 June 2001 by the Court of Appeal, and the three justices of the Supreme Court were Chief Justice Winneke and Justices Phillips and Charles. The decision held that the Victorian Workcover Authority cannot recover recalculated employer premiums prior to the current policy year, except in very limited circumstances. In that unanimous decision it was held that the employer was entitled to be refunded the amount paid for prior adjusted premiums. Two of the three justices held that the change of industry classification was correct, and therefore the insurer was entitled to retain the adjusted payment for the current year of insurance.

In that case the amount of the adjusted premiums totalled $107 262, and the two main issues litigated in the case at first instance were whether the industry classification was correct, and whether the Accident Compensation (Workcover Insurance) Act, the statutory policy and the premiums orders on their proper construction empowered the appellants to adjust premiums for previous policy periods and to call upon the respondent to pay any difference.

The matter went to a hearing before the Court of Appeal on 19 February this year. The decision in a later case of *SBA Foods Pty Ltd v. Victorian Workcover Authority and Anor*, which was heard in February and March of this year, was handed down on 10 August 2001 in the Supreme Court before Justice Gillard. That was not an appeal; it was a judicial review. Justice Gillard said:

The judicial review jurisdiction is concerned with the legality of what was done by the administrative body, and is not concerned with the merits of the decision under review.

His Honour contrasted an appeal where the question usually is whether the decision is right or wrong, whereas a judicial review is concerned with whether the decision is in accordance with the law. A judicial review is not concerned with whether the decision was fair or correct.

The case of SBA Foods was an action instigated by originating motion seeking judicial review of three decisions made in respect of premiums payable under insurance policies. The premiums had been recalculated by the insurer resulting in the employer being required to pay further premiums totalling slightly in excess of $4.5 million.

In this case the decision of Justice Gillard found that the Victorian Workcover Authority did have sufficient statutory power to recalculate and recover employer premiums in respect of past policy years. These two decisions have created uncertainty and have created administrative and legal problems for both employers and Workcover. The Victorian Workcover Authority has sought special leave to appeal to the High Court against the decision in I. R. Cootes, but it is not expected to be heard for a couple of years.

In light of the decision the Victorian Workcover Authority will be required to at least double its audit program and the government is seeking to avert a massive rise in the number of audits and wants to avoid an unnecessary increase in premiums for those employers whose industry classification is correct. The government desires to stabilise the operation of the Workcover scheme, and after extensive consultation with employer associations the government seeks to clarify the law by including appropriate amendments in the bill, which are set out in part 5 of the bill.

The amendments in part 5 seek to entrench in a fair way the rights of both the Victorian Workcover Authority and the employers in relation to the recalculation of premiums from past policy years. Part 5 effectively reinstates the practices that have operated since 1993. The Victorian Workcover Authority will be empowered under proposed section 31(1)(b) to recover past recalculated premium adjustments but will be limited to a period of four years rather than six years. It is important to note that the VWA will initiate a moratorium on the collection of incorrectly calculated premiums and penalties for prior years, except where a fraud is involved, which will run from the date of the passage of this bill until at least 30 May next year. The intention is to allow employers to ensure they are correctly classified within their correct industry classification for their Workcover premiums.

It is important to note that the government does not wish to penalise employers who are doing the right thing. The bill gives a discretion to the VWA to apply reduced penalties, or no penalty, where an employer had no Workcover policy through an honest mistake. The bill also removes the need for compulsory conciliation prior to a court hearing in the event of a death claim. It introduces flexibility by allowing discretion in the penalty that is payable where an employer has no Workcover insurance policy through a genuine mistake. Currently there is no discretion.

Clauses 22 and 23 amend certain rules on the commencement of common-law proceedings and some other proceedings to avoid injustice. The bill provides a more manageable limitation period for certain old Workcover common-law cases and extends the period of approval for persons who can determine hearing loss from 12 months to 3 years. The bill also enables the government policy on controls and possible banning of asbestos to be implemented and enables licensing arrangements for asbestos removalists.

The bill also gives effect to ministerial agreement to ensure the Occupational Health and Safety Act applies in all quarries and mines, and enables Workcover to appoint Department of Natural Resources and Environment officers to enforce the act in quarries and mines.

Certainly the bill does not show the government to be mean spirited or stingy. It shows a generous and fair scheme for injured workers, and it certainly is not spin over substance, a phrase continually used by the previous speaker. The government's approach is one of being fair and financially balanced, and it certainly has a commitment to continue to protect injured workers in this state.

The bill will ensure that the Workcover and accident compensation scheme is affordable, sustainable and responsible. It is important to note that the bill also reinforces that the Bracks government is growing the whole of the state. I commend the bill to the house.

Motion agreed to.

Read second time.

Third reading

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

That this bill be now read a third time.

In moving this motion I want to make a couple of comments. Following a matter raised by the Honourable Peter Katsambanis I wish to indicate to him that the Minister for Workcover set out in another place arrangements concerning a moratorium where there had been an honest mistake in Workcover industry classification in the past. Following some additional inquiries from the opposition concerning how the Victorian Workcover Authority will treat this matter relating to Workcover industry classifications and changed premiums, I can advise that the premium for the current year will be recalculated using the corrected Workcover industry classification. The experience of the employer from past years will also be taken into account. Additional premium for the past years will not be payable, as the minister advised in the other place.

I would also like to comment on the matter the Honourable Chris Strong raised about the issue of the regulation of occupational health and safety at mine sites. An agreement has been reached between the Minister for Energy and Resources and the Minister for Workcover on this matter, and this has been formalised by an exchange of correspondence. Following the agreement, the Department of Natural Resources and Environment (DNRE) has negotiated a memorandum of understanding (MOU) with the Victorian Workcover Authority. This will ensure that only one agency will regulate occupational health and safety at mine sites. Under the MOU, DNRE inspectors will be appointed as inspectors under the Occupational Health and Safety Act. Department inspectors are currently undergoing training by the Victorian Workcover Authority to ensure that they have appropriate qualifications and apply the occupational health and safety rules consistent with other industries.

In conjunction with the Victorian Workcover Authority the Department of Natural Resources and Environment is working on specific regulations for health and safety in mines. These regulations will be made under the Occupational Health and Safety Act and a regulatory impact statement will be prepared. DNRE officers have had discussions with the Victorian Minerals and Energy Council about the changes and will continue to consult with it regarding the proposed regulations and their timing. In the meantime the existing regulations under the Mineral Resources Development Act will continue to apply.

On that note I thank honourable member for their contributions. I believe those two comments address the issues raised in the course of the debate. I thank honourable members for their support of the bill.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

ROAD SAFETY (FURTHER AMENDMENT) BILL

Second reading

Debate resumed from 28 November; motion of Hon. C. C. BROAD (Minister for Energy and Resources).

Hon. G. B. ASHMAN (Koonung) — I might state at the outset that the Liberal Party does not oppose the Road Safety (Further Amendment) Bill. For as long as I have been a member of this Council road safety measures have always enjoyed bipartisan support, and this bill is no different. The legislation makes a number of amendments which are quite important and will facilitate increased safety on our roads. Probably the most important change in this legislation relates to written-off vehicles and what is commonly known around the motor trade as the rebirthing of vehicles. Other changes in the bill relate to drink-driving offences and the use of numberplates.

The government has this week announced a number of major road safety initiatives, and this bill has been put forward as an early part of that package. I must say that I am not persuaded that some of the initiatives being pursued are supported by the available statistics. I know that we can quote statistics until we are blind, but in this case I think they present a picture that is worth reviewing.

There is a great deal of discussion at the moment about the annual road toll in this state, and clearly in raw numbers it is higher than in previous years. However, I am not persuaded that the fact that it is higher than in previous years is justification for moving in the direction that the government is taking, particularly with the proposals in relation to the use of speed cameras and the expansion of that program. Nor am I persuaded that some of the other changes being suggested are warranted.

When you look at the fatalities on a week-by-week basis for this year you realise they are higher than we have experienced for some time, but a number of factors come into play and they must be considered when evaluating these numbers. I will quote from the November 2001 issue of the Transport Accident Commission's (TAC) *Road Safety Monthly Summary*. The 12-month moving total has fluctuated between

406 to the current number of 441 as at 25 November, but there has also been quite a significant movement within that period.

The numbers are quite interesting in that they actually show that some weeks are much more dangerous than others. The chart I am reading from shows the weeks from 1996 to 2001. I might indicate to honourable members that the week that contains 23 September is one that should be avoided at almost all costs. In 1996 there were 16 fatalities in that week, and there were 6, 11, 8, 11 and 6 in the following years. When we come to the week of 18 November, the figures are 10, 6, 9, 11, 11 and 13. For the week of 23 November from 1996 the fatalities are 11, 12, 12, 6 and 13, and in 2001 there were 12 fatalities. The week we are about to enter is also one in which we should exercise caution, because historically there have been quite high fatalities in that week. However, you can go to other weeks when fatalities are quite low.

To react to what at times appears to be a short-term jump in numbers is not the way to address the road toll; it needs a far more strategic approach. The government needs to be approaching the road toll with an open mind and with initiatives that are not window-dressing but contain significant substance. We should be investigating accidents and comparing statistics with the weather conditions of the time, what events are occurring at the time and a whole range of other factors.

It is interesting to note that since 30 September there has been quite a significant increase in the number of fatalities on our roads. I also note that over that period there was the major police dispute and a significantly reduced police presence on our roads.

One of the initiatives the government is talking about is the installation of fixed speed cameras and the use of speed cameras that do not provide any warning or indication to drivers of their presence. I question that approach, because in my view that is an exercise in entrapment rather than appropriate policing, and it does not send a message to the motorist that there is a police presence. It generates revenue and creates an accumulation of demerit points for motorists, but I do not believe it produces the required result — that is, more caution on our roads, more sensible driving, and an overall reduction in the road toll.

My argument is supported by the statistics. Quite clearly there has been a significant reduction in police presence during the period of the police dispute. I will quote some numbers relating to police enforcement with booze bus random breath testing. In the period to October 1999 versus the same period to October 2001 in metropolitan Melbourne there was an increase of 34 per cent in the number of tests carried out, but in country Victoria there was a reduction of 53 per cent. So the numbers tell a story — the country road toll increases. The speed camera data for the 12 months to August 2001 shows that in a period in the middle of the year there was clearly a drop in the use of cameras and speed detection equipment.

When we focus on the road toll we should focus on what level of policing has occurred at the time the statistics relate to. My point is that we need to do a great deal more research into this subject, rather than just having a gut reaction to grab a short-term headline and give the appearance of action by the government. We have gone through a period of changes to speed limits and the introduction of the 50-kilometre per hour speed limit. Once again I make the comment that that is a knee-jerk reaction; it is not a reaction based on facts.

Sitting suspended 6.30 p.m. until 8.02 p.m.

Hon. G. B. ASHMAN — As I was saying before the dinner break, the government has had a knee-jerk reaction to a number of road safety issues. The issue I was speaking about prior to the dinner break is the introduction of the 50-kilometre-per-hour blanket speed limit for all residential streets. That is quite inappropriate. We are now seeing that motorists are confused and are unable to determine from the visual appearance of a road what the speed limit should be.

In the past the general assumption was that if a road was not signed the limit was 60 kilometres an hour. Now a number of roads that have all the characteristics of roads that are posted at 60 kilometres an hour but do not carry signs have speed limits of 50 kilometres an hour. The police advise me that they are having great difficulty policing the speed limit on these roads and that in many areas they are choosing not to enforce the speed limit because they privately acknowledge that the limit is inappropriate for particular roads and for the volumes and nature of traffic being carried on those roads.

While the number of collisions occurring on these roads is not yet sufficiently detailed to make an assessment on the statistics for the effectiveness of the change of speed limit, the preliminary information would suggest that the change of speed limit has had almost no impact on the collision rate on those roads.

I now turn to the major components of the bill. The first matter on which I comment concerns vehicles that are written off. There has been considerable debate and concern within the motor industry about such vehicles

for some time. It is an issue that is not new. It has been around probably for 30 years or 40 years, although in the past 10 years the problem of rebirthing damaged vehicles has become far more prevalent.

By way of explanation, the rebirthing of a vehicle generally involves the obtaining of a good vehicle, the transfer of the identification from a written-off vehicle to that acquired vehicle, and the acquired vehicle then assumes the identity of the written-off vehicle. Such a practice is illegal 99 times out of 100 in that the vehicle acquiring the new identity is invariably a stolen vehicle.

The legislation proposes two classes of written-off vehicles: one will be known as the statutory write-off and the other will be the repairable write-off. It will not be possible to repair the statutory write-off under any circumstances. The vehicle will only be available for component parts. The repairable write-off could be a vehicle that is insured and has sustained significant damage, such that the insurer would not wish to repair it because from its view it would be uneconomic. However, it may be a practical restoration and repairable proposition for an individual who is prepared to donate their time to such restoration of the vehicle.

It is estimated that something in the order of 2000 vehicles a year are part of this rebirthing process. The decision to write off a vehicle will generally be made by an insurance company, although occasionally an individual will make that decision, particularly if they are uninsured. It is proposed that when the vehicle is written off as a statutory write-off, all the identification numbers will be marked in such a way that ensures they cannot be removed from that vehicle, and by removal I mean being cut out and re-welded into a similar vehicle. Those numbers will be damaged in such a way that it will be impossible to transfer them.

Until recently the insurance industry has not been keen on the proposal for a register of written-off vehicles because while they have been insuring the stolen vehicles they have been able to sell the wrecks resulting from crashed vehicles at generally quite inflated values to people or groups who use the damaged vehicles to obtain an identity to put on to a stolen vehicle. The practice has been widespread.

Professional groups who have undertaken these activities have been particularly well networked with vehicles being rebirthed and sold interstate within a short time from when they were stolen. It has been a national racket, and recently evidence has been brought forward that shows it has been international. To my knowledge a number of very expensive imported vehicles have been brought into the country, obviously stolen — and I am aware of a vehicle that was stolen off a German autobahn and shipped in a container to Australia.

Once that occurs, it is not difficult to find a vehicle of similar colour and make in Australia. That vehicle is stolen and then damaged beyond repair and insurance claimed by the owner. The identity of the vehicle is then transferred to the imported vehicle after the purchase of the wreck from insurance auctions by the rebirthers. That has been one of the practices and the people undertaking this activity are very skilled and many of the vehicles are almost impossible to detect.

The register will assist, but if this proposal is to work it will be imperative that there be a special policing squad or a special Vicroads squad with all the skills of the people in the rebirthing business because they will be the only people who can identify the vehicles. Unless you are skilled and trained it is particularly difficult to identify the vehicles. It is the opposition's wish that the government take some action to restore the police stolen motor vehicle unit. That unit was disbanded about three years ago and with its disbandment there has been a loss of those skills within the police force. The average investigator within a criminal investigation unit would not have the skills to identify these rebirthed stolen vehicles. It is very important to have a group of people who have all the skills and knowledge of these practices.

As I said earlier, the insurance industry has not been overly enthusiastic about the legislation. However, I understand it has now come on board and that will probably assist in reducing the activities of rebirthing, as the availability of donor cars dries up.

The other major change proposed by the legislation relates to the alcohol and drug component of the Road Safety Act. It imposes stiffer penalties for those who exceed .05 blood alcohol content. Honourable members will recall that only a few months ago legislation was introduced to adjust the reading of .05 and to clarify the interpretation of exceeding .05. It has been noted that over an extended time where motorists have exceeded .05 but have not exceeded .10, there has been a consistent pattern of people seeking to take the matter to court rather than accepting the on-the-spot fine and cancellation because the magistrate has had some discretion on whether licences were cancelled. We are advised that the discretion was exercised by the courts in about 60 per cent of cases so many people who had exceeded .05 were allowed by the courts to continue driving.

The government's proposal is to make .07 the point at which all drink-drivers must lose their licences. While the opposition understands the sentiment of that and will, in not opposing the legislation, support it, opposition members question whether we are not now moving to a regime of mandatory sentencing and removing the discretion of the courts. We have a concern that we may be saying to magistrates that we do not trust them to make the right judgments. I would have hoped we could encourage magistrates to impose penalties within the existing law without the government moving to mandatory sentencing. There will be some options for those who exceed .05 but not .07; they will have the opportunity to lose 10 demerit points but continue driving. I believe there are some reasonable arguments to allow magistrates to continue to have that discretion. There are at times extenuating circumstances. The legislation says that there is no opportunity for extenuating circumstances to be taken into account. Notwithstanding my comments, the Liberal Party does not intend to propose any amendments and will support the legislation as it is presented to us.

The changes that will allow breath testing to occur in police cars, public hospitals and other places provide police with more flexibility in the enforcement of the .05 legislation. As it has been explained to me, that provision is particularly valuable in country areas where drivers have frequently needed to be transported from the location of the alleged offence to a police station or a booze bus. Given distances between some places and others, it has been noted that on a number of occasions alleged offenders have sobered up sufficiently during the journey to pass the breath test. So that provision is positive and allows the police to test people in more remote locations. Collision and drink-driving rates are somewhat higher in country areas than population numbers would suggest they should be.

A minor change proposed in the bill clarifies the definition of a person being in charge of a motor vehicle. A person steering a towed vehicle is now deemed to be a person driving the vehicle, just as a person sitting in the passenger seat with a learner-driver at the wheel has exactly the same provisions applied to him or her as would be applied if the person were physically driving the vehicle.

