PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

2 May 2000

(extract from Book 6)

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By authority of the Victorian Government Printer

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His Excellency the Honourable Sir JAMES AUGUSTINE GOBBO, AC

The Lieutenant-Governor

Professor ADRIENNE E. CLARKE, AO

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Privileges Committee — The Honourables W. R. Baxter, D. McL. Davis, C. A. Furletti, M. M. Gould and G. W. Jennings.

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Environment and Natural Resources Committee — (*Council*): The Honourables R. F. Smith and E. G. Stoney. (*Assembly*): Mr Delahunty, Ms Duncan, Mr Ingram, Ms Lindell, Mr Mulder and Mr Seitz.

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Road Safety Committee — (*Council*): The Honourables Andrew Brideson and E. C. Carbines. (*Assembly*): Mr Kilgour, Mr Langdon, Mr Plowman, Mr Spry and Mr Trezise.

Scrutiny of Acts and Regulations Committee — (*Council*): The Honourables M. A. Birrell, M. T. Luckins, Jenny Mikakos and C. A. Strong. (*Assembly*): Ms Beattie, Mr Carli, Mr Dixon, Ms Gillett and Mr Robinson.

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Assembly — Clerk of the Parliaments and Clerk of the Legislative Assembly: Mr R. W. Purdey

Council — Clerk of the Legislative Council: Mr W. R. Tunnecliffe

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FIFTY-FOURTH PARLIAMENT — FIRST SESSION

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The Hon. P. R. HALL

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TUESDAY, 2 MAY 2000

Tuesday, 2 May 2000

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

ROYAL ASSENT

Message read advising royal assent on 18 April to:

Corporations (Victoria) (Amendment) Act
Education Acts (Amendment) Act
Financial Management (Financial Responsibility) Act
Flora and Fauna Guarantee (Amendment) Act
Prevention of Cruelty to Animals (Amendment) Act
Prostitution Control (Planning) Act
Renewable Energy Authority Victoria (Amendment) Act
Road Safety (Amendment) Act

QUESTIONS WITHOUT NOTICE

Snowy Mountains scheme

Hon. PHILIP DAVIS (Gippsland) — Will the Minister for Energy and Resources support or oppose the proposed constitutional challenge to the Snowy Mountains scheme?

Hon. C. C. BROAD (Minister for Energy and Resources) — I presume the honourable member is referring to the action announced by the honourable member for Gippsland East in another place. It is important for the government to seek advice on that matter. It has been indicated to me on a preliminary question that the advice is likely to be highly conflicting, as are most matters to do with constitutional challenges in the High Court. So far as the government is concerned, and in particular my responsibilities in negotiating those matters, the emphasis is not in that direction but in the direction of negotiating an agreement with the New South Wales and commonwealth governments as soon as possible.

Industrial relations: wage claim

Hon. G. D. ROMANES (Melbourne) — I refer the Minister for Industrial Relations to her previous statements to the house on the government's submission to the Australian Council of Trade Union's living wage case, and I ask: what is the government's response to the Australian Industrial Relations Commission's decision to grant a $15 a week increase to low-paid workers on minimum rate federal awards?

Hon. M. M. GOULD (Minister for Industrial Relations) — The government welcomes the Australian Industrial Relations Commission's decision to award an increase of $15 a week to low-paid workers under federal awards. Federal awards are the only awards — —

Hon. M. A. Birrell — Long overdue.

Hon. M. M. GOULD — I take up the Leader of the Opposition's interjection and acknowledge his comments that a pay rise for low-paid workers is overdue. Victorian workers only had access to federal awards after the previous government's referral of industrial relations power to the commonwealth. The government believes the wage increase will provide critical relief for Victorian families who are struggling to make ends meet. The $15 a week increase will mean a family will be able to pay for a takeaway meal — two flake, a couple of potato cakes, a serve of chips and maybe a drink. It is not a huge amount of money but it is welcomed by low-paid workers in Victoria.

Honourable members interjecting.

Hon. M. M. GOULD — And that does not include the GST!