Another minor amendment relates to the use of numberplates, and I confess I thought this provision was already in place. A person who holds or owns a set of numberplates that are displayed on the wrong vehicle will now incur the same liabilities and responsibilities as if he or she were the owner of the vehicle on which the plates are displayed. Therefore, if the plates have been stolen the owner of them will need to be able to demonstrate that they have been stolen and that the theft has been reported to the police. I am assured that that is a more than adequate defence. This provision is proposed because, as I understand it, existing legislation has at times allowed for an evasion of traffic camera fines, parking fines and tolling fines.

One thing that surprised me is that there is no provision in the existing legislation for assisting police when hit-run accidents occur and stolen plates have been identified. I would have thought that would be just commonsense. Evidently, however, there have been some instances when information has not been forthcoming from the owner of the plates.

A contentious provision in the bill concerns rules about learners permits for motorcyclists. The Liberal Party does not intend to oppose this part of the bill, but the government is putting to us that the learners permit, which is currently available at 17 years and 9 months of age, will now not be available until the age of 18 years.

It has been put to us that this has been used by a number of young people to obtain a learners permit and then on turning 18 years of age transfer to a motor vehicle licence. We are not persuaded by the argument, but have taken the view that we will not oppose the change. One argument in favour is that it provides consistency. One of the training groups has raised with me that this change may present problems in relation to their liability insurance while training learners.

One of the conditions on their insurance policy is that those learning to ride a motorcycle on private property must hold a learners permit. I hope the situation can be addressed and if it is a major problem for the training institutions the government will take measures to ensure that their indemnity insurance covers the people learning to ride who do not hold a learners permit. Motorcycle riders are far more likely to be injured or killed than any other person using the roads.

Pedestrians and single vehicle accidents rank higher than motorcycle injuries and deaths, but as a proportion of the users there is a significant overrepresentation in motorcycle riders. I note that from 1997 to date, of the 17-year-old learners only one learner was killed in Melbourne and one learner was killed for the rest of Victoria, and there have been 15 serious injuries in Melbourne and 18 serious injuries for the rest of Victoria. The statistics show there is some evidence of an overrepresentation among learners in country Victoria.

I am not persuaded that the figures necessarily justify the direction the government is taking. There is obviously a problem with motorcycle riders in that there is no opportunity to provide supervision while on a motorbike, and certainly none of us would choose to be a pillion passenger while somebody is learning to ride a motorbike. I will volunteer to teach someone to drive a motor vehicle, but I will not get on the back of a motorbike. That is part of the difficulty.

Hon. B. W. Bishop — Where is your sense of adventure!

Hon. G. B. ASHMAN — Mr Bishop, I would go bungee jumping before I would ride pillion on the back of a motorbike, and I am not lining up to go bungee jumping either — the risks are similar.

Changes have been made to the heavy vehicle legislation which relates to vehicles that are repeatedly found to be speeding. On major highways everyone of us has noted heavy vehicles that consistently exceed the speed limit, notwithstanding that they have signs on them saying that the vehicle is speed limited to 100 kilometres an hour. You can find yourself being hunted up the road at 110 kilometres an hour, thinking that you are pushing the limits, but a truck pulls out and passes you. When it does you then get a great view of the 100 kilometres an hour speed-limited sign on the back of the truck before it disappears off into the distance.

The bill provides for the suspension of the registration of heavy vehicles that are repeatedly found to be speeding. It also provides for the mandatory fitting of speed limiters to vehicles that are found to be consistently speeding when obviously the limiter is not already fitted. It provides more options for enforcement.

Changes have been made to evidence in relation to digital speed cameras, the way digital evidence can be presented to the courts and the procedure of producing Vicroads records for the courts. None of that detracts from a person's ability to defend themselves in court, but it frees up police resources for policing matters rather than court attendances, and will assist in deploying more police on the roads, which is where they should be.

The Liberal Party has a strong view that policing of our roads is the greatest deterrent to errant motorists, but speed cameras, while they are valuable, are much more valuable when they are visible rather than hidden. Evidence shows that during the police dispute when there was not a strong police presence on our roads the road toll increased. I urge the government to take note of those numbers, and rather than looking at cameras and passive forms of policing it address the issue of active policing by putting more patrol cars on the roads and more visible police as the means of reducing our road toll, and training motorists to drive appropriately. We should move away from the single-minded pursuit of 'speed kills'. While inappropriate speed kills, minor offences do not necessarily cause the problem we are told they do. We should be focusing on responsible driving and driving that is appropriate to the conditions of the time and day regardless of the speed limit. The Liberal Party will not be opposing the legislation.

Hon. B. W. BISHOP (North Western) — I am pleased on behalf of the National Party to contribute to the Road Safety (Further Amendment) Bill and to inform the house that it will not oppose the bill. However, my colleague the Honourable Jeanette Powell proposes to move an amendment in the committee stage to retain the age at 17 years and 9 months rather than at 18 years for motorcycle learners.

I thank the officers from the minister's department who as usual have been most helpful in providing comprehensive briefings to the National Party, and as always have got back quickly with any questions that we may have had on the legislation.

Clause 1 sets out the purpose of the bill:

(a) provide for the establishment of a register of written-off vehicles;

(b) make changes to the penalties of drink-driving offences;

(c) enable a breath sample to be furnished for analysis in any place or vehicle;

(d) define circumstances in which a person is to be taken to be in charge of, or driving, a motor vehicle and impose new duties on the person in charge;

(e) provide for the seizure of number plates in certain circumstances;

(f) make other miscellaneous amendments to that Act.

The National Party has consulted quite widely on this bill. Obviously, it does that for every bill, but it consults as widely as it can on anything to do with penalties for drink-driving and the age limits of people who might utilise motor bikes or even cars. The National Party has consulted across a number of municipal councils in rural areas, and I will refer to them later in my contribution. I congratulate my colleague in the other place the honourable member for Wimmera, Hugh Delahunty, who did an excellent job in substantiating

the National Party's case for retaining the motorcycle learner permit age at 17 years and 9 months. The National Party will utilise his work.

The National Party also consulted Vichealth; the Australian Drug Foundation; the Victorian Alcohol and Drug Association; the Royal Automobile Club of Victoria; the Auto Cycle Union of Victoria; the Auto Cycle Council of Australia; and the Driver Training Academy of Victoria. The RACV was supportive of all the changes proposed in the bill. I would also like to commend the liaison that the National Party has with the RACV, in particular with David Cumming, who is the manager of government and corporate relations. The relationship the National Party has with the RACV is not surprising. Many of the people whom we represent are in regional and rural Victoria, and obviously a large number of them are members of the RACV. The RACV gives them good service if they break down anywhere on the isolated roads, or in fact if they break down anywhere, so obviously there is a good relationship between the National Party and the RACV.

I refer to the recommendation on written-off vehicles. This bill will establish a register of written-off vehicles that is certainly intended to make it harder to trade in stolen vehicles. As my colleague the Honourable Gerald Ashman said, thieves could very easily replace the vehicle identifiers on a damaged car and then pass it off as a repaired vehicle. It is important to note that the term for this is quite unusual — it is called rebirthing. It seems a bit strange to be rebirthing a car, but that is the term. It is big business, because every year 2000 vehicles are rebirthed and sold. It involves a huge cost across Australia — it is estimated at $30 million, so it is big business. Vicroads will maintain the register, which will form part of a national network of such registers.

It was interesting to work through the definition of written-off vehicle with the departmental officers. A written-off vehicle is one that would cost more to repair than it is worth. We found there were a couple of types of written-off vehicles. One is a statutory write-off, which is a vehicle that is so badly damaged that it cannot be repaired to comply with safety requirements. The second one is a repairable write-off, which is a vehicle that can be repaired. The bill will also enable regulations to be made that will require insurers and motor vehicle wreckers to report to Vicroads written-off vehicles less than 15 years old. When Vicroads receives this notification it must list the vehicle identifier on the register. The National Party is very strongly in favour of a national register for written-off vehicles.

On the subject of vehicles that can be repaired — in other words, the repairable write-offs — when I go through the panel shops in my electorate and talk to the people there it is surprising to find what damage can be fixed. It is quite remarkable. They now have really good equipment and apply modern technology to stretch and twist and bend the metalwork in cars to get them back on the road again in extremely good condition. I might say, however, that like any of us who have had a bit of a scrape with a motor car I am often surprised by the cost of smash repairs. The cost always seems to be high to me — or perhaps I take the wrong view. The smash repairers are an essential part of the motor industry.

I can remember the peaceful demonstrations that took place not long ago at the front of Parliament House. The people in the industry were very concerned that the rates provided by the insurance companies were extremely low and that they had not been reset for many years. It will be a continuing challenge to keep the insurance costs down not only in the car industry but also in the wider field. There are many reasons for that — some were discussed during the debate on the HIH bill earlier today. There were the events of 11 September, and we now have a society that appears to be driven more and more by a consciousness of litigation. We seem to be chasing the view often held in the United States of America and sue for everything you can think of, which comes back in the form of increased premiums that most of us have to pay.

I will present the RACV's view on this issue in my contribution. It says it fully supports the development of a written-off vehicle register for Victoria that is consistent with other state registers so that a national register can be formed.

The RACV says it will be effective in significantly reducing the opportunities for professional car thieves to rebirth stolen cars with different identities. That should be a significant deterrent to car theft. The RACV is currently represented on the working group chaired by Vicroads. It has informed me that a regulatory impact statement will be prepared based on the draft regulations. It is anticipated it will be available for public comment by February–March 2002. The planned implementation date for a written-off vehicle register will be April 2002. The RACV made the point that it has publicly advocated that this stage should not be further delayed, but should be accelerated if possible.

The National Party has struggled with the difficult issue of the proposed changes to drink-driving laws relating to the .05 blood alcohol level. The National Party

discussed reducing the demerit points from 10 to 9, but eventually decided not to proceed with that. During that process we noted that some members of the legal fraternity also objected to the provision. I understand they objected for two main reasons: firstly, as mentioned earlier, because it appears to introduce a form of mandatory sentencing, where there is no option, and secondly — I do not think I am unkind to say so — because they may have been concerned about missing out on some work they performed under the old rules. The National Party thought the arguments put regarding road safety were reasonable and that the community would generally support the provision. There has been considerable publicity about this issue, particularly relating to the Daryl Somers case. He retained his licence because of his access to good legal representation. I believe the community has responded to that.

Currently first-time drink-drivers with a blood alcohol concentration of more than .05 but less than .10 are issued with an infringement notice, which involves a fine and a cancellation of their licence for up to six months. The driver can either accept the infringement notice — that is, pay a fine and lose his licence — or elect to go to court, but he must do that within 28 days of receiving the infringement notice. Any driver with a reading over .10 receives a penalty of automatic loss of licence and a fine. The Vicroads licensing data for 1999–2000 shows that 59 per cent of drivers who opted to go to court retained their driving licences. The bill seeks to address this by fixing .07 as the reading at which drink-drivers must lose their licences.

It is a difficult issue that must be worked through. The legislation proposes that first-time offenders with a reading of between .05 and .07 will receive a fine and 10 demerit points, and those with a reading from .07 to .10 will receive a penalty of automatic loss of licence plus a fine, with no discretion to overrule the loss of licence. A person who is over the .10 blood alcohol reading will receive the same penalties as currently exist. Second-time offenders will automatically lose their licences and be fined.

Offenders receiving a penalty of 10 demerit points may be over the limit of 12 demerit points, in which case the current rules would apply — the loss of licence for a minimum of three months, depending on the points accrued, or the double-or-nothing option, where the driver can apply to Vicroads to keep his licence. However, if a single road safety offence is committed within the following 12 months the driver will lose his licence for double the initial period. The RACV supports the amendment. It supported the initiatives regarding drink-driving and the increased demerit points, including the amendment that would allow alcohol breath testing to be conducted in places such as hospitals and police cars.

Personally, I believe an education and awareness program is being carried out. I see a lot more testing of drivers on the roads, and I am on the roads a lot. I believe that is a significant deterrent to drink-driving. The bill will give police the power to conduct breath tests at places other than at a police station or in a booze bus. Tests may be done in police cars, public hospitals or community halls, which alleviates the need to take a driver to a police station or to have a booze bus present. In the remote areas that members of the National Party represent this will reduce the detention time for testing and make it easier all round.

The bill will clarify the meaning of being in charge of a vehicle. It will mean that driving instructors or persons steering a towed vehicle will be subject to the same rules as a driver — that is, he must comply with the road laws, hold a licence and not drink and drive.

The issue of numberplates has been referred to. At present the owner-onus makes a registered owner of a vehicle liable for all offences — parking or traffic camera offences — unless he nominates the person who was actually driving. The legal responsibilities of a vehicle owner do not extend to the owner of plates displayed on the wrong car. Under the proposed changes the person who owns or holds numberplates wrongly displayed on a vehicle will incur the same liabilities and responsibilities as its owner.

The miscellaneous amendments refer to the increase in the minimum age for obtaining a motorcycle learners permit to 18 years and enabling an infringement notice to be used in the administration of Victorian and interstate registration suspension schemes for heavy vehicles that are repeatedly involved in speeding offences. The RACV supports that provision.

Given the time of the evening, I now move to the issue about which the National Party is most concerned. The RACV differs from the National Party in supporting the proposal to raise the minimum age for obtaining a motorcycle learners permit from 17 years and 9 months to 18 years. The RACV says that motorcyclists account for 16 per cent of all road fatalities, but only about 1 per cent of all kilometres travelled in Victoria. It believes there is no reason that motorcyclists should be treated differently from car drivers, but the National Party takes the opposite view. David Cumming has provided some statistics I will refer to later.

The National Party has two major reasons for disagreeing with this proposal. The first is that we have substantial support for our argument.

The first letter I bring to the attention of the house is from the Victorian Farmers Federation. It states:

> Thank you for your letter of 20 November 2001 alerting the VFF to this bill and the proposal to increase the age at which a motorcycle learner permit may be obtained from 17 years and 9 months to 18 years.
>
> The VFF has some concerns about this. Motorcycles provide young people from farming backgrounds with a cheap transport to work or education. Young people in rural areas have often gained considerable experience riding motorcycles on farms from a relatively early age. The VFF therefore supports your proposal to retain the status quo for country-based motorcycle learners.

My colleague the honourable member for Wimmera in the other place did a lot of work on this issue. He received a letter from Workco Ltd. John Ackland, the general manager, writes:

> As a member of the Wimmera Regional Youth Committee, Wimmera Rural Training Advisory Committee and general manager of Workco Ltd I would be greatly concerned with any increase in age to obtaining a motorcycle learners permit.
>
> Young people in our region are experiencing difficulty in taking up apprenticeships and traineeships in agriculture due to the lack of transport to and from work and trade school. In the past both of these committees have sought a review into the youth driving age to see if it could be reduced similar to other states in Australia. The fact that young people lack transport to take up training positions is causing a skill shortage in agricultural industries that will deteriorate into the future.
>
> I would ask the National Party to not only oppose this bill but strongly push for a more extensive review into reducing the driver licence age in Victoria.

Another letter, dated 20 November, was received from the chief executive officer of Hindmarsh Shire Council. It states, in part:

> We understand that the state government proposes to increase the age at which a young person can obtain a motorcycle learners permit, from 17 years and 9 months to 18 years.
>
> Rural youth in many cases have had the opportunity to use farm equipment and to use motorcycles on private land for many years. They have experience and an above-average proficiency.
>
> The opportunity to obtain a motorcycle learners permit at 17 years and 9 months provides a young rural person with access to transport, education and employment. In most of our communities there is no public transport. Travelling distances are considerable.
>
> The Hindmarsh shire supports the status quo of 17 years and 9 months.

The corporate services manager of the Northern Grampians Shire Council, Peter Elliott, wrote to the honourable member for Wimmera. His letter of 20 November states, in part:

> The effect of this bill will be to extend the waiting period for young people to have access to a form of independent travel and this is not something council would support. In rural areas the opportunities for education and employment are somewhat more restricted than in metropolitan and major regional centres, and these restrictions often mean reliance on parents to give up their own time, which may be their own otherwise productive time on farms or in other businesses, to take young people to work or educative activities.
>
> Council would support a proposal to examine the age at which young people may gain some form of restricted motor vehicle licence (perhaps only valid to travel to and from employment or education facilities) in order that the opportunities presently afforded young people in rural areas to take advantage of limited possibilities may be enhanced.

The shire supports the proposals to allow increased mobility for youth.

The mayor of West Wimmera Shire Council, Cr Bruce Meyer, writes:

> The West Wimmera Shire Council would like to draw your attention to the point of a possible raising of the minimum age to 18 years for motorcycle learner permits. This is contained in the proposed Road Safety (Further Amendment) Bill.
>
> Our council feels strongly that we should like the current status to be maintained. It is our belief that many farm apprentices and students required to travel some distance for further education will be disadvantaged. These young people would be totally reliant on parents or friends to get them to work should there be a change. Many rural areas do not have public transport.
>
> We would point out we do not seek an unlimited horsepower for permit riders nor do we request unlimited use, but simply want to allow our young people to have every opportunity to be employed. Being on the border —

which the shire is —

> we are in competition with South Australian job seekers who can obtain a full drivers licence at 16 years.
>
> Please bring this matter before your party and the Parliament.

Those letters constituted a compelling argument for the National Party. Although we are absolutely supportive of safety on our roads and extremely conscious of safety because we travel extensively on our roads in motor vehicles, including tractors and trucks, we must support the wishes of the people who have asked the National Party to respond in this way on their behalf.

A common thread runs through all the letters. Our young people have the opportunity to learn how to ride motorbikes more often than not with more access to the

bikes than do people in the metropolitan area. They need to do that for their work and education, and the fact that in rural areas we do not have access to the public transport enjoyed in major regional centres or city and metropolitan areas. The National Party has closely examined the statistics on the issue. We come out in an uncertain position relative to those statistics. When we examine them we see that the non-metropolitan area is safer than the metropolitan area. I hesitate to quote those statistics, but there definitely is a real difference between the metropolitan and non-metropolitan areas. The reasons could be easily explained.

Obviously one is traffic, which creates more risk for people on motorcycles in metropolitan areas than in rural areas. I have seen them skip or weave in and out of traffic with great enthusiasm. They take risks.

In the rural areas we have early learning opportunities on our farms and the wide open spaces. Even when I was young we used farm bikes on the farms. They were rather ordinary bikes; I had a BSA Bantam which usually broke down once I had reached the other end of the paddocks and I had to push it home. Now we have good purpose-built bikes for farms. They are designed and built for farm travelling. They are good bikes. Now we have access to not only two-wheeled bikes but we have gone through a spate of having three-wheelers, although they did not gain the popularity that many thought. There are many four-wheelers around and they have become popular. They are a magnificent tool on the farm for farm work.

Anybody who has ever ridden a two-wheeler and chased a sheep knows that the only way to work is to jump off, catch the sheep and then stand your bike up while still grappling with the sheep. But a four-wheeler stands on its own while you hop off, catch the sheep and the bike is ready for immediate travel once you have done what you need to do to the sheep. Those machines are well suited to our children in rural areas. They can be used to help the children learn what motorbikes can do — but to do it with great safety. My own children ride those bikes, under close supervision at the start; they always ride wearing their helmets. Of course they come off them, as I have! They learn quickly and well. They have gained tremendous respect for motorbikes and their place in the whole transport scene.

Now the wheel has turned further and my grandchildren do the same thing. They had a purpose-built bike to learn on when they were quite small; the same supervision as applied to my children was in place. They are going through the same process. In rural areas in the past few years we have seen something of a transition between the horse and the motorbike. I believe the process acts to strongly protect the safety of our rural kids as they learn at a young age all the tricks of the trade about riding motorbikes.

In one of the speeches it was suggested that the age for driving a motorcycle solo should be raised to the age for driving a motor car. The National Party response is that that is fine, but why do we not lower the age so we can compete with other states with which we share a border? Why not allow our young rural people to have the same capacity to transport themselves to gain better access for work, education and recreation?

With those few words I conclude my contribution. As I said in my earlier comments, the National Party does not oppose the bill. However, my colleague the Honourable Jeanette Powell will move an amendment about motorcycle learners during the committee stage, when other points will also be raised. I strongly urge all honourable members to support that proposed amendment because I believe it will provide much better opportunities for our young people in rural Victoria in their search for work, in their education and in their recreation.

Hon. G. D. ROMANES (Melbourne) — I am pleased to speak on the Road Safety (Further Amendment) Bill, which introduces a written-off vehicle register to combat the rising rate of vehicle theft and tightens drink-driving laws while making laws fairer for people just over the legal limit. It provides protection for young motorcyclists and introduces minor and machinery amendments to close loopholes in existing laws.

One of the first purposes of the bill is to introduce a register of written-off vehicles in Victoria. The origin goes back to 1998 when the National Motor Vehicle Theft Reduction Council issued a report on state and territory written-off vehicle registers and looked at the development, status and national best-practice principles. It put forward proposals for national arrangements which would bring consistency to the way this problem is addressed across the states and nationally and stop the cross-border trade in stolen vehicles.

In April 1998 a decision was made by the Australian Transport Council to develop linked written-off vehicle registers in all states. Currently such registers exist only in South Australia and New South Wales. The Australian Transport Council proposal was aimed at reducing the use of vehicle identification numbers from written-off vehicles in the rebirthing of stolen vehicles.

This is a problem of the magnitude of approximately 1400 to 2100 vehicles a year being rebirthed at a direct cost to the community of approximately $30 million per annum.

Other honourable members have spoken about what rebirthing means and the way thieves use the identification numbers of a legitimate wrecked vehicle to register and on-sell a stolen vehicle. The scheme put forward in clause 10 provides for the establishment of a register of the identity of vehicles that are written off, including details of the nature of the write-off and whether it is considered a total write off — that is, a statutory write-off where the car is so badly damaged it cannot be safely repaired — or whether it is a repairable write-off. The register includes details of the damage or condition that led to the write-off to enable the checking of the safety of repairs and restorations and the identity of the vehicle if someone subsequently seeks to re-register that vehicle.

The proposed register will be maintained by Vicroads and will be part of the national monitoring scheme whereby there will be an exchange of information and the registration of a written-off vehicle in one state will operate as registration in all states, so that national monitoring will strengthen the arms of all states to better address this problem. The bill includes a requirement to notify Vicroads when a vehicle is written off and motor car traders are required to notify Vicroads when a written-off vehicle is acquired.

The bill prohibits the reregistration of written-off vehicles, except as allowed under the regulations. The aim is to curtail the trade in stolen cars using the identification numbers swapped over from written-off vehicles. It is proposed that the regulations would permit repairable write-offs to be re-registered if they pass a vehicle identity inspection in addition to the usual roadworthy tests. None of the vehicles which have previously been totally written off would be allowed to be re-registered unless there was a revised assessment.

Other parts of the bill relate to drink-driving penalties. It is timely that we are dealing with this bill on road safety this evening, just a couple of days after the Victorian government launched its Vicroads safety strategy, Arrive Alive, which is designed to address road safety issues in this state. The government has been courageous in releasing this strategy because it has put forward a very clear target that the Bracks Labor government is seeking to achieve by 2007.

The target is a 20 per cent reduction in the road toll in that five years and a 20 per cent reduction in the casualty rate. If, with the assistance of the people of Victoria, the Bracks government can achieve that target by 2007, from that point 80 lives a year would be saved and 1300 injuries would be prevented each year. They are significant achievements to aim for. It is even more imperative that we seek to address the issue of road safety now, because as other speakers have mentioned the number of road deaths and injuries is on the rise again.

There are a range of reasons why that may be happening. Numerous causes contribute to accidents and deaths on the road. The Honourable Gerald Ashman believes more active policing would be one way of addressing the road toll. Yesterday I heard an interesting interview on the Jon Faine radio program. Dr Robert Voss, who works in transport research at the Pacific Institute in the United States of America, spoke about how effective alcohol interlocks are in places where they operate. When asked about the possible causes of the rising road toll in Victoria he pointed out that economic activity can be a contributor. More vehicles on the road as a result of increased economic activity could be a reason why the road toll is increasing.

However, I think we all know that some very lethal combinations are contributing on an ongoing basis to dangers on the road. One, of course, is speed. In a graph in Arrive Alive, the government's strategy document, it is very clear that the risk of a crash doubles for every 5-kilometre-an-hour increase in speed over the legal speed limit. The statistics relating to alcohol and driving show that something like 60 deaths per annum in Victoria are attributable to alcohol.

If you look at the involvement of youth in road statistics you can see that inexperienced young people are overrepresented. In 2000, 27 per cent of those killed on the roads were young people in the 18 to 25-year age group; their representation in the cohort of licensed drivers is 14 per cent. These are very serious and lethal combinations — speed, drink and youth. Various other combinations are lethal in their own ways and cause the government and the community angst about how we should address them to improve the statistics, save lives and ensure people are not disabled due to activities on the road.

Various drink-driving reforms are included in the bill, particularly as set out in clauses 12, 14 and 25. The bill proposes to remove from the current legislation an anomaly which results in inconsistent treatment of first offenders with a blood alcohol content of between .05 and .10. Currently infringement notices to first offenders with a blood alcohol content in that bracket

impose cancellation of licence for a minimum of six months. However, one-third of those who receive such notices choose to exercise their right to take the matter to a court and contest it and the courts have a discretion to waive that disqualification period.

In fact, 59 per cent of the one-third of first offenders who go to court do not have their licences cancelled because the court exercises its discretion in that way. The other two-thirds of first offender drink-drivers have their licences automatically cancelled while the ones who take their cases to the courts are dealt with in a different way. There is some inequity in the outcome for those two groups of first offender drink-drivers.

The bill removes that anomaly and introduces a consistent treatment of first offenders. It provides that .07 will be the level at which all first offender drink-drivers must lose their licences. That means that the existing cancellation level of .05 has been raised to .07 for those who choose to accept the infringement notice. However, the discretion of the court in dealing with first offenders is reduced from .10 to .07. What is being proposed is a more equitable treatment of the two categories of first offender drink-drivers. Drivers who are subject to a zero blood alcohol content limit such as P-plate drivers and truck drivers will still have their licences cancelled automatically if found to be over .05.

Under the provisions of the bill a drink-driver with a blood alcohol content below .07 will incur 10 demerit points. That means that those with good driving records and a blood alcohol content reading just above the current legal limit will not necessarily lose their licences. However, with those 10 demerit points they would be put on notice not to reoffend. There will be a change in that discretion. Whereas the court can currently let off a driver with a blood alcohol content of up to .07, that will now no longer be possible.

One must consider that drivers who are convicted of drink-driving in those circumstances currently could be let off by a court even though if they had a blood alcohol content of nearly .10 their driving would be four times as dangerous as someone driving at the legal limit of .05. The crash and road toll statistics show that the risk of an accident doubles for every .025 of blood alcohol content. This is a very important issue. If you look at the curve in the graph you can see that a drink-driver at .05 is four times more likely to be in an accident than a sober driver. A drink-driver at .07 is almost twice as dangerous as a driver at .05 but at .10 — the current limit of the court's discretion — you can double that again. Drivers out on the road driving at those limits are a high risk to road safety.

On 15 November the Law Institute of Victoria wrote to the Minister for Transport supporting measures to reduce the number of accidents in the state but expressing some concern about the sentencing implications of the bill. At one point in its letter the institute characterised the proposals relating to the proposed new limits and the change of discretion as 'mandatory sentencing'. I would like to quote from a response of the Minister for Transport in the other place to the law institute and its characterisation. He said:

> The government does not agree with the characterisation of these proposals as 'mandatory sentencing'. The cancellation of a driver's licence does not derogate from a person's fundamental rights but represents the withdrawal of a privilege in circumstances where the person has demonstrated themselves unfit to hold it.

I contend that it is not an appropriate comparison. We have had lots of discussions around the country about mandatory sentencing in relation to mandated imprisonment for people who have been found to have committed crimes in certain states. That sentencing relates to fundamental rights being withdrawn. But the courts have discretions given to them under various sentencing provisions, and many other actions, outcomes and penalties are mandated in practices and laws of this land. For example, a person is required to pass a driving test to be granted a licence to be allowed to drive on the road. Members of the community are required to submit their tax returns on a regular basis or incur penalties. We are mandated or required to do many different things.

Hon. R. M. Hallam — So what is the point?

Hon. G. D. ROMANES — My point is that it is not an appropriate comparison to make that point about the changes proposed in the bill.

Another important provision in the bill is the provision for the protection of young motorcyclists. Clause 11 proposes to raise the minimum age for obtaining a motorcycle learners permit to 18 years from the current 17 years and 9 months, so that the age at which novice motorcycle riders and novice car drivers may ride or drive solo will be the same. The intent of this provision is to remove the incentive for young people to use motorcycles in preference to cars when needing to travel independently at a younger age — and as Mr Bishop has pointed out, many do. The National Party has foreshadowed that it will move an amendment to keep the qualifying age at 17 years and 9 months.

Hon. R. M. Hallam — In the country?

Hon. G. D. ROMANES — In the country.

Hon. R. M. Hallam — Thank you.

Hon. G. D. ROMANES — The reasons put forward for that are quite understandable. Young people have a need to independently get to places of work, education, and entertainment at different times of the week. The comment has been made that public transport is not as available in country areas as it is in the city.

While one can understand those needs put forward very cogently by the National Party, the government does not support the amendment it proposes to move. That is because the statistics from Vicroads records on accidents involving motorcyclists and learner motorcyclists do not support the argument to change what has been put forward in the bill.

I would contend that there are other strategies that should be put in place to address those needs of young people. One of those was a recommendation of the school bus review to look carefully at trying to incorporate the needs of young people to get to educational institutions and training positions with school bus services, and the other was to continue to improve public transport in rural and regional areas, as the government intends to do with the fast train proposal but with which the National Party appears to take issue. I am told by other members that many young people would use the fast trains to get from different country centres to educational institutions in provincial cities like Bendigo and Ballarat and in other centres such as the Latrobe Valley.

Statistics show that the number of accidents that occur in Melbourne involving learner motorcyclists that result in fatalities or serious injuries is roughly double the number that occur in the rest of Victoria. In the last five years in Melbourne 17 were killed and 354 were injured, compared with the rest of Victoria, where 9 were killed and 161 were injured. However, when you look at the statistics for 17-year-old learner motorcyclists, the group that is the subject of the National Party's proposed amendment, you can see that more serious accidents have occurred outside Melbourne than in Melbourne. Those figures for 17-year-old motorcyclists are 1 death and 15 injuries in Melbourne compared with one 1 death and 18 injuries in the area outside of Melbourne.

At this stage the law allows independent travel on motorcycles at a younger age than independent travel in cars. The concern is that by doing that the law gives an incentive to young people to use motorcycles in preference to cars at an earlier age and to adopt that much more dangerous means of transport. In fact, motorcycle riders are 17 times more likely than car drivers to be involved in serious casualties or fatal crashes.

The other point to make is that those who travel by public transport travel on a form of transport that is over 20 times safer than private vehicle transport and many more times safer than motorcycle transport. So there are relative advantages in encouraging young people to wait the extra three months and to opt for other forms of transport — in other words, to opt for a motor vehicle licence as opposed to a motorcycle licence.

The bill is really responding to the artificial incentive the current law provides for young people to ride motorcycles, which results in a disproportionate number of accidents in rural areas involving 17-year-olds on motorcycles.

The lives of young people in the country are no less important than those in the city. The amendment would not achieve its objective. The National Party proposal would create a dual licensing system that would be impossible to enforce because it would be based on where a person was living at the time they applied for a permit. Therefore, it would be very easy to circumvent.

The other provisions of the bill have been dealt with by other speakers, so I will not go into them in detail. But I remind honourable members of the challenge before the government and the Victorian community to use the road safety strategy the government is developing to make it very clear to young people and to the community that it is unacceptable to drive and drink and speed, and that those combinations are dangerous and bad for the future of individuals and the community.

The provisions of the bill go some way towards addressing some of the challenges for Victoria in trying to bring the road toll down again. I commend the bill to the house.

Hon. E. J. POWELL (North Eastern) — This bill makes a number of amendments to the Road Safety Act 1986. I am pleased to speak on the bill this evening because it gives me an opportunity to address some of the misconceptions expressed during a number of presentations. Other honourable members have spoken about the main purposes of the bill, and due to time constraints I will refer just to the main issues. National Party representative, the Honourable Barry Bishop, has already put the purposes of the bill on the record. He also put on record the fact that the National Party will

not oppose the bill but will seek to amend clause 11 in the committee stage.

I will start with the clauses in the bill that deal with some of the major issues. Clause 10 deals with written-off vehicles, which are those that cost more than they are worth to repair. There are two types of written-off vehicles: a statutory write-off, where the vehicle is so badly damaged it cannot be repaired and a repairable write-off, where the vehicle can be repaired. The Honourable Barry Bishop put on the record the costs of repairing vehicles and the types of work that can be done on damaged vehicles.

The bill also deals with the establishment of a register of written-off vehicles, which is intended to make it harder to trade stolen vehicles. We have heard that thieves can replace the vehicle identifiers with those of a damaged car and then pass the stolen vehicle off as a repaired vehicle. Vicroads will maintain the register, which will form part of a national network. New South Wales and South Australia already have this type of register, and it makes sense for Victoria to now connect and network with other states so that it is not viable for people who have stolen cars or stolen car parts to cross borders. The bill also proposes regulations that will require insurers and motor wreckers to report to Vicroads written-off vehicles that are less than 15 years old, and Vicroads must list the vehicles on the register.

One of the outcomes of the bill that has received a lot of media coverage — and I will not go into it in great detail, but the coverage has shown that some people support it and some people oppose it — is the .05 drink-driving issue. Currently first-time drink-drivers with a blood alcohol concentration of over .05 but less than .10 are issued with an infringement notice which involves a fine and a licence cancellation of up to six months. The driver can either accept the infringement notice and pay the fine and accept the licence cancellation for the time limit or choose to go to court. If they chose to go to court and contest their case, they must do that within 28 days of the infringement.

However, the new penalty is an automatic loss of licence plus a fine for any reading over .10. The new legislation means that first-time offenders with a reading of .05 to .07 will receive a fine plus 10 demerit points; those with a reading of .07 to .10 will receive an automatic six months loss of licence plus a fine, and there will be no discretion of the court to overrule this loss of licence; and those with readings of above .10 will receive the same penalties that currently exist, which are the loss of licence for at least 10 months plus a fine. This will be automatic and there will be no excuses. There is some concern in the community about the mandatory way this is being done, but there are so many times where we see people getting off with fines that this is probably one way to get around that. All second-time offenders will continue to receive an automatic loss of licence plus a fine.

A number of speakers have spoken about the Vicroads licensing data for 1999–2000, which shows that 59 per cent of drivers, which is over half the drivers that go to court and contest a charge, actually get to keep their licences. Now .07 drink drivers will automatically lose their licences. The community is sick of seeing drink-drivers who are charged with being over the limit going to court and contesting the charge and not losing their licence but just getting a smack on the wrist. A number of honourable members have been asked — I know I have been asked a number of times — to write letters of support or character references for somebody in the community who is contesting a drink-driving charge before a court. It is usually for somebody who is well respected in the community. Those letters of support and commendation often get that person off.