This comes at a time when families are struggling to make ends meet with the increased cost of pharmaceuticals, vegetables and car insurance. The government welcomes the Australian Industrial Relations Commission's award to Victorian workers covered by federal awards. In its decision the commission noted that this amount of money is in real terms less than what it has awarded in previous safety net adjustments. As they have done since 1997, the commonwealth government and conservative governments argued for a miserly $8 a week increase. On this occasion, as in the past, the commission rejected those submissions and awarded workers a $15 increase. The government welcomes this economically and socially sound decision by the Australian Industrial Relations Commission to protect low-income workers.

Liquor: licences

Hon. BILL FORWOOD (Templestowe) — I refer the Minister for Small Business to her press release of 22 March announcing a review of the 8 per cent liquor licence limit. The minister claimed the review was 'required under national competition policy'. Given that Victoria undertook a national competition policy review of liquor in 1997, will the minister explain to the house why this review is required?

Hon. M. R. THOMSON (Minister for Small Business) — My understanding is that the Department of Treasury and Finance requested that the 8 per cent liquor licence limit be reviewed again under national competition policy, and the review has been undertaken on that basis. I am conscious that it is important to ensure that there remains some diversity in the selling of packaged alcohol, no matter what the review decides.

GST: State Boating Council

Hon. E. C. CARBINES (Geelong) — Will the Minister for Energy and Resources inform the house of what impact the goods and services tax will have on the provision of grant funding to voluntary organisations under the administration of the State Boating Council?

Hon. C. C. BROAD (Minister for Energy and Resources) — I am pleased to respond to the honourable member's question about government-funded grant programs and the consequential impact of the goods and services tax (GST) on grants provided to voluntary organisations through the State Boating Council.

Through the State Boating Council more than $170 000 boat and water safety grants were allocated to more than 150 individual and parent boating volunteer organisations in the current financial year, which includes the period covered by the previous government. That sum includes grants to important organisations such as surf lifesaving clubs and volunteer coastguards to assist them to purchase necessary search and rescue equipment or increase the availability of training opportunities for boaters, which are important safety factors.

The GST is a particularly onerous and administratively burdensome system for organisations that are required to be registered for GST purposes, and even more so for volunteer organisations that make valuable contributions to the community by providing such services. Organisations that are not required to register for the GST and choose not to do so will find that their costs will increase by up to 10 per cent after the introduction of the GST on 1 July.

A draft ruling on grants of financial assistance is awaiting finalisation. However, it appears from the draft ruling that most grant funding programs provided by the Bracks government will be subject to the GST. The impact of the GST on State Boating Council grants to volunteer organisations will largely depend on the GST registration status of the organisations.

The Bracks government is committed to advocating on behalf of Victoria's volunteer organisations, including committees of management, rescue squads and lifesaving organisations, to ensure that they are not disadvantaged by the new tax regime.

Small business: workplace safety

Hon. W. I. SMITH (Silvan) — Will the Minister for Small Business inform the house of what incentives will be offered to small business to encourage safe working practices and safe environments in the workplace?

Hon. M. R. THOMSON (Minister for Small Business) — My department is currently working with the Victorian Workcover Authority to provide a package for small business, and the government hopes to make an announcement shortly.

LPG: prices

Hon. R. F. SMITH (Chelsea) — Will the Minister for Small Business outline to the house details of the government's current liquefied petroleum gas campaign?

Hon. M. R. THOMSON (Minister for Small Business) — Over the past 12 months both sides of the house have raised the price of liquefied petroleum gas (LPG) in relation to both Autogas and bottled gas. The government is concerned that in the past 12 months there has been a price increase of 66 per cent in Autogas and up to 30 per cent in the variation between metropolitan Melbourne and some rural and regional areas.

The government has asked the public to become involved in a campaign to help it monitor LPG prices. From last Friday until approximately noon yesterday some 700 respondents have called the hotline, and more than 200 people have responded by email, which is a good response. The pricing regime of the LP gas industry is not transparent and it is hard to work out where the prices are set and whether they are justified. I have met with Australian Competition and Consumer Commission representatives to discuss whether it will participate in an inquiry on the issue. The ACCC needs authority from the federal government to act properly and I have written to the Honourable Joe Hockey seeking authority for the ACCC to act.