The issue of breath tests is a good one for country Victoria. Currently police are required to do a breath test in a police station or a booze bus. In country Victoria the police station can be quite a distance from where the person is actually picked up or stopped. The bill will allow breath testing in police cars, public hospitals and community halls, which will avoid having to take the driver to a police station. As I said, in the country sometimes there are great distances between where the driver is picked up and the police station. This provision will also reduce the length of detention time.

Clause 6 clarifies the meaning of being in charge of a vehicle. Over a number of years there has been much comment about who is in charge of a vehicle. It is defined in the bill so that a driving instructor and a person steering and in control of a towed vehicle will be subject to the duties of a driver. Those sorts of duties include: to comply with the road rules; the driver must hold a current drivers licence; and the person in the driver's seat must not drink and drive.

I now refer to clause 11, which we will seek to amend in the committee stage. It proposes to raise the minimum age for obtaining a motorcycle learners permit to 18 years. Currently the age is 17 years and 9 months. The National Party will propose an amendment which has the effect of retaining the status quo for the learners permit. The Honourable Barry Bishop is the National Party shadow Minister for Transport, and he has consulted widely on this issue. He read into *Hansard* a number of letters that he has

received, and he sought the opinion of many people. The National Party has based its decision to seek an amendment on those responses, which have had a large bearing on the decision we have made today.

Mr Delahunty, the honourable member for Wimmera in the other place wrote to all the councils in his electorate asking for some comment. Important issues were raised in those letters. I will not read them all because the Honourable Barry Bishop has done that, but I will refer to some of the more important points. We had a letter from Mr Peter Walsh, the president of the Victorian Farmers Federation (VFF). When we asked him about the bill and raising the motorcycle learners permit age his comments were:

> The VFF has some concerns about this. Motorcycles provide young people from farming backgrounds with cheap transport to work or education. Young people in rural areas have often gained considerable experience from riding motorcycles on farms from a relatively early age. The VFF therefore supports your proposals to retain the status quo for country-based motorcycle learners.

A number of shires responded to Mr Delahunty on the issue we have been dealing with here this evening. A letter from West Wimmera Shire Council is signed by the mayor, Cr Bruce Meyer, and states:

> Our council feels strongly that we would like the current status to be maintained. It is our belief that many farm apprentices and students required to travel some distance for further education will be disadvantaged. These young people would be totally reliant on parents or friends to get them to work should there be a change. Many rural areas do not have public transport.
>
> We would point out we do not seek an unlimited horsepower for permit riders, nor do we request unlimited use, but simply want to allow our young people to have every opportunity to be employed. Being on the border we are in competition with South Australian job seekers who can obtain a full drivers licence at 16.
>
> Please bring this matter before your party and the Parliament.

A letter from the chief executive officer of the Hindmarsh Shire Council, Mr Neil Jacobs, says similar things:

> Rural youth in many cases have had the opportunity to use farm equipment and to use motorcycles on private land for many years.
>
> They have experience and an above-average proficiency.
>
> The opportunity to obtain a motorcycle learners permit at 17 years and 9 months provides a young rural person with access to transport, education and employment. In most of our communities there is no public transport. Travelling distances are considerable.
>
> The Hindmarsh shire supports the status quo …

The Northern Grampians Shire Council wrote:

> Council has not had the opportunity to formally consider the matter …

It explains in its letter, however, that it did raise the matter at the North West Municipalities Association and says in the view of the participants:

> The effect of this bill will be to extend the waiting period for young people to have access to a form of independent travel and this is not something council would support. In rural areas the opportunities for education and employment are somewhat more restricted than in metropolitan and major regional centres, and these restrictions often mean reliance on parents to give up their own time, which may be their own otherwise productive time on farms or in other businesses, to take young people to work or educative activities.
>
> Council would support a proposal to examine the age at which young people may gain some form of restricted motor vehicle licence (perhaps only valid to travel to and from employment or education facilities) in order that the opportunities presently afforded young people in rural areas to take advantage of limited possibilities may be enhanced.
>
> We would agree that while statistical evidence shows that the incidence or risk to young people is high, the base training for practical purposes available to rural youth is better and more suited to the need described than might apply in metropolitan areas and we support the proposals to allow increased and independent mobility for youth, especially for employment and education opportunities.

While we have had some letters of support we did receive a letter from the RACV which voiced some concerns. I will not read the letter in detail because it deals with all the other issues covered in the bill, but I will put on the record the comments that go to the heart of what the National Party seeks in this debate — namely, to amend clause 11. The letter states:

> RACV supports the proposal to raise the minimum age for obtaining a motorcycle learners permit from 17 years and 9 months to 18 years. Motorcyclists account for 16 per cent of all road fatalities but only about 1 per cent of all kilometres travelled in Victoria.

It then gives some statistics, which I am rather concerned about. If this is how the RACV is basing its opposition to our amendment I would like to have seen better and more relevant statistics than the ones it has given us.

The RACV offers the following figures: in 1999 there were 38 motorcycle fatalities; in 2000 there were 45 motorcycle fatalities; and so far this year 53 motorcyclists have died, compared with 35 for the same period in 2000. The statistics do not show where the accidents happened in Victoria, whether they were country motorcyclists or learners permit holders — in fact, they do not even say whether accidents that happened in the country involved country learners

riding the bikes. A lot of accidents that happen in country Victoria involve people from cities, not people from the country.

Based on the evidence it collected, therefore, the National Party was not able to ascertain how many young rural motorcyclists were being killed, maimed or badly injured.

The next group of statistics received from the RACV probably bears out what we are trying to say. The age breakdown for motorcycle fatalities in the year 2000 according to the RACV is as follows: among 18 to 20-year-olds there were 7 fatalities; among 21 to 25-year-olds there were 10; among 26 to 29-year-olds there were 6; and among 30 to 39-year-olds there were 11 fatalities. Those statistics do not bear out the contention that it is principally the young motorcyclists who are being maimed and injured. I assume that the youngest age category, written as 18 to 20-year-olds, includes riders who are a few months younger than 18.

Statistics have been given to us from other areas where people are saying that inexperienced cyclists are the ones being killed. These figures, however, include not only the 18-year-olds but also older learner cyclists. What these figures do not show is whether the older learner cyclists are being injured or killed in their first three or six months in greater numbers than are motorcyclists in the same age category who have been riding their motorcycles for a longer period.

Therefore, it was not possible for us to find conclusive evidence that would sway the National Party's mind. Given the evidence the party has asked for, sought and received it has not been possible to make firm conclusions.

Another letter came to us from Mr John Ackland, who is the general manager of Workco Ltd, the Wimmera Regional Youth Committee, and a member of the Wimmera Rural Training Advisory Committee. He is greatly concerned about any increase in the minimum age for obtaining a motorcycle learners permit. He writes:

> Young people in our region are experiencing difficulty taking up apprenticeships and traineeships in agriculture due to the lack of transport to and from work and trade school. In the past both of these committees have sought a review into the youth driving age to see if it could be reduced similar to other states in Australia. The fact that young people lack transport to take up training positions is causing a skill shortage in agricultural industries that will only deteriorate into the future.
>
> I would ask the National Party to not only oppose this bill but also strongly push for a more extensive review into reducing the driving licence age in Victoria.

I would like to pick up one of the issues raised in a number of those letters. When I became a new member of Parliament in 1996 I asked the government of the day to look at a specialist, restricted or limited licence to allow 17-year-olds in regional Victoria to drive a car in special circumstances. Those special circumstances would be going to TAFE or other study and training, including university, or to go to a place of employment. The National Party at that time envisaged that there would be a designated route from the home to the place of employment or training. The driving would also take place within certain hours. So the concept was of a restricted licence, not to allow a group of friends to get into a car and go to an entertainment venue. If young drivers used those restricted licenses in a way that contravened the rules they would lose the licences — unless there was a good reason.

I can offer a personal example of why I am supporting the National Party's amendment. I was sitting beside the Honourable Roger Hallam a short while ago and he gave me some examples of his sons, who own motorcycles, and their experiences on farms. My personal experience is of being in an auto electrical business. Our business was in Shepparton.

During the 17 years we were in business we had the good fortune of putting through five apprentices; we watched them grow into adulthood and they then moved on, some of them starting their own businesses. The apprentices who lived on farms were harder workers and much more mechanical. I mean no disrespect to young city people, but the ones who shone out — we did not know until we employed them — came from farms. Two apprentices moved into flats in Shepparton but the other three lived some distance from Shepparton. One who lived in Tatura, about 20 minutes from Shepparton, bought a motorbike at 17 years and 9 months, but before that his mother had to drive him to work, return home and then come back and pick him up to take him home.

The other apprentice who lived in Tamleugh, 25 kilometres from Shepparton, also bought a motorbike when he was 17 years and 9 months. His mother also drove him in from the farm to work. It was inconvenient for the parents because it meant that they had to stop work on the farm, take their son to work and then drive back, return again at 5 o'clock and drive back to the farm again.

The third apprentice was a young hardworking lad who lived at Youanmite, 30 kilometres from Shepparton. but was so keen to get a job that he moved to Shepparton to live with his grandmother. Such people do not have independent travel, and there is no public transport in

rural areas to take you from your home to your workplace. Our young people rely on someone else's goodwill.

Young people are leaving country towns because it is hard to find employment, but they have more off-road driving experience. I know my sons learnt a lot from driving in the paddocks. I am sure that honourable members who come from country areas would say that their sons and daughters also learnt a lot about driving in that way. Many have what they call a paddock basher in which they learnt good driving skills and how to manoeuvre. More than that, they learnt how to ride a motorbike. Often riding a motorbike is part of the farm work and they gain much experience in riding a motorbike at a young age, usually on one of the small motorbikes until they are old enough to ride a large motorbike.

The Honourable Barry Bishop said that country motorcycle learners are not competing with as much traffic as is the case in Melbourne. The National Party urges the house to support the proposed amendments. There has been no evidence given to us that suggests it is country motorbike learners who are at risk. Statistics do not show that it is rural people who are dying on our country roads. If we had been supplied with such statistics that conclusively show that it is our young people who are dying on the roads then the National Party would support the provisions of the bill, but the evidence is the other way. For all of those reasons we ask that the foreshadowed amendments be supported during the committee stage.

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 to 10 agreed to.

Clause 11

The CHAIRMAN — Order! The Honourable Jeanette Powell to move amendment 1 and to canvass amendment 2.

Hon. E. J. POWELL (North Eastern) — I move:

1. Clause 11, line 2, omit "for" and insert "after".

I shall canvass amendment 2 in my name because it tests the main issue that the status quo remain in regional Victoria, as defined in section 3 of the Regional Infrastructure Development Fund Act 1999. The National Party supports the amendment because of the lack of public transport in country areas and also poor access to training and employment. We are not convinced there is enough evidence that it is country learner motorcyclists who are at higher risk. We believe country learners have more experienced riding off road.

Hon. C. C. BROAD (Minister for Energy and Resources) — The government does not support the amendment proposed by the National Party. Statistics have been obtained from Vicroads records on accidents involving motorcyclists and learner motorcyclists over the past five years. I am advised that this information has been provided to the National Party. The statistics show that the number of accidents in Melbourne involving learner motorcyclists that result in fatalities or serious injuries is roughly double the number that occurred in the rest of Victoria. However, the statistics also showed that for 17-year-old learner motorcyclists, the group which is the subject of the National Party's proposed amendments, there have been more serious accidents outside Melbourne than in Melbourne.

In response to a request about explaining the difference between the use of cars and motorcycles by young people, I advise the committee that, as indicated in the second-reading speech, the law allows independent travel on motorcycles at a younger age than in a car and, as a result, the law provides an incentive for young people to use motorcycles, which is a much riskier form of transport. The representations made to the National Party, as outlined in the second-reading debate in this place, all serve to confirm that this inducement is particularly strong in the country.

I wish to outline why the government is not supporting the amendment. There is no basis in terms of road safety for distinguishing risks facing 17-year-old motorcyclists in the country and those in the city. If anything, the statistics show that the artificial incentive that the current law provides for young people to ride motorcycles results in a disproportionate number of accidents in rural areas involving 17-year-olds on motorcycles.

Further, the lives of young people in the country are just as important as those in the city, and even if the figure supports the National Party's contention that it is safer in the country the amendment would still not achieve its objective. It is based on the place that the person is living at the time they apply for a permit and as a result it would be very easy to circumvent. Finally, in the government's view it would create a dual licensing system. For those reasons the government will not be supporting the amendment put forward by the National Party. The government believes the position put

forward in the bill is the correct position in terms of furthering the interests of road safety in this state.

Hon. E. J. POWELL (North Eastern) — I wonder whether the minister could give me a breakdown of the statistics that relate to areas outside Melbourne and tell me the places of residence of the people involved in those fatalities? The minister mentioned a number of fatalities that resulted from accidents that happened outside Melbourne in country Victoria. That does not necessarily mean those riders were from country Victoria.

Hon. C. C. BROAD (Minister for Energy and Resources) — I am advised that the information which I referred to and which has been provided to the National Party is sourced from Vicroads records. I am not able to provide a further breakdown of that information at this time, but I am happy to seek that information from Vicroads through the Minister for Transport and, if it is available, make it available to the honourable member.

Hon. E. J. POWELL (North Eastern) — The minister would understand that this an important issue for the National Party. The National Party was given those statistics without the breakdown. It makes a difference if those motorcyclists lived in Melbourne and were travelling through country Victoria as opposed to country riders who had different experience.

Hon. P. R. HALL (Gippsland) — I would like to make one point on this matter — that is, to clarify or comment on some of the reasons the Honourable Glenyys Romanes put forward in the second-reading debate for the government not accepting the amendment moved by the National Party. One of the reasons she advanced was the fact that public transport opportunities would be improved in country Victoria with the advent of fast rail. I would like to make some comments about that, because the argument she advanced is illogical.

We know the fast rail projects will originate from four locations: Geelong, Ballarat, Bendigo and Traralgon. Virtually all those fast rail projects are planned to travel express to Melbourne. We have argued in favour of the provision in this bill so that country students and other young people can get from their place of residence to their place of work, their school and perhaps their place of recreation. The advent of fast rail, if it comes about in Victoria, will not address those particular issues. The fast rail service does not start at the farm gate; it starts in the regional centre. We are talking about the means of travel required for many young people to get to their school, tertiary education institution or their job. Fast rail projects in themselves will not address the issues the National Party has advanced in support of this particular argument.

The Honourable Glenyys Romanes mentioned perhaps increasing the usage of school buses to help some of those young people. That will help in part in some instances, but those instances will be limited. The fact of the matter is that public transport in country Victoria is extremely limited. Access to public transport — apart from some of the school bus services, which are part of a specific public transport system — is virtually confined to the main regional towns. It does not exist in small country towns, and it does not exist in the farm areas that National Party members represent.

I need to put those points forward to refute the argument that was put against this particular amendment. I do not believe the argument advanced during the second-reading debate was at all relevant or addressed the particular issues of why the National Party has put forward this amendment.

Hon. W. R. BAXTER (North Eastern) — I support the amendment. The bill is the same sort of proposal that was served up to me by the bureaucracy when I was Minister for Roads and Ports. There are a whole lot of people in Denmark Street, Kew, who are interested in restricting people's access to vehicles and licensing if it is perceived that it will get the road toll down. Clearly, it is always government policy, whichever party is in office, for steps to be taken to get the road toll down because it is too high. I do not argue with that, but I do say that any steps taken need to be practical. They must take into account the needs and requirements of the people of Victoria as a whole, not just those who happen to have access to fast trains, which the Honourable Glenyys Romanes seems to believe the people in country Victoria at large will have.

I have always rejected the suggestion that we should somehow hinder the ability of country people to get a better go in terms of licensing, because I believe young people should be able to get to their educational institution or their place of employment or simply be able to assist in running the local family farm. The minister made an analogy between car drivers and motorcyclists. I point out that a person can get a learners licence at 16 years.

Hon. R. M. Hallam interjected.

Hon. W. R. BAXTER — Yes, a learner drivers licence at 16. Of course, they need to be accompanied

by a fully licensed driver for two years until they turn 18 — —

Hon. R. M. Hallam interjected.

Hon. W. R. BAXTER — As Mr Hallam notes, that is a bit difficult on a motorbike! Clearly, that is one of the reasons they cannot get motorcycle learners licences until some time later — until they are 17 years and 9 months. I put it to the committee that almost every country teenager, male or female, gets their learner drivers permit when they turn 16 years or pretty soon thereafter.

Most of them are just breaking their neck to get it, therefore most of them who then go on to get their motorcycle learners permit at 17 years and 9 months have had a fair bit of experience with a car learners licence and with driving under supervision. It seems to me to be totally unreasonable in the absence of compelling evidence to the contrary to amend the current law. The National Party has taken account in its amendment of the government's desire, and that is why we have attempted to put in a city-country difference. We acknowledge that creates two streams of licensing, but we are endeavouring to accommodate the government's wishes for what it might want to do in the city, where it happens to know a little bit about what goes on as against having almost complete ignorance of reality in country Victoria.

We are endeavouring to provide a mechanism which gives young people in the country an opportunity to get to their employment or to their education without having to rely on either their parents or some other people who may well be young drivers themselves and quite inexperienced to convey them. I think it is a fair and reasonable proposition, and the committee should adopt it.