The government is collating the data obtained via its own price monitors and from the public ringing in and will provide the results to the ACCC. The government hopes the federal government will respond positively to the data and that useful information will be provided.

The government is asking the ACCC to be involved in an inquiry into the industry.

There are many issues in relation to an inquiry as to the setting of the Saudi propane price as the proper benchmark and the question of what are the add-ons for wholesale price. There is also the question of what rebates are on offer and how they work, which no-one seems to know or understand. It is not a transparent industry and it is time it was opened up. The government will collect as much information as it can on the pricing regime of the LP gas industry. Unfortunately the legislation provides that responsibility for an open inquiry lies with the ACCC. The government hopes the ACCC will be able to join with the government in an inquiry, and thus open up the LP gas industry once and for all.

Melbourne Park: multipurpose stadium

Hon. M. A. BIRRELL (East Yarra) — Will the Minister for Sport and Recreation advise the house of when the multipurpose venue at Melbourne Park will open?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Recently I had discussions with the chair of the Melbourne and Olympic Parks Trust who indicated that a number of issues were ongoing with the completion of the multipurpose venue. However, I believe the venue will be completed close to June or July, and the government expects confirmation of that indication from the Office of Major Projects shortly. The government looks forward to receiving that advice.

Luke's Place, Morwell

Hon. D. G. HADDEN (Ballarat) — Will the Minister for Youth Affairs inform the house of recent improvements in the provision of youth services in the Latrobe Valley?

Hon. J. M. MADDEN (Minister for Youth Affairs) — Last Friday I had the good fortune to launch Luke's Place in Morwell, which is a combined venture of the Morwell Uniting Church and Kilmany Family Care. It is a fantastic example of community partnerships working together with young people. The establishment of Luke's Place follows issues raised in a survey conducted by the Gippsland Presbytery. The issue of greatest interest was young people, which translated into concerns about lack of employment opportunities; lack of participation; social isolation; high levels of suicide, particularly among young men; low school retention rates; and family breakdown. Luke's Place aims to support young people by providing programs that build self-esteem and construct positive relationships.

Luke's Place will provide a resource centre, an advocacy and referral service, and indoor recreation facilities such as pool, table tennis and music. It is also anticipated it will provide programs such as courses in the Internet, budget cooking and links with the commonwealth's JPET program. Staff members are also encouraging community members to become involved in a mentor program for at-risk young people. That reinforces that it is a magnificent example of community partnerships supporting young people.

Glenferrie Oval: weight-lifting training centre

Hon. P. R. HALL (Gippsland) — I ask the Minister for Sport and Recreation whether the government is committed to the establishment of a weight-lifting training centre located at Glenferrie Oval; and if so, what level of funding will be provided to the project.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — The government is committed to the weight-lifting centre at the Glenferrie Oval precinct as part of developments associated with the Commonwealth Games. The government is committed to contributing funding for the project but is concerned about some planning issues.

Hon. P. R. Hall — How much?

Hon. J. M. MADDEN — I do not have the figures with me, but I will be happy to supply those figures to Mr Hall as soon as possible.

State Gymnastics and Circus Training Centre

Hon. JENNY MIKAKOS (Jika Jika) — Will the Minister for Sport and Recreation inform the house what action he is taking to assist gymnastics in this state?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — On Friday, 28 April, I had the pleasure of launching the State Gymnastics and Circus Training Centre, a joint venture between the government and Swinburne University. The facility will allow gymnasts and circus performers to develop skills. It will be a purpose-built facility to which the government has contributed $3 million and will be part of developments for the 2006 Commonwealth Games, which are to be held in Melbourne. Swinburne University will contribute $60 000 a year to assist with operating costs.

The centre will provide training facilities for three gymnastics disciplines: men's artistic gymnastics, women's artistic gymnastics and women's rhythmic gymnastics. It will also be a competition venue. One of the important aspects of the facility will be the support it will provide to gymnasts whose careers as artistic gymnasts have been shortened as they have matured or developed. The circus component of the facility will allow those gymnasts to develop skills in other directions.