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

Ayes, 33

Ashman, Mr
Atkinson, Mr
Birrell, Mr
Boardman, Mr
Bowden, Mr
Brideson, Mr
Broad, Ms
Carbines, Mrs
Coote, Mrs
Cover, Mr
Craige, Mr
Darveniza, Ms
Davis, Mr D. McL.
Davis, Mr P. R. (Teller)
Forwood, Mr
Furletti, Mr
Gould, Ms
Hadden, Ms
Jennings, Mr
Katsambanis, Mr
Lucas, Mr
Luckins, Ms
McQuilten, Mr
Mikakos, Ms
Nguyen, Mr
Rich-Phillips, Mr
Romanes, Ms
Ross, Dr
Smith, Mr K. M.
Smith, Mr R. F. (Teller)
Smith, Ms
Strong, Mr
Thomson, Ms

Noes, 5

Baxter, Mr (Teller)
Best, Mr
Hall, Mr
Hallam, Mr (Teller)
Powell, Mrs

Amendment negatived.

Hon. E. J. POWELL (North Eastern) — I move:

2. Clause 11, line 3, omit '**substitute** "18 years"' and insert '**insert** "(if the applicant's usual place of residence is within regional Victoria, as defined in section 3 of the **Regional Infrastructure Development Fund Act 1999**) and 18 years (if the applicant's usual place of residence is not within regional Victoria)"'.

I believe support for this amendment was canvassed substantially when we dealt with amendment 1.

Hon. C. C. BROAD (Minister for Energy and Resources) — The government does not support the amendment proposed by the National Party and, following the example of the Honourable Jeanette Powell, I believe the reasons have been outlined in relation to the first amendment.

Amendment negatived.

Clause 11 agreed to; clauses 12 to 34 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

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

FILM BILL

Second reading

Debate resumed from 27 November; motion of Hon. J. M. MADDEN (Minister for Sport and Recreation).

Hon. ANDREA COOTE (Monash) — I have great pleasure in speaking on the Film Bill this evening. I am mindful of the time and I will not go into the detail of every movie I have ever seen.

The purpose of this bill is to establish Film Victoria and the Australian Centre for the Moving Image, to repeal the Cinemedia Corporation Act 1997 and to abolish the Cinemedia Corporation established under that act. In other words, the purpose is to split Cinemedia into two separate entities: Film Victoria and the Australian Centre for the Moving Image (ACMI).

During the election campaign in 1999 — over two years ago — the ALP promised to re-establish Victoria as a centre of excellence for film and television production. The state government's task force finally brought down its report in September last year. The report is only now being introduced after a period of two years. There has been absolutely no explanation for this delay.

A 'Comment' article in the *Age* of 25 February stated:

> The state government's task force delivered its report last September. One of its key recommendations was that Cinemedia be divided into two entities — Film Victoria and Screen Culture Victoria.
>
> The delay in implementing the recommendations is all the more puzzling given Delahunty's close interest in the report and her election promise that a Bracks government would re-establish Victoria as a centre of excellence for film and television production.
>
> …
>
> But the Victorian film industry is still waiting to learn Cinemedia's fate and, meanwhile, debates rage about how best to proceed.

We are all this way down the track and we are only now getting on to that issue. It is fairly sloppy work.

In her contribution on the bill in the other place the honourable member for Mooroolbark referred to some excellent films that have been produced in Victoria. I remind honourable members of *Muriel's Wedding*, *The Castle* and *The Man from Snowy River*. We have our very own man from Snowy River in this place, and sadly the Honourable Graeme Stoney is not here, because we have referred to him and the excellent job he did. Not only have these excellent films been made, but more recently we have heard about the refilming of the television series *Bonanza*. I am sure many honourable members would remember Hoss, Little Joe, and everything that went with them.

I refer to an article in the *Age* of 6 July, which states:

> A prequel to the long-running American western television series, *Bonanza* will be filmed in and around Daylesford in Central Victoria over the next four months pouring $25 million into this state.
>
> *Ponderosa*, named after the Nevada ranch around which the original series revolved, stars an American and Australian key cast …
>
> …
>
> Producer Jan Bladier said yesterday that 12 Australians had also been cast as regular characters, and that there were 'substantial' roles for 29 guest cast and an all-Australian crew.
>
> …
>
> Ms Sullivan said Victoria was an obvious place to locate the series with physical and historical similarities to the frontier lands of the US.

A sum of $25 million is an enormous amount to invest in Victoria, and such investment is to be encouraged at all costs. I hope the Bracks government will develop ways of encouraging film crews to come to the state and do more of this sort of filming.

The honourable member for Mooroolbark also mentioned how successful the *Neighbours* program has been in a worldwide sense. I lived in Ireland for several years and *Neighbours* was screened there twice a day. Schoolchildren in Ireland go home for lunch, and the school lunchtime had to be changed so that the children could watch *Neighbours* then because so many of them were not going back to school.

Cinemedia was established with bipartisan political support in 1997. The Australian Centre for the Moving Image at Federation Square — the square being another Bracks disaster that has not been completed; it is the Federation year and time is running out — was a Kennett government initiative made possible by a $50 million donation from the Howard federal government. The Kennett government recognised that the Victorian film and television industry required assistance, and it set up an excellent task force called the Victorian film and TV industry working party to recommend initiatives to reinvigorate the film and television production industry. The report was handed down just prior to the last state election in July 1999.

However, the Bracks government ignored this task force and its report and established the Victorian film and television industry task force chaired by Sigrid

Thornton. The two task forces have been in operation for over two years, in which time the Victorian film and television industry, indeed the whole of the industry in this sector, has been extremely anxious and concerned about the time delay. Many talented people have left Victoria and gone to New South Wales, Queensland or overseas.

The Bracks government talks about how important the arts are, yet in its visionary statement made just a few weeks ago called *Growing Victoria Together*, which was supposed to knock us all off our feet but did not, there is no mention of the arts. That shows what the government thinks of the arts.

It was very sloppy work indeed. There is support for the Thornton report within the industry. I know segments of the industry are very pleased to see this, but the question was asked, 'Why split up Cinemedia at all? Why not restructure it and give it a new direction?'. There are two schools of thought on this issue. Some people feel that by creating two entities there is going to be double the bureaucracy and all the costs involved in that, and indeed the very many modes of film delivery et cetera which could be disadvantaged. Others argue that film and television production will increase only if there is a separate body focused on each. I believe the industry itself has some dilemmas about this and I do not think there is conclusive support for either.

I would like to mention the costs issue. There is nowhere mentioned how much this split is going to cost. The second-reading speech says:

> ACMI will be Victoria's seventh major cultural institution and venue (after the State Library of Victoria, Museum Victoria, National Gallery of Victoria, Public Record Office Victoria, Victorian Arts Centre and the Geelong Performing Arts Centre).

I would like to remind the house just what dire straits some of those other seven institutions are in. In the most recent reports the museum reported an operating loss of $13.3 million while at the same time executive salaries increased by $134 000; the Victorian Arts Centre Trust had a net loss of $4.5 million and at least one senior executive received a $20 000 pay rise; and the Geelong Performing Arts Centre reported a $782 000 operating deficit. So I sincerely hope that the cost of splitting Cinemedia does not blow out and join many of these six other important institutions which are now reporting losses.

Hon. N. B. Lucas interjected.

Hon. ANDREA COOTE — Mr Lucas said the Labor government could not run a chook raffle at a profit. I think most of the house would probably agree with this.

I think we should have a look at the Queensland and New South Wales examples. Both of these states have separate entities, and Victoria has lost an enormous amount of work and talent to both Queensland and New South Wales. If the Bracks government provided payroll tax deductions or rebates, as they do in Queensland, I believe we would be encouraging many more people here to the arts.

I am a member of the Economic Development Committee and as we have toured many parts of Victoria we have found so many of these — —

Hon. R. A. Best — All of Victoria!

Hon. ANDREA COOTE — That is right. As Mr Best says, we have been all over Victoria. In many instances we are asked, 'Why isn't something done about payroll tax?'. It is an iniquitous tax. It is absolutely appalling, and the Bracks government is not addressing it. Here we are with our arts industry haemorrhaging to New South Wales and Queensland because those states are giving payroll tax rebates. It is not good enough.

In this area we have seen quite an interesting development for the Australian Centre for the Moving Image and Film Victoria. Mr Peter Redlich has been appointed the president of Film Victoria. I remind honourable members that all of the other major institutions we have been talking about have chairpeople, chairpersons or chairmen, and the title 'president' seems to be a quite a departure from the norm. I find it quite extraordinary. I also happen to know both Peter Redlich and Ann Sherry, who has been appointed to ACMI. Although I have no difficulty at all in working with them, I would like to point out to the chamber their Labor credentials, as I think it is important to understand what those credentials are. Peter Redlich was the chairman of the ALP's Victorian branch and Ann Sherry has been a senior organiser and administrator of the — —

Honourable members interjecting.

The PRESIDENT — Order!

Hon. ANDREA COOTE — One of the major things that has been left out of this bill is multimedia. It has not been dealt with in this bill at all.

I would like to quote from a speech made during the second-reading debate on the Cinemedia Corporation Bill by Carlo Carli, the honourable member for Coburg

in the other place. He made some very positive comments about multimedia, and it is tragic that it has not been addressed in this bill at all. In March 1997 Mr Carli said:

> The opposition supports this small bill …
>
> … it begins to recognise the role of multimedia and defines multimedia content and applications. It responds to the convergence of technology. Film, video, animation and other forms of multimedia are converging as a result of digital technology and the role of Cinemedia will assist and promote multimedia in Victoria.
>
> The bill is important. It is easy to understate the importance of the digital revolution in multimedia or to underestimate its impact in 5 or 10 years. The infrastructure needs to be put in place to allow Victoria to gain a vital place in the information revolution …

Well, it has been left out of this bill, and that is not good enough. Mr Carli was on the right track and it is disappointing to see that multimedia has not been included in a greater sense in this bill.

I would like to go into detail on a number of issues in this bill but to be brief I need to make some comments before I sit down very shortly. The first concerns clause 7 and the functions of Film Victoria. Subclauses (c), (d) and (e) allow Film Victoria to 'provide financial assistance, whether in Victoria or elsewhere'. I would like to make certain that there are no financial blow-outs in this area and that people do not define 'elsewhere' as travelling to Cannes and all sorts of places spending Victoria's money supposedly promoting arts and film in Australia and around the world. The same applies to the Australian Centre for the Moving Image. I caution the government and hope it looks at this and makes certain that it is accountable.

I am concerned about clause 11 and the constitution of Film Victoria. In subclause 2(a) there is a potential for conflict because it says that the majority of members of Film Victoria are to be chosen from persons who are experienced in the film and television or multimedia industry. I believe there is an opportunity for conflict when people are looking at peer assessment et cetera.

I am pleased to see the investment in the general fund under clause 19. However, I have some problems with ACMI. Clause 23 sets out the functions of ACMI, and I reiterate my concerns about people being able to promote 'elsewhere'. I think it is extremely important that we promote Australian film and television all around the world, but accountability is also extremely important. I make one final point on that same aspect. Clause 32 says the minister may appoint a person to act as a member, and under subclause (2)(b) that person:

> is entitled to be paid remuneration, sitting fees, travelling expenses and other expenses fixed by the minister.

There is huge cause for concern there, as these expenses could blow out to be unreasonable. I will be watching. It will be very interesting to see what transpires and whether it is accountable.

I am pleased to see that many of these things are included in part 5, the transitional provisions, but I must say that it has taken an awfully long time. It has already taken far too long. I am pleased to see the transitional provisions, but I hope the whole process speeds up.

In conclusion, I would like to see as much support as possible for the arts industry. I sincerely hope that the Bracks government provides sufficient funds for these two new institutions and that it addresses the issue of declining funds in the other major arts organisations. Our arts industry is a vital component of our community. The Liberal Party does not oppose this bill.

Hon. E. C. CARBINES (Geelong) — I am very pleased to rise to speak on the Film Bill. I am sure all honourable members would agree that the Australian film industry is booming and that we can be very proud of the contribution our films are making and the recognition they are receiving internationally. This is not a new phenomenon; historically our films have been acclaimed world wide.

The first Australian film I can remember seeing was *Picnic at Hanging Rock*, which I really enjoyed. Since then, there have been many unforgettable Australian movies that we all love, such as *The Adventures of Priscilla: Queen of the Desert, The Year my Voice Broke, The Castle, Mad Max*; *Strictly Ballroom* — and many more too numerous to mention.

Next year Victorians will see in our state the making of a huge new film, *Ned Kelly*. We look forward to the employment and economic spin-off that will result from the production of that film in Victoria. In fact, we can be proud not only of our great films but also of our internationally renown actors, again too numerous to mention here tonight. However, I am very pleased to acknowledge in the house that during my teaching career I taught French for three years to one of Australia's fine young actors, Ben Mendelsohn, whom some people may know. I am always very pleased to see the success he has in the film industry and the contribution he continues to make to the Australian film and television industry.

It would be remiss of me not to mention our great television industry. I am very proud as a member for Geelong Province to acknowledge that one of our most

loved television shows, *SeaChange*, was filmed in my electorate.

Hon. I. J. Cover — And mine!

Hon. E. C. CARBINES — It was filmed mostly at Barwon Heads but also at St Leonards, and we all like to recognise the places that we know and love from our electorate.

Hon. I. J. Cover — Thank you.

Hon. E. C. CARBINES — Many people world wide love to watch *Neighbours* and *Home and Away*. The children in my family absolutely love watching those two shows and cannot stand the thought that they might miss them. I do not share their enthusiasm for those shows, but last year when my elderly aunt visited us from England she sat down and watched with them and was an avid fan of *Home and Away*. She could not wait to go back to tell all her neighbours what she had found out from the episodes here that were months ahead of the English episodes.

The Australian television and film industry contributes significantly to the nation's economy, and Victoria shares handsomely in that. The Bracks government is very keen to ensure that Victoria is at the forefront of film, television and multimedia production. Last year the Bracks government established the Victorian Film and Television Industry Taskforce which was chaired by Sigrid Thornton. The task force was asked to report on a range of issues relating to the industry and how the government can work to support the industry to ensure that Victoria remains a centre of excellence.

Over the course of last year the task force consulted widely with industry stakeholders and presented its report to the government in September last year. One of the key findings of the report was that over the 10 years from 1989 to 1999 Victoria's share of the nation's industry has declined by about 10 per cent. The information that was gleaned from that report has helped to shape the bill before us tonight, which will basically repeal the Cinemedia Corporation Act 1997 and establish two new statutory authorities in Victoria — Film Victoria and the Australian Centre for the Moving Image. The bill details the functions, powers and constitutions of both those new agencies. It also goes through the transitional provisions that will be involved in the disaggregation of the Cinemedia Corporation.

The establishment of Film Victoria and the Australian Centre for the Moving Image will complement key initiatives of the Bracks government to promote and re-establish Victoria as a centre of excellence for the film, TV and multimedia industries. These initiatives involve the designation of the industry as a key strategic industry sector.

The government has allocated $32 million over four years for new investment in the industry and has also allocated up to $40 million for the development of a world-class media studio at the Docklands, one of the recommendations of the strategic task force. The task force's report and recommendations have received broad support from the industry. A raft of very complimentary comments have been made by leaders in the industry, such as Mac Gudgeon, screenwriter and past president of the Australian Writers Guild, who said:

> The current legislation before the Victorian Parliament is of the utmost significance to the state's film and television industry.
>
> The re-establishment of Film Victoria as a dedicated film and television body will focus its work, and restore it to its former position as the most innovative funding body in the country.

Tony Wright, from the Screen Producers Association of Australia, said:

> The Victorian film and television industry has been floundering for years. As a result of the raft of recent government initiatives such as the Docklands studio development and the increase in development and production investment we can look forward to the gradual return of a healthy and vibrant industry in Victoria.

Sue Maslin, the chair of Film Victoria, said:

> The Film Bill will usher in an exciting new period. A reinvigorating Film Victoria capable of delivering more than twice the funding available for local film, television and digital media. An industry buoyed by higher levels of local, interstate and international film and television productions. A world-class centre for the moving image based at Federation Square …

Finally, Jenny Sabine, head of the Victorian College of the Arts School of Film and Television, said:

> The Victorian College of the Arts School of Film and Television welcomes the Victorian government's decision to establish Film Victoria and the Australian Centre for the Moving Image.

They are certainly resounding endorsements of the government's work and the bill before us.

The film, television and multimedia industry has multilayered value to our state. It is important as an employer for many Victorians, it contributes financially to Victoria and it promotes our state, not just within the state but nationally and internationally. On top of all those benefits it also provides great recreational

enjoyment for Australians, and much satisfaction and pride can be derived from that for all Victorians.

I commend the Minister for the Arts on her fine work on this issue and her preparedness to act decisively on the recommendations of the strategic task force. We can be sure that the future of the film, TV and multimedia industries is in very safe hands. I therefore commend the bill to the house.

Hon. R. A. BEST (North Western) — On behalf of the National Party it gives me pleasure to advise the house that it will not oppose this legislation. At this late hour I do not intend to make this a lengthy speech. However, I would like to put on the record the contribution made over the years by the TV and film industry to the Victorian economy.

Hon. I. J. Cover interjected.

Hon. R. A. BEST — As one of those, I would think Mr Cover, who has in the past been involved in the arts industry, would be particularly supportive of this type of legislation that may — we all hope — provide an opportunity for a greater role for and investment in the Victorian film and TV industry.

For many years Victoria has been the leader in attracting investment in and making TV productions. I think many of the famous television drama series and TV shows in years gone by such as *Division 4*, *Homicide* and those types of series were the foundation on which many people were employed within Victoria.

One of the issues I am particularly happy about as far as the bill is concerned is that while I do not necessarily agree with the splitting of Cinemedia in the way it has been done I am satisfied that the transitional arrangements and the way in which appointments have been made will ensure there is a transitional period which will not be disruptive to the industry.

It needs to be acknowledged that the government has handled the issue quite well because progressively over the past 12 months it has been appointing people to the Cinemedia board who will unquestionably take up positions as respective presidents and leaders of the two entities. I refer to Peter Redlich and Anne Sherry. Unlike Mrs Coote I do not mind putting on the record the fact that I know Peter Redlich very well. He is a person committed to the arts industry. His contribution over the years has been significant. While there are people who would be prepared to label him as a Labor mate the reality is that he is a person who is qualified and capable of doing the job, and that is one of the major prerequisites that we should have when people are appointed — people with sufficient qualities and skills that are capable of performing their duties and enhancing the entities they will head.

The Film Bill has three primary purposes. The first is to establish Film Victoria; the second is to establish the Australian Centre for the Moving Image (ACMI); and the third is to repeal the Cinemedia Corporation Act 1997, which will also abolish the Cinemedia Corporation established under the previous act in 1997. Part 2 of the bill contains all the issues associated with the powers, functions, constitution, membership, delegation, committee structure and procedures of Film Victoria, and the conditions under which the chief executive officer is to be employed. Division 2 of part 2 sets out the borrowing and investment provisions, and clauses 18, 19 and 20 establish the requirements and responsibilities for the administration of investment in the general fund.

Part 3 of the bill refers to the establishment of the Australian Centre for the Moving Image, and again it has many functions and powers similar to those provided in part 2 as far as the film industry is concerned. Part 3 confers powers on ACMI; sets out its functions; sets out how gifts, grants or bequests are to be handled; and provides how the collection is to be established and how it can be disposed of or sold. It also sets out the delegation powers and other requirements.

I take up the point raised by the Honourable Andrea Coote. One of the issues we can be comforted by and need to be supportive of is the fact that there are set provisions within the legislation which confirm clearly the powers of these entities and the way in which they are to perform their duties on behalf of all Victorians. In past times there have been concerns regarding the way in which artistic development has occurred and it is important that stringent criteria are placed on the way in which these entities will perform their duties.

The bill also sets out the constitution of the board of ACMI. It is to be a board of not more than 11 and not less than 7 members. It sets out the period of appointment, the eligibility of membership, how the committees can be established, and as in part 2 concerning Film Victoria, it sets out the employment conditions of the chief executive officer.

As I said, the bill is the result of a task force that was established by this government. The task force chaired by the well-known actress, Sigrid Thornton, looked at the reinvigoration of the Victorian film and television production sector and also at addressing the decline in investment in Victoria. It is worth putting on the record that in the 10-year period from 1988–89 to 1998–99

Victoria's share of national film and television production investment declined by some 10 per cent to a lowly 17 per cent. That is a concern for all Victorians because in the past Victoria has played a prominent and dominant role in the making of television series and in film production. Very successful films have been produced in Victoria. Reference has been made to *The Man from Snowy River*, but there have also been great films that have provided economic benefit to country Victoria such as *All the Rivers Run* and the television series that ran from that. I know the economic boom that series provided to Echuca, and even now paddle steamers that ply the Murray are still attracting tourists from not only Victoria but also other parts of the world.

Hon. D. G. Hadden — Is that part of your electorate?

Hon. R. A. BEST — No, it is not, Ms Hadden. I know where my electorate is, thank heavens. Some day someone will draw you a map and you will know the area you represent so you will not have to worry about parking bays!

Hon. M. T. Luckins — Keep your thoughts to yourself if you have nothing interesting to say!

Hon. R. A. BEST — Ms Luckins, thank you for your help!

I again advise the house that the National Party will not oppose the bill. Some very ambitious targets have been set by the government, and we hope they can be achieved because it is important for the whole of Victoria. It is important for the film industry and it is important for the television industry. We would welcome Victoria retaining its current position and being able to improve on that because of the resultant increase in jobs and investment flow into the state. I do not intend to continue. However, I put on the record that we have one thespian in our midst.

Hon. M. T. Luckins — What was that word?

Hon. R. A. BEST — Hansard heard it! I place on record the involvement Mr Jennings has had in the arts industry, and the role of Mr Stoney.

Hon. I. J. Cover — I was part of a crowd scene in the *Flying Doctors*!

Hon. R. A. BEST — And Mr Cover. I will include the role he has played in television. The National Party will not oppose the bill.

Hon. P. A. KATSAMBANIS (Monash) — Like the rest of the opposition, I do not oppose the bill. I put on the record my personal support for the film and television industry in Australia, and Victoria in particular. However, I must express my concern at the direction that this bill is flagging. My concern relates to the fact that with the splitting up of Cinemedia and the creation of two separate entities, Film Victoria and the Australian Centre for the Moving Image, it appears that the government is sending out the strong message that it is focused solely on traditional film and television production at the expense of the growing world of multimedia. It is also at the expense of digitisation and convergence of media to produce images in forms that we are only just starting to understand, and in new forms for the future that right at the moment we cannot even contemplate.

The creation of Cinemedia in 1997 gave a very strong indication not only to Victorians but to the rest of the world that Victoria was to be at the forefront of convergence of technologies, and that whilst supporting and nurturing traditional television and film making it would not be bound by the constraints of those media but would embrace new media. As with the development of all new industries, the government's role is one of creating a positive environment rather than being active in picking and choosing winners. The government was sending a clear and strong message that Victoria was the right place to come if you were young and innovative and wanted to do new things.

As a result whole new industries sprang up. One of the most successful and dynamic of those businesses that sprang up as a result of the previous government's commitment to new technology and media was Animationworks. It is unfortunate that that company has recently relocated to Perth, and if one peruses the Animationworks web site it shows that its registered address is still here in Carlton South. The first page of the site says:

> Established in 1994, the studio recently relocated from Melbourne to Perth and continues to be one of the Australia's largest employers of animation artists.

The record of Animationworks is strong. It has produced *The Silver Brumby* animation series, the *New Adventures of Ocean Girl* — a series that has been sold right across the world — and currently it is involved in a co-production with a Canadian production house making John Callahan's *Quads!*, a unique animation work.

The success of Animationworks gives everyone heart that even in Australia, which is not at the forefront of Hollywood — is not within driving distance of Hollywood — we can produce programs individually by ourselves and in co-production with others across

the world that are at the leading edge of the technological revolution and are popular and in demand from purchasers all across the world. However, unfortunately, due to the inaction of this government, because it was prepared to sit on its hands, we see that innovative new production houses like Animationworks find the grass is greener somewhere else.

When we want to talk about nurturing new industry, about nurturing the arts, about fostering an environment where innovation can thrive, we can look at the most recent example and see that the government has failed. It is wedded to a vision of the film and television industry that might have been appropriate for the 1950s, 1960s and the 1970s, but at the start of the 21st century we run the risk of a wonderful project like the Australian Centre for the Moving Image unfortunately becoming, in a few years time, if we are not careful, an ancient museum rather than something that showcases the here and now: the future of film, television and multimedia production in Victoria.

I was disappointed that the minister's second-reading speech paid scant regard to digitisation, to animation, to convergence of media and to production of programs for the digital age and for the multimedia age. That is unfortunate. I hope it is something that has happened by omission and that it will be corrected in due course. Like everyone else I am proud of the success of our film industry, our television industry and our many wonderful television and film producers here in Victoria. In the future, however, I want to be equally proud of the producers of new forms of media — the converged forms of multimedia, if you like. I want to know that I live in a state and belong to a Parliament that encourages the growth of those new forms of media rather than discouraging them and sending them away, as has happened with Animationworks due to the neglect of the Bracks government.

The Film Bill is not a bad bill for what it attempts to do. However, as I said, because the minister and the government by their actions seem to be ignoring the new wave of technology and media and the opportunities for young Victorians and all Victorians that brings, it is unfortunately setting a terrible precedent. If we are not one of the early players we will be left behind in the future. I hope my speech tonight can act as a warning signal to the government that, yes, it needs to focus on traditional television and traditional film but that it will ignore the emerging forms of media at its peril and the peril of all Victorians who stand to benefit from the great advances in technology that we are seeing today.

My point to the government is, 'Do not be myopic. Do not be led by the nose by those who have vested interests in existing media, including film and television. Do not take a narrow or parochial view. This is a globalised world where there is plenty of new work out there that needs to be encouraged and nurtured rather than ignored and sent away'. The signals that this bill sends, unfortunately simply by its being called the Film Bill and by repealing Cinemedia, are bad ones. The government is going to have to act quickly and decisively to correct the impression that it is ignoring a whole wave of opportunity out there.

As I said at the outset, I support the film and television industry, but I also support Victoria's emerging multimedia industry. I hope the government does too.

Hon. M. T. LUCKINS (Waverley) — I am pleased to have the opportunity to make a brief contribution on the Film Bill, which establishes Film Victoria and the Australian Centre for the Moving Image (ACMI) and repeals the Cinemedia Corporation Act 1997. I find it quite peculiar and I am concerned that the government when in opposition in 1997 provided full support for the establishment of the Cinemedia Corporation yet as well as having no minister responsible for multimedia has made no provision for multimedia as a separate medium under the auspices of the bill.

I also have some concerns about the pecuniary interests provisions of the bill, which have been alluded to by previous speakers. I note that the delegation powers in clauses 10 and 28 are so broad that Film Victoria and ACMI can delegate powers to members of the board, the chief executive officer or staff members. I find that quite a concern.

I am very passionate about the film industry in Australia, and the Victorian industry in particular. We as a country should be justly proud of many of our films. They highlight our unique Australian psyche and our lifestyles. We have been very successful internationally with many series and television programs produced in Australia, such as *Neighbours* and *Home and Away*.

Honourable members interjecting.

Hon. M. T. LUCKINS — Seriously! I am always regaled with requests from my relatives in Britain for updates on series that I have not watched myself since I left school. These series constitute a good export market for Australia's economy.

There are many other movies that I feel very proud of as an Australian. *The Man From Snowy River* has been mentioned this evening, and I note that the Honourable

Graeme Stoney appeared in that film. I also note that the Honourable Alister Paterson appeared as the newsreader in *The Dish*. My early life was defined by many Australian-produced film and television programs — for example, *Storm Boy*, *My Brilliant Career*, and *Picnic at Hanging Rock*, and contemporary programs including *Priscilla: Queen of the Desert*, which revived Abba in Australia.

I must also note that I am very proud indeed of my cousin Rachel Griffiths's contributions in *Muriel's Wedding*, *Me Myself I* and *Amy*. I also note that *Amy* in particular was produced in Victoria. It is always a great pleasure to see a film released internationally that has the print of Victoria and Melbourne on it — seeing tram tracks and the Yarra River on the big screen is always quite delightful.

I am aware of a new production being produced at the moment called *The Ponderosa*, which was going to be set in Daylesford but is now being filmed in Beveridge — —

Hon. B. N. Atkinson interjected.

Hon. M. T. LUCKINS — No, it is a prequel, in *Star Wars* terms, for *Bonanza*, and it is being filmed in Victoria. We have had terrific success overseas with both our Australian actors and our Australian-produced films, in particular with television series.

I put on the record that as a parent with impressionable young children I would like to see more Australian content on our television screens. *SeaChange* was an outstanding success, and *Always Greener* is something I also enjoy. My children particularly love the *Saddle Club* on the ABC.

Hon. B. N. Atkinson — What about *The Wiggles*?

Hon. M. T. LUCKINS — They are very into *The Wiggles* and *Hi-5*. I also mention the Hooley Dooleys, who are Australian entertainers. However big they might be on video, they are not quite as big in the television or film industry.

An honourable member interjected.

Hon. M. T. LUCKINS — The Hooley Dooleys! I will sing a song if you are not careful, Mr Craige.

I want to re-emphasise at the end of my contribution that I am concerned that this government has completely walked away from the emerging industry in multimedia. We have no minister, we have no mention of multimedia in this bill, we have no commitment from this government, and therefore it has no credibility in the multimedia industry internationally. I think that is of grave concern to the future of that industry in Victoria and also in Australia.

The report of the task force that was chaired by Sigrid Thornton, a respected Australian actor, was provided to the government in September 2000. The government has taken well over a year to introduce this bill into Parliament. Again we find that the government has been very tardy in making good commitments that it made in the past.

I welcome an investment in the Docklands studio development, but I also note that this commitment lacks any inducement or encouragement for the industry to establish in Victoria, particularly when compared to the payroll tax and other incentives offered by New South Wales and Queensland. Those states have natural advantages compared to Victoria, but Victoria has a long and very proud history in the film and television industry, and it is up to this government now to ensure that we do not lose our pre-eminence and that we train people into the industry. I am not talking just about actors and producers. I am talking about people who make sets. I am talking about screen writers and make-up artists. I am talking about the backbone of the industry.

We must ensure that proper apprenticeships are provided to people in the industry to ensure that it grows in Victoria. The opposition does not oppose the bill and will be watching closely and monitoring carefully what happens with Film Victoria and the Australian Centre for the Moving Image with a view to ensuring that there is proper accountability, that the no-conflict pecuniary interests are reviewed and that the minister has full discretion and authority over the decisions of both bodies. I commend the bill to the house.

Motion agreed to.

Read second time.

Third reading

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

That this bill be now read a third time.

During the debate a question was asked about whether the government had any intention of appointing members of Parliament to the Australian Centre for the Moving Image. I advise the house that there is no intention by the government to do so. I thank all

honourable members for their contributions to the debate.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

AUDIT (FURTHER AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

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

LIQUOR CONTROL REFORM (PROHIBITED PRODUCTS) BILL

Introduction and first reading

Received from Assembly.

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

AUCTION SALES (REPEAL) BILL

Introduction and first reading

Received from Assembly.

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

COUNTRY FIRE AUTHORITY (MISCELLANEOUS AMENDMENTS) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. J. M. MADDEN (Minister for Sport and Recreation).

ENERGY LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL

Introduction and first reading

Received from Assembly.

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

VICTORIAN INSTITUTE OF TEACHING BILL

Council's amendments and Assembly's amendments

Message from Assembly agreeing to some Council amendments, disagreeing with other Council amendments and seeking concurrence with further Assembly amendments.

Ordered to be considered next day.

HOUSE CONTRACTS GUARANTEE (HIH FURTHER AMENDMENT) BILL

Council's amendment

Returned from Assembly with message relating to Council's suggested amendment.

Ordered to be referred to committee.

BUSINESS OF THE HOUSE

Adjournment

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

That the Council, at its rising, adjourn until Tuesday, 4 December, at 10.00 a.m.

Motion agreed to.

ADJOURNMENT

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

That the house do now adjourn.

Road safety: trees and saplings

Hon. G. R. CRAIGE (Central Highlands) — I raise with the Minister for Energy and Resources a matter for the attention of the Minister for Environment and Conservation in the other place. The matter is a significant road safety issue concerning trees and saplings growing on many rural roads throughout Victoria.

Most country members would be aware that many of their local roads which are predominantly gravel are

wearing to the extent that young trees are growing near or on the roads, which in many people's view is causing a road safety problem.

The roads I mention in particular are Smiths Road and Old Toolangi Road in Toolangi, which is in the Murrindindi shire. This is not solely a local government problem; it clearly requires cooperation between the shire and the Department of Natural Resources and Environment (DNRE). On a lot of these gravel roads the young trees grow in the table drains which are on the shoulders of the road. They obstruct the view of road users, and a great deal of conflict occurs on these roads because of tractors and farm machinery, particularly on Old Toolangi Road, which is in a significant potato-growing area. A lot of tractors and trailers use the road and a lot of development is occurring nearby.

I ask the minister to establish a formula which sets the distance from the centre of a road for a certain width to each side of it from which the vegetation can automatically be cleared by the council rather than it having to apply to DNRE only to find in the majority of cases, which is occurring now, that applications are being refused. I urge the minister to work cooperatively with local government to resolve this issue.

Consumer affairs: roof painting

Hon. D. G. HADDEN (Ballarat) — I raise with the Minister for Consumer Affairs a matter concerning a paint scam operating in Creswick in my electorate.

Last weekend two Creswick citizens appear to have been victims of sham roof painters. The two elderly residents were approached in their homes by two male persons who persuaded them that their roofs needed painting. The two residents each paid the two male persons in cash, purportedly for a completed and professional job. One resident paid $450 in cash and the other resident, who is a dementia sufferer, was unaware of how much she had handed over in cash. Importantly, no paperwork, business card or receipted tax invoice was handed to either of the residents.

It was subsequently discovered that the work done was unprofessional to the point of being shoddy, and it is quite clear that the two senior residents were ripped off. I therefore ask the minister what advice and action her department can provide in order to assist my local community and the local police at Creswick.

Urban and Regional Land Corporation: managing director

Hon. R. M. HALLAM (Western) — I address an issue to the attention of the Minister for Industrial Relations. It goes to the jobs-for-the-boys accusation currently embroiling Premier Bracks. I refer in particular to the minister's insistence during question time earlier today that the Premier's mate, Mr Jim Reeves, was not actually appointed to any position of employment.

If the minister is seriously asking the house to accept her version of events, I ask whether she can explain to the house why Mr Reeves reportedly felt the need to resign, what it was he resigned from, and why she canvassed the prospect of a severance entitlement in her response.

Trains: rear signs

Hon. N. B. LUCAS (Eumemmerring) — I raise with the Minister for Energy and Resources, who represents the Minister for Transport in the other place, a matter to do with the removal from the rear of trains of signs indicating the trains' destinations.