The PRESIDENT — Order! I give the Deputy Leader of the Opposition the call because 20 minutes has not yet expired.

Liquor: licences

Hon. BILL FORWOOD (Templestowe) — In her small business policy late last year the Minister for Small Business said that she would immediately and retrospectively close legislative loopholes which allow large retailing chains to accumulate more than 8 per cent of the total number of packaged liquor licences. What action has the minister taken to date on the promise?

Hon. M. R. THOMSON (Minister for Small Business) — Unfortunately the government is required to take part in the national competition inquiry. The government will finish the review in relation to the 8 per cent. It is committed to ensuring that small businesses remain secure in a diverse marketplace for packaged liquor and will ensure that that is enshrined in legislation as soon as the review is completed.

The PRESIDENT — Order! The time for the taking of questions without notice has concluded. By way of explanation, 10 questions had been asked but 20 minutes had not expired and I allowed another question. In the interests of fairness, if the government had wanted to ask a further question I would have allowed it.

QUESTIONS ON NOTICE

Answers

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

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

The question numbers are: 263–88, 290, 294, 297, 298, 300, 305, 306, 309, 310, 313, 314, 316, 317, 319, 322, 324, 325, 327–30, 331–34, 338, 341, 343, 347, 348, 350–52, 354, 355, 357–60, 364, 366–68, 370–72, 374–77, 379–86, 393, 395–98, 400, 406, 416.

Motion agreed to.

COUNTY COURT JUDGES

Annual report

Hon. M. R. THOMSON (Minister for Small Business) presented, by command of His Excellency the Governor, report for 1998–99.

Laid on table.

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Reforms for scrutinising budget estimates

Hon. BILL FORWOOD (Templestowe) presented report, together with estimates.

Laid on table.

Ordered to be printed.

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Alert Digest No. 5

Hon. M. T. LUCKINS (Waverley) presented *Alert Digest* No. 5 of 2000, together with appendices.

Laid on table.

Ordered to be printed.

PAPERS

Laid on table by Clerk:

Ballarat Health Services — Report, 1998–99.

Barwon Health — Report, 1998–99 (two papers).

Bendigo Regional Institute of TAFE — Report, 1999.

Box Hill Institute of TAFE — Report, 1999.

Central Gippsland Institute of TAFE — Report, 1999.

Chisholm Institute of TAFE — Report, 1999.

Council of Adult Education — Report, 1999.

Crown Land (Reserves) Act 1978 — Orders under Section 17D and 17DA granting leases at Mt Rouse.

Djerriwarrh Health Services — Report, 1998–99.

Driver Education Centre of Australia Ltd — Report, 1999.

East Gippsland Institute of TAFE — Report, 1999.

East Wimmera Health Service — Report, 1998–99.

Eastern Regional Waste Management Group — Minister for Environment and Conservation's report of 20 April 2000 of receipt of the 1998-99 report.

Edenhope and District Memorial Hospital — Minister for Health's report of receipt of the 1998-99 report.

Gascor Holdings No. 3 Pty Ltd — Financial Statements for the period 1 July 1998 to 31 March 1999.

Gordon Institute of TAFE — Report, 1999.

Goulburn Ovens Institute of TAFE — Report, 1999.

Hepburn Health Service — Report, 1998–99.

Holmesglen Institute of TAFE — Report, 1999.

International Fibre Centre Ltd — Minister for Post Compulsory Education, Training and Employment's report of 26 April 2000 of receipt of the 1999 report.

Kangan Batman Institute of TAFE — Report, 1999.

Melbourne City Link Act 1995 —

City Link and Extension Projects Integration and Facilitation Agreement Fourth Amending Deed, 10 April 2000, pursuant to section 15B(5) of the Act.

Melbourne City Link Eleventh Amending Deed, 10 April 2000, pursuant to section 15(2) of the Act.

Mercy Public Hospitals Incorporated — Report, 1998–99 (three papers).

National Crime Authority — Report, 1998–99.

Northern Melbourne Institute of TAFE — Report, 1999.

Northern Regional Waste Management Group — Minister for Environment and Conservation's report of 20 April 2000 of receipt of the 1998–99 report.

Planning and Environment Act 1987 — Notices of Approval of the following amendments and a new planning scheme:

Boroondara Planning Scheme — Amendment C7.

Darebin Planning Scheme — Amendment C5.

Frankston Planning Scheme.

Kingston Planning Scheme — Amendment C1.

Stonnington Planning Scheme — Amendments L67 and L68.

Yarra Ranges Planning Scheme — Amendment L120.

Portland and District Hospital — Report, 1998–99.

Rural Northwest Health — Report, 1998–99.

South Eastern Regional Waste Management Group — Minister for Environment and Conservation's report of 20 April 2000 of receipt of the 1998–99 report.

South West Institute of TAFE — Report, 1999.

Statutory Rule under the Magistrates' Court Act 1989 — No. 27

Subordinate Legislation Act 1994 — Minister's exemption certificate under section 9(6) in respect of Statutory Rule No. 27

Sunraysia Institute of TAFE — Report, 1999.

West Wimmera Health Service — Report, 1998–99 (two papers).

Western Regional Waste Management Group — Minister for Environment and Conservation's report of 20 April 2000 of receipt of the 1998–99 report.

William Angliss Institute of TAFE — Report, 1999.

Wodonga Institute of TAFE — Report, 1999.

Wonthaggi and District Hospital — Report, 1998–99.

BUSINESS REGISTRATION ACTS (AMENDMENT) BILL

Second reading

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

That this bill be now read a second time.

The bill facilitates electronic service delivery for registration services, makes name changes to the Office of Fair Trading and Business Affairs and its director, and makes miscellaneous amendments to the Associations Incorporation Act 1981, the Business Names Act 1962, the Co-operatives Act 1996 and the Partnership Act 1958 — referred to as the business registration acts.

The government is committed to delivering all suitable government services online as soon as possible by way of electronic service delivery. As part of this strategy, it is proposed that selected transactions, such as registration of business names or incorporated associations, will be able to be conducted electronically. This will be facilitated by amendments to the business registration acts to allow for electronic service delivery.

This bill is intended to partner the Electronic Transactions Bill, which is also before this house. The Electronic Transactions Bill, when enacted, will

provide for the acceptance of electronic signatures in place of manual signatures and provides the framework for this bill's operation. Together, they will enable electronic commerce with government agencies.

The bill will retain the need for original documents to be signed manually in certain circumstances — for example, where a form is required to be signed by multiple parties and the computer system does not support multiple signatures of the same document, and the use of an agent.

The bill will allow for electronic lodgment where a document is digitally signed and lodged, without the need for a hard copy. It will remove the requirement for a manual signature on electronically lodged business name renewals to enable a quick and easy process for renewal applications. Forms of electronic lodgment will replace the manual signature. Electronic renewals will not otherwise be accessible to a large number of business name registrants if the current requirement for a signature for this class of renewals is retained. At present, there are up to 60 000 such transactions conducted each year. The bill also provides that documents lodged by electronic transmission do not need to comply with regulations which prescribe requirements for paper documents. These amendments will remove obstacles for electronic service delivery and facilitate legal recognition of electronic communications.

In addition, the bill amends the Business Names Act and the Associations Incorporation Act to enable the director or registrar to approve the design and layout of forms. This is essential to enable rapid changes to forms in response to changes in technology, particularly, as electronic lodgment becomes more common. Currently, the design and content of the forms are prescribed by regulations and, in some instances, by the acts themselves. To ensure legal certainty, the content of the forms shall still be prescribed by regulations or the relevant acts. However, the design and layout need not be fixed in this way.

The bill will change the name of the Office of Fair Trading and Business Affairs to Consumer and Business Affairs Victoria and the name of the Director of Fair Trading to Director of Consumer and Business Affairs. The reason for this name change is to make the agency more accessible to consumers and to emphasise the government's interest in consumer welfare.

The bill also makes miscellaneous amendments to the business registration acts to increase penalties for trading under unregistered business names, to allow for the registration of a mailing and email address as well as a registered address for service of notices, and various technical amendments to correct out-of-date references.

In broad terms, the bill will authorise electronic