In our metropolitan system a number of ramps lead onto platforms where potential passengers are running for a train, see the back of the train and cannot see the destination board on the platform — for example, after the football at Richmond when people run up the ramp and want to get on a particular train but cannot see where it is going.

I believe the reason for that is that there is some correlation between the sign on the front of the train and the position of the train in the electronic tracking of the train in the metropolitan system. The reason given for not having the destination of the train on the rear of it is that that would muck up the information dissemination equipment for passengers as well as the information displays on the stations.

It seems to me that to many passengers this is a basic service, and my constituent Mr Moyes of Berwick has raised the issue with me. I ask the minister to investigate this matter with a view to ensuring that this basic customer service is reinstated.

Water: Latrobe aquifer

Hon. P. R. HALL (Gippsland) — I raise with the Minister for Energy and Resources a matter raised with me by Bill Bodman, the chairperson of the Alberton project, regarding concerns about the Latrobe aquifer. I know the minister is well aware of the issues regarding

the aquifer and the concerns expressed by the Alberton project, particularly regarding potential land subsidence and falling water levels and the impact that has on users of ground water.

I am sure the minister is also aware of the interrelationships between federal and state responsibilities for these issues. The Alberton project wrote to the minister on 13 November asking her to refer this matter to the Council of Australian Governments in an effort to resolve some of these interrelated state and federal issues. I support that call from the Alberton project and request the minister to consider referring the matter to COAG to resolve the interrelated issues.

Workcover: premiums

Hon. J. W. G. ROSS (Higinbotham) — I raise a matter with the Leader of the Government as the representative of the Minister for Workcover in the other place. Mr Brendan Wicks, a constituent who operates a small business known as Danmatt Trading Pty Ltd in Beaumaris, appears to be caught in a catch-22 situation with respect to Workcover premiums.

In response to Mr Wicks's representations CGU Insurance, on behalf of the Victorian Workcover Authority, changed the industry classification of his business from a builders hardware store with a premium rate of 2.7 per cent to a builders hardware agency at a rate of 0.86 per cent.

In ordinary circumstances this change of classification would have delivered a reduction in Workcover premiums of about $1000 to the small business. However, because of the government's bungling of premium setting over the past two years the Freeze Worker Compensation program has been established. That program is targeted at small employers with remuneration of less than $1 million, and requires their premiums to be frozen while the entire premium system is reviewed. This is because the experience rating system does not provide effective incentives for small employers.

However, Mr Wicks is not seeking a review of his rating experience that is the subject of the freeze. He has already been granted a change in his industry classification, and in his words it appears obscene that he should be paying the premium of another class of business.

This is a clear case of blind bureaucracy frustrating a sensible response and I cannot but conclude that Mr Wicks is being ripped off by Workcover. I ask the minister to inquire into the circumstances of this farce and allow the premium reduction for Mr Wicks to proceed.

Consumer affairs: parking fees

Hon. R. H. BOWDEN (South Eastern) — I seek the assistance of the Minister for Consumer Affairs, although there is a possibility of interest from the Minister for Local Government, but I am approaching the issue as a consumer affairs matter. My constituents are concerned about the high cost of public parking facilities provided by councils. A report published in the *Herald Sun* of 22 November said that during the past five years fines incurred by motorists totalled $346 million and fees totalled $119 million. In the past year or so massive increases have occurred in both percentage and real dollar terms by many councils in the metropolitan area and regional Victoria. Most councils cooperated when contacted and provided information, but Bayside City Council flatly refused to cooperate or provide information on fines and fees. That is not very good.

The concern of my constituents in South Eastern Province is about the heavy and savage level of parking fees that councils are using for revenue. My question to the minister is whether she supports the continuation of council rorts and exploitation of motorists by councils, and if not, what she will do about it.

Schools: woodwork materials

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — I raise with the Minister for Industrial Relations for the attention of the Premier in the other place the use of medium-density fibreboard in school woodwork rooms. Honourable members may be aware that I have raised this matter previously. I can see the minister wondering why I am raising this for the attention of the Premier. The reason is that I have previously raised the matter on 22 March, 14 June and 26 September this year with the Minister for Minister for Sport and Recreation and I believed, in good faith, the minister would have passed it on to his counterpart, the Minister for Education in the other place.

We have a situation where, having raised the matter three times for the attention of the Minister for Education, I am yet to receive a response of any sort — absolutely no response. Is the Minister for Education just incompetent or is the government trying to hide something? After an eight-month delay, I am asking for the Premier's assistance in getting a response from the Minister for Education.

Trams: dynamic fairways

Hon. ANDREA COOTE (Monash) — My matter is directed to the Minister for Energy and Resources for the attention of the Minister for Transport in another place concerning the dynamic fairway trial. I have spoken previously about the $500 000 trial that is happening along Toorak Road between Punt and Grange roads. It consists of large electronic signs at the major intersections along Toorak Road. These signs are suppose to enhance dynamic fairways at peak hour by directing traffic out of the intersections when trams are approaching. I have yet to be advised whether these have saved time or not. However, the six-month trial finishes in December. When will the minister remove the signs and declare the trial an expensive disaster?

HM Melbourne Assessment Prison: industrial dispute

Hon. M. T. LUCKINS (Waverley) — I raise for the attention of the Minister for Industrial Relations the industrial action and 24-hour strike by nurses at HM Melbourne Assessment Prison. I understand the strike will commence in about 25 minutes. The action results from a claim by nurses that the Victorian government bungled the Melbourne assessment prison's management tender and breached its own policy to maintain public health services in prisons in public hands. The result of the action will mean that 275 prisoners will be in lock-down for the 24-hour duration of the strike. What action has the minister taken to avoid this strike and the adverse consequences for prisoners on remand?

Sandy Beach Centre

Hon. C. A. STRONG (Higinbotham) — I raise a matter with the Minister for Sport and Recreation as the representative in this house of the Minister for Finance. It deals with the adult, community and further education (ACFE) grants and the Sandy Beach Centre in my electorate. As I understand it, adult, community and further education capital funding has been added to by some $9 million drawn from the Community Support Fund to provide capital for that program. This seems to be a good initiative to provide this funding.

The Sandy Beach Centre is an outstanding facility that has been established for 15 to 20 years; it has worked from a local shopfront on a shoestring budget and has provided very good programs to the local area. The centre has applied for a capital grant under this program and I hope its submission is successful. However, the issue I raise goes to the matter of timing. It is fairly obvious that in developing any facilities for 2002 it is important that the people at the centre know whether a grant is coming or not so they can work out how they are placed for next year.

Is the minister able to give some advice as to whether Sandy Beach is likely to get a grant under the ACFE capital program so the offerings for 2002 can be finalised?

Snowy River

Hon. PHILIP DAVIS (Gippsland) — I refer the Minister for Energy and Resources to the government's policy of restoring 28 per cent flow to the Snowy River. Given that the corporatisation environmental impact statement concluded that this policy would reduce generation capacity of the hydro-electricity scheme by 7 per cent, and that this would require substitute fossil fuel-generated power which will produce greenhouse gas emissions equivalent in effect to permanently clear felling more than 28 000 hectares of native forest, will the minister confirm that implementation of this policy will result in a significant adverse impact on greenhouse gas emissions?

Urban and Regional Land Corporation: managing director

Hon. K. M. SMITH (South Eastern) — I ask the Minister for Industrial Relations, as the representative in this place of the Premier, if it is correct that the Premier's mate Jim Reeves was not only a failed brewer but also a country and western singer who composed and sang 'Put your long snout a little deeper in the trough.'?

Responses

Hon. M. M. GOULD (Minister for Industrial Relations) — The Honourable Roger Hallam raised a matter with respect to my answer to a question earlier today. Jim Reeves had not taken up the appointment, and I stand by my answer of earlier today.

The Honourable John Ross raised a matter with respect to a constituent of his who has a problem with Workcover premiums. I will refer the matter to the Minister for Workcover and ask him to respond in the usual way.

The Honourable Gordon Rich-Phillips had a bit of a whinge about not getting a response from a minister and asked me to raise that matter with the Premier, and I will do so.

The Honourable Maree Luckins raised the matter of the lock-down at the Melbourne assessment prison and the action taken by nurses. I will investigate that matter.

The Honourable Chris Strong raised a matter for the attention of the Minister for Finance with respect to whether there was any adult, community and further education funding for the Sandy Beach Centre. I will raise that matter with the minister and ask her to respond in the usual way.

Hon. C. C. BROAD (Minister for Energy and Resources) — The Honourable Geoff Craige requested that the Minister for Environment and Conservation establish protocols between the Department of Natural Resources and Environment and councils on vegetation clearance on gravel roads in the country. I will refer that request to the minister.

The Honourable Neil Lucas requested the Minister for Transport to investigate the reinstatement of signs on the back of trains identifying their destination. I will refer that request to the minister.

In relation to the request by the Honourable Peter Hall in support of the Alberton project's request for a reference to the Council of Australian Governments, referrals to COAG are a matter for the Premier, but I am happy to follow up the request and see if it is a possible inclusion on the COAG agenda.

The Honourable Andrea Coote requested the Minister for Transport to end the dynamic fairway trials. I will refer that request to the minister.

In response to the Honourable Phil Davis, it is a great pity that the opposition continues to not be able to accept this government's implementation of its election policy on restoring environmental flows to the Snowy River. I do not accept the assertions in the honourable member's question, and my response to his assertion is no, that proposition is not accepted.

As I have outlined to the house on previous occasions, that assertion was rejected by the Victorian government when the environmental impact statement was published. If the honourable member cares to go back and check the press releases at the time, he will see those assertions being rejected at the time — a long time ago.

Hon. M. R. THOMSON (Minister for Consumer Affairs) — The Honourable Dianne Hadden raised the matter of — —

Honourable members interjecting.

The PRESIDENT — Order! I want to hear the minister's responses. Honourable members on this side of the house put the matters to the minister; I am sure they want to hear the responses.

Hon. M. R. THOMSON — The Honourable Dianne Hadden raised the matter of a painting scam occurring in her electorate where cash is being paid for what is a very shoddy, substandard piece of work. I understand the local police are involved and I am sure that consumer affairs would be more than pleased to cooperate with the police on information they may have in relation to scams of this sort that have occurred in the past.

The Honourable Ron Bowden raised a matter in relation to high public parking fees imposed by city councils. I answered a question put by the honourable member — I think only this week — in relation to that matter, and I suggest he takes it up with the Minister for Local Government.

Motion agreed to.

House adjourned 11.43 p.m.

QUESTIONS ON NOTICE

Answers to the following questions on notice were circulated on the date shown.
Questions have been incorporated from the notice paper of the Legislative Council.
Answers have been incorporated in the form supplied by the departments on behalf of the appropriate ministers.
The portfolio of the minister answering the question on notice starts each heading.

Tuesday, 27 November 2001

Gaming: electronic gaming machines — note acceptors

2209. THE HON. ANDREW BRIDESON — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Gaming): How many electronic gaming machines in Victoria had note acceptors as at 30 June 2001 at — (i) Crown Casino; (ii) gaming venues operated by Tattersalls; and (iii) gaming venues operated by Tabcorp.

ANSWER:

I am informed that:

Bank note acceptors were first approved for introduction on electronic gaming machines in early 1995.

Specific statistical information identifying operating Bank Note Acceptors on electronic gaming machines, per operator is not recorded by the Office of Gambling Regulation.

Gaming: electronic gaming machines — note acceptors

2210. THE HON. ANDREW BRIDESON — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Gaming): How many electronic gaming machines in Victoria had note acceptors as at 20 September 2001 at — (i) Crown Casino; (ii) gaming venues operated by Tattersalls; and (iii) gaming venues operated by Tabcorp.

ANSWER:

I am informed that:

Bank note acceptors were first approved for introduction on electronic gaming machines in early 1995.

Specific statistical information identifying operating Bank Note Acceptors on electronic gaming machines, per operator is not recorded by the Office of Gambling Regulation.

Gaming: electronic gaming machines — note acceptors

2211. THE HON. ANDREW BRIDESON — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Gaming): How many electronic gaming machines in Victoria had note acceptors as at 30 June 2000 at — (i) Crown Casino; (ii) gaming venues operated by Tattersalls; and (iii) gaming venues operated by Tabcorp.

ANSWER:

I am informed that:

Bank note acceptors were first approved for introduction on electronic gaming machines in early 1995.

Specific statistical information identifying operating Bank Note Acceptors on electronic gaming machines, per operator is not recorded by the Office of Gambling Regulation.

Gaming: electronic gaming machines — note acceptors

2212. THE HON. ANDREW BRIDESON — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Gaming): How many electronic gaming machines in Victoria had note acceptors as at 30 June 1999 at — (i) Crown Casino; (ii) gaming venues operated by Tattersalls; and (iii) gaming venues operated by Tabcorp.

ANSWER:

I am informed that:

Bank note acceptors were first approved for introduction on electronic gaming machines in early 1995.

Specific statistical information identifying operating Bank Note Acceptors on electronic gaming machines, per operator is not recorded by the Office of Gambling Regulation.

Multicultural Affairs: advertising

2250. THE HON. G. K. RICH-PHILLIPS — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Multicultural Affairs): In relation to each department, agency and authority within the Minister's administration:

(a) What is the total advertising budget in the Minister's portfolio for 2000–2001 and 2001–2002, respectively.

(b) What are the details of all advertising campaigns since January 2000 to date indicating the purpose and total costs of each campaign.

ANSWER:

I am informed that:

Advertising budgets are determined each year based on the relevant activities of each of the agencies within multicultural affairs, that is the Victorian Interpreting and Translating Services, the Victorian Office of Multicultural Affairs and the Victorian Multicultural Commission. The total advertising budget for financial year 2000-01 was $68,987.96. As some of the specific activities in financial year 2001-02 are still being finalised, only an estimate of the expected total advertising budget can be provided. This amount is currently projected at approximately $366,000. The vast majority of this amount relates to the community education campaign for the Racial and Religious Tolerance legislation.

With respect to advertising campaigns from January 2000 to date, I am informed that:

– $55,564.65 was expended in financial year 2000-01 in relation to informing the public of the Racial and Religious Tolerance Bill and Discussion Paper and the extensive consultation process that occurred.

– $17,893.64 was expended since January 2000 to inform the public of the Victorian Multicultural Commission's 1999-2000 and 2000-2001 community grants programs through advertisements placed within both ethnic and general media. It is anticipated that approximately $9,500 will be expended for the advertisement of the VMC community grants program in 2001-02.

– $7,178 was expended by VITS in financial year 2000-01 and $30,000 in financial year 2001-02 for advertising within the Yellow Pages, White Pages and Call Connect.

– $12,000 was expended from the VMC's and VOMA's budget towards a Sunday Herald Sun supplement that promoted cultural diversity and tolerance, which was organised through Diversity Victoria in March 2000.

Diversity Victoria is a coalition of peak bodies that includes VECCI, the Country Women's Association, the Ethnic Communities' Council of Victoria, the Victorian Multicultural Commission, the Equal Opportunity Commission, the Victorian Council of Social Services, ATSIC and various other representative organisations.

Post: Department of Education, Employment and Training — ministerial staff

2305. THE HON. B. N. ATKINSON — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Post-Compulsory Education, Training and Employment): How many current ministerial staff were previously employed in the Department of Employment, Education and Training as at September 1999.

ANSWER:

I am informed as follows:

One ministerial staff member employed in the office of the Minister for Post Compulsory Education, Training and Employment was on unpaid leave from the Victorian Teaching Service at September 1999. That staff member has since resigned from the teaching service.

Post: Department of Education, Employment and Training — ministerial staff

2306. THE HON. B. N. ATKINSON — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Post-Compulsory Education, Training and Employment): What are the current salary levels of any ministerial staff who were previously employed in the Department of Employment, Education and Training as at September 1999.

ANSWER:

I am informed as follows:

The current Chief of Staff in the office of the Minister for Post-Compulsory Education, Training and Employment was on unpaid leave from the Victorian Teaching Service at September 1999. That staff member has since resigned from the teaching service.

Post: Department of Education, Employment and Training — ministerial staff

2307. THE HON. B. N. ATKINSON — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Post-Compulsory Education, Training and Employment): What were the salary levels in the Department of Employment, Education and Training of those current ministerial staff who were previously employed in the Department of Employment, Education and Training as at September 1999.

ANSWER:

I am informed as follows:

The current Chief of Staff employed in the office of the Minister for Post Compulsory Education, Training and Employment was on unpaid leave from the Victorian Teaching Service at September 1999. That staff member has since resigned from the teaching service.

Industrial Relations: Australian Industrial Relations Commission — representations

2334. THE HON. BILL FORWOOD — To ask the Honourable the Minister for Industrial Relations:

(a) How many representations has the Government made to the Australian Industrial Relations Commission — (i) between October and December 1999; (ii) in 2000; and (iii) up to 30 September 2001.

(b) Upon what matters were these representations made.

ANSWER:

I am informed that:

The Crown in the State of Victoria makes representations to the Australian Industrial Relations Commission in respect of its capacity as an employer and in respect of broader policy representations in test and other important cases.

In respect of the first category, the Crown in the State of Victoria has made the following representations:

October - December 1999
– No representations.

January - December 2000
– Application by Department of Human Services under s.170LJ of the *Workplace Relations Act 1996* (WR Act) for certification of an enterprise agreement with the Health and Community Services Union covering Department of Human Services' (DHS) Disability Services

– Application by Victoria under s.170LJ, WR Act for certification of an enterprise agreement with Community and Public Service Union covering the non-executive Victorian Public Service

– Dispute notification by DHS under s.99 in relation to threatened industrial action over changed staffing allocations in the Grampians Regional Office

January - 30 September 2001
– Application by DHS under s.170MI WR Act for the initiation of a bargaining period with the Health and Community Services Union in DHS' disability services.

In respect to test cases and other important matters:

October - December 1999
– Representation relating to the retail industry award application

– Minimum Entitlements (Public Holidays) - intervention in respect of the application for amendments to minimum entitlements

January - December 2000
– Safety Net Review case - intervention in support of application

– Minimum Wages Orders - intervention in support of application

– Newton Matter - proposed intervention relating to termination of employment.

January - 30 September 2001
– Safety Net Review case - intervention in support of application

– Minimum Wages Orders - intervention in support of application

– Parental Leave for Long Term Casuals- intervention in support of application

– Reasonable Hours of Work - intervention in support of application

Housing: public housing waiting lists

2340. THE HON. ANDREA COOTE — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Housing): What are the State quarterly waiting list numbers for public housing for the June and September 2001 periods, respectively.

ANSWER:

State quarterly Waiting List Numbers for Public Housing

Quarter Ending	New Applications	Transfer Applications	Total Applications
June 2001	37,571	5,246	42,817
September 2001	39,037	5,576	44,613

Note: Public housing includes the Rental General Stock and Movable Units programs.

It should be noted that waiting list information is compiled annually and is readily available in the Office of Housing's annual publication 'Summary of Housing Assistance Programs'.

Environment and Conservation: fruit bats — control

2356. THE HON. BILL FORWOOD — To ask the Honourable the Minister for Energy and Resources (for the Honourable the Minister for Environment and Conservation): What are the locations of the sites investigated around Melbourne in relation to the relocation of bats to Ivanhoe.

ANSWER:

I am informed that:

A taskforce of scientists and management professionals with expertise in ecology and land management was established in April of this year to identify the most appropriate site or sites to locate an alternative flying-fox campsite.

The taskforce examined 7,000 potential sites within a 20 kilometre radius of the Royal Botanic Gardens to identify the most suitable sites. The criteria used in assessing the sites were: distance from the Botanic Gardens; the amount of shelter available; the structure and microclimate of the vegetation of the sites; the impact on and distance from human use; current site use; and access to amenities at the site. After considering these criteria and applying a rigorous scientific assessment, the site at Horseshoe Bend on the Yarra River at Ivanhoe was the most appropriate considering the needs of the flying-foxes and the general community.

The complete 83 page report produced by the taskforce has been available to the general public at the Department of Natural Resources and Environment web site and the NRE Customer Service Centre since 5 October 2001.

Industrial Relations: State Revenue Office — recruitment drive

2369. THE HON. BILL FORWOOD — To ask the Honourable the Minister for Industrial Relations: In relation to the recruitment drive being carried out in Ballarat for the State Revenue Office (SRO) referred to in the Minister for Industrial Relations Media Release on 16 August 2001 :

(a) Who engaged the services of Ballarat Employment Services and Training (BEST) to conduct the recruitment drive.

(b) What is BEST's fee to conduct this recruitment drive.

(c) How many telephone inquiries have been received by BEST up to 30 September 2001.

(d) How many prospective employees has BEST met with up to 30 September 2001.

(e) How many State Revenue Office employment kits have been distributed up to 30 September 2001 and what was the cost of producing the kits.

(f) What other activities were conducted, in conjunction with the recruitment drive.

(g) What is the total cost of the recruitment drive and other activities.

(h) On what date will the recruitment campaign finish.

ANSWER:

I am informed as follows:

(a) The State Revenue Office (SRO) engaged the services of Ballarat Employment Services and Training (BEST) to conduct the recruitment drive, in accordance with Victorian Government Purchasing Board requirements.

(b) Under the contract established between the SRO and BEST, the SRO pays $325 per person recruited to the SRO for persons not registered with BEST. In accordance with the guidelines set by the Commonwealth Department of Education, Workplace Relations and Small Business, the SRO pays no fee for persons registered with BEST. Under the contract, the SRO also paid other fees related to recruitment such as fees for a computer skills test.

(c) BEST received 274 telephone inquiries about the advertised Band 2 positions, and a further 331 people called into BEST's offices in Ballarat.

(d) Following an application screening process by BEST recruiting consultants and SRO staff, BEST interviewed 138 people.

(e) 605 hard copy information packs were distributed by BEST at a cost of $2000. Prospective applicants were also able to download information packs from the SRO web site.

(f) A number of activities were conducted in conjunction with this recruitment activity. They included:
- advertising positions in the *Age* and *Ballarat Courier*;
- listing positions on the Centrelink Touch Screen and on the SRO web site;
- a presentation by SRO to students at Ballarat University;
- letters of acknowledgment sent to all applicants;
- screening of applications, a two part interview process and referee checks; and
- letters of offer to successful candidates and letters to other candidates who were not successful at this stage.

(g) The total cost of this initial recruitment drive to 30 September 2001 was $31,515, excluding salary costs of SRO staff.

(h) This initial recruitment drive ends on 23 November 2001. Further recruitment drives will continue until about June 2002.

Workcover: Transport Accident Commission — chairman

2441. THE HON. BILL FORWOOD — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Workcover): Further to the answer to question no. 2376, given in this House on 30 October 2001, what other allowances and expenses have been fixed by the Governor in Council for Mr James MacKenzie in his capacity as Chair of the Transport Accident Commission.

ANSWER:

I am informed that:

In accordance to the responses previously provided to the Hon. P. A. Katsambanis (Question No. 1969) and the Hon. W. Forwood (Question No. 2376), I restate the following:

Under section 16(6) of the *Transport Accident Act 1986* a Director is entitled to be paid:

(a) such remuneration as is specified in the instrument of appointment or as may be fixed from time to time by the Governor in Council; and

(b) such travelling and other allowances and expenses as may be fixed from time to time by the Governor in Council.

However, no specific amount for travelling and other allowances and expenses have been fixed by the Governor in Council in regard to the appointment of Mr James MacKenzie in his capacity as Chair of the Transport Accident Commission.

The Guidelines for the Appointment and Remuneration of Part-time Non-executive Directors of State Government Boards and Members of Statutory Bodies and Advisory Committees provide that reimbursement is to be made of all expenses reasonably incurred in the discharge of office.

Workcover: Victorian Workcover Authority — chairman

2442. THE HON. BILL FORWOOD — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Workcover): Further to the answer to question no. 2375, given in this House on 30 October 2001, what other allowances and expenses have been fixed by the Governor in Council for Mr James MacKenzie in his capacity as Chair of the Victorian Workcover Authority.

ANSWER:

I am informed that:

In accordance to the responses previously provided to the Hon. P. A. Katsambanis (Question No. 1970) and the Hon. W. Forwood (Question No. 2375), I restate the following

Under section 26(3) of the *Accident Compensation Act 1985* a part-time Director is entitled to be paid:

(c) such remuneration as is specified in the instrument of appointment or as may be fixed from time to time by the Governor in Council; and

(d) such travelling and other allowances and expenses as may be fixed from time to time by the Governor in Council.

However, no specific amount for travelling and other allowances and expenses have been fixed by the Governor in Council in regard to the appointment of Mr James MacKenzie in his capacity as Chair of the Victorian Workcover Authority.

The Guidelines for the Appointment and Remuneration of Part-time Non-executive Directors of State Government Boards and Members of Statutory Bodies and Advisory Committees provide that reimbursement is to be made of all expenses reasonably incurred in the discharge of office.

Workcover: Transport Accident Commission — chairman

2443. THE HON. BILL FORWOOD — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Workcover): Is Mr James MacKenzie, Chair of the Transport Accident Commission, eligible for a performance bonus.

ANSWER:

I am informed that:

In accordance to the responses previously provided to the Hon. P. A. Katsambanis (Question No. 1969) and the Hon. W. Forwood (Question No. 2376), I restate the following

Under section 16(6) of the *Transport Accident Act 1986* a Director is entitled to be paid:

(e) such remuneration as is specified in the instrument of appointment or as may be fixed from time to time by the Governor in Council; and

(f) such travelling and other allowances and expenses as may be fixed from time to time by the Governor in Council.

Accordingly, the remuneration of the Chairman of the Transport Accident Commission does not include payment of a performance bonus.

Workcover: Victorian Workcover Authority — chairman

2444. THE HON. BILL FORWOOD — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Workcover): Is Mr James MacKenzie, Chair of the Victorian Workcover Authority, eligible for a performance bonus.

ANSWER:

I am informed that:

In accordance to the responses previously provided to the Hon. P. A. Katsambanis (Question No. 1970) and the Hon. W. Forwood (Question No. 2375), I restate the following

Under section 26(3) of the *Accident Compensation Act 1985* a part-time Director is entitled to be paid:

(g) such remuneration as is specified in the instrument of appointment or as may be fixed from time to time by the Governor in Council; and

(h) such travelling and other allowances and expenses as may be fixed from time to time by the Governor in Council.

Accordingly, the remuneration of the Chairman of the Victorian Workcover Authority does not include payment of a performance bonus.

QUESTIONS ON NOTICE

Answers to the following questions on notice were circulated on the date shown.
Questions have been incorporated from the notice paper of the Legislative Council.
Answers have been incorporated in the form supplied by the departments on behalf of the appropriate ministers.
The portfolio of the minister answering the question on notice starts each heading.

Wednesday, 28 November 2001

Manufacturing Industry: ministerial staff

2053. THE HON. D. McL. DAVIS — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Manufacturing Industry): As at 30 May 2001, how many staff were employed by the Minister — (i) in the Minister's office as Ministerial staff, what are their names and what is the cost; and (ii) on secondment from the Victorian Public Service, what are their names and what is the cost.

ANSWER:

All ministerial staff in my office are employed by the Premier. Therefore there are no Ministerial staff employed by me in my office.

The names of Ministerial staff are regularly made public in the Victorian Government Directory, as are relevant Departmental Liaison Officers on secondment from Departments. The salary of individual staff members relates to the personal affairs of those individuals.

The Member may wish to refer to the Budget Papers for details on expenditure.

Racing: ministerial staff

2054. THE HON. D. McL. DAVIS — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Racing): As at 30 May 2001, how many staff were employed by the Minister — (i) in the Minister's office as Ministerial staff, what are their names and what is the cost; and (ii) on secondment from the Victorian Public Service, what are their names and what is the cost.

ANSWER:

All ministerial staff in my office are employed by the Premier. Therefore there are no Ministerial staff employed by me in my office.

The names of Ministerial staff are regularly made public in the Victorian Government Directory, as are relevant Departmental Liaison Officers on secondment from Departments. The salary of individual staff members relates to the personal affairs of those individuals.

The Member may wish to refer to the Budget Papers for details on expenditure.

Manufacturing Industry: ministerial staff — pecuniary interest

2230. THE HON. G. K. RICH-PHILLIPS — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Manufacturing Industry): Have all ministerial officers currently or previously employed by the Minister signed a pecuniary interest form; if so, on what date — (i) was the declaration signed; and (ii) did the employee commence employment.

ANSWER:

I am informed as follows:

All staff working in my office are employed by the Premier. Therefore there are no ministerial officers employed by me.

Racing: ministerial staff — pecuniary interest

2231. THE HON. G. K. RICH-PHILLIPS — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Racing): Have all ministerial officers currently or previously employed by the Minister signed a pecuniary interest form; if so, on what date — (i) was the declaration signed; and (ii) did the employee commence employment.

ANSWER:

I am informed as follows:

All staff working in my office are employed by the Premier. Therefore there are no ministerial officers employed by me.

Environment and Conservation: alpine grazing licences

2351. THE HON. P. R. HALL — To ask the Honourable the Minister for Energy and Resources (for the Honourable the Minister for Environment and Conservation):

(a). How many alpine grazing licences have been issued for areas within the Alpine National Park.

(b) What percentage area of the park do these licences cover.

ANSWER:

I am informed that:

(a) 62 Grazing Licences are currently issued for areas in the Alpine National Park:

(b) Approximately 50 per cent of the Alpine National Park is licensed for grazing.

Environment and Conservation: Ovens River

2439. THE HON. E. G. STONEY — To ask the Honourable the Minister for Energy and Resources (for the Honourable the Minister for Environment and Conservation): In relation to the proposal to increase minimum environmental flows to the Ovens River, and with reference to the historical records of flows at the gauging station at Myrtleford, when the minimum flow at the gauging station at Myrtleford is set at 150 megalitres per day in the future:

(a) Since records have been kept for how many years would restrictions have been placed on pumping from the river above that gauge.

(b) For how many days in those years that restrictions would have been placed, would restrictions have been imposed on pumping above the gauging station.

(c) For how many years in 100 would pumping have been banned (even for one day) above the gauging station.

(d) For how many days in those years when a ban would have been applied would pumping be banned above the gauging station.

ANSWER:

I am informed that:

A report on hydrology and reliability of supply is yet to be finalised and considered by the Upper Ovens Streamflow Management Plan Consultative Committee. Neither has any recommendation been made or accepted that the minimum flow should be set at 150 megalitres per day in the future.

Housing: Monash Province — public housing

2447. THE HON. ANDREA COOTE — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Housing): In relation to the purchase and construction of public housing in Monash Province, what criteria is the assessment of need in the region comparative to other needs based upon.

ANSWER:

The process for identifying client need and translating this need into public housing purchase and construction in the area covered by Monash Province, as for all Victorian locations, involves consideration of:

– demand for housing assistance;

– the supply of public housing stock; and

– stock losses through redevelopment, sales to existing eligible tenants and disposal of stock.

Housing: local government affordable housing policy committee

2448. THE HON. ANDREA COOTE — To ask the Honourable the Minister for Small Business (for the Honourable the Minister for Housing): In relation to the Local Government Affordable Housing Policy Committee, when will the final report, including recommendations, be completed.

ANSWER:

A final report of the State and Local Government Affordable Housing Committee, including recommendations, will be completed and presented to my colleague, the Minister for Housing, in the first quarter of 2002.

QUESTIONS ON NOTICE

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Thursday, 29 November 2001

Education: teacher classification

2154. **THE HON. ANDREW BRIDESON** — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Education): Following the advertisement in the *Education Times* on 1 March 2001, in relation to the Experienced Teacher With Responsibility (Internal Round) appointments:

(a) How many teachers across Victoria were eligible to apply for this new teacher classification.

(b) How many of those eligible teachers applied for an Experienced Teacher With Responsibility position.

How many teachers were successfully appointed as an Experienced Teacher With Responsibility.

ANSWER:

I am informed as follows: As the process is not yet complete I cannot provide you with the final figures.

Education: teachers — salaries

2278. THE HON. D. McL. DAVIS — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Education): What salary and benefits (excluding superannuation) are estimated to be paid by the Government to teachers employed in Government schools by the Government in 2001–02.

ANSWER:

I am informed as follows:

The answer to this question is not confirmed at this time.

Education: early years P-2 class size funding

2412. THE HON. ANDREW BRIDESON — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Education): In relation to the Early Years P-2 class size funding:

(a) How much core School Global Budget funding has been allocated for this program to government primary schools for the school years 2000, 2001 and 2002, respectively.

(b) How much funding has been allocated for this program in the Victorian budget in 1999-2000, 2000-01 and 2001-02, respectively.

ANSWER

I am informed as follows:

The figures appear in the Budget Papers.

Education: early years literacy program

2413. THE HON. ANDREW BRIDESON — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Education): In relation to the Early Years literacy program:

(a) How much funding has been allocated for this program to government primary schools for the school years 1998, 1999, 2000, 2001 and 2002, respectively.

(b) How much funding has been allocated for this program in the Victorian budget in 1998-99, 1999-2000, 2000-01 and 2001-02, respectively.

ANSWER

I am informed as follows:

The information appears in the Budget Papers.

Education: early years numeracy program

2414. THE HON. ANDREW BRIDESON — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Education): In relation to the Early Years numeracy program, including research components:

(a) How much funding has been allocated for this program to government primary schools for the school years 1998, 1999, 2000, 2001 and 2002, respectively.

(b) How much funding has been allocated for this program in the Victorian budget in 1998-99, 1999-2000, 2000-01 and 2001-02, respectively.

ANSWER

I am informed as follows:

The figures for initiatives appear in the Budget Papers.

Education: early years program

2415. THE HON. ANDREW BRIDESON — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Education): In relation to the whole Early Years program:

(a) How much funding has been allocated for this program to government primary schools for the individual school years 1998, 1999, 2000, 2001, and 2002, respectively.

(b) How much funding has been allocated for this program in the Victorian budget in 1998-99, 1999-2000, 2000-01, and 2001-02, respectively.

ANSWER

I am informed as follows:

The figures appear in the Budget Papers.

Education: extension education program

2431. THE HON. ANDREA COOTE — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Education): What are the recommendations of the review of the Extension Education Program.

ANSWER

I am informed as follows:

The review of the Extension Education Program has been completed and the Department is currently considering the recommendations.

Education: extension education program

2433. THE HON. ANDREA COOTE — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Education): What organisations are currently participating in the Extension Education Program.

ANSWER

I am informed as follows:

That fifty-eight cultural organisations and subject associations receive DEET resources to provide curriculum support, student programs and teacher professional development under the Extension Education Program.

Education: extension education program

2434. THE HON. ANDREA COOTE — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Education): When will the recommendations for the Extension Education Program Review at the State Library of Victoria be released.

ANSWER

I am informed as follows:

That there is no Extension Education Program Review at the State Library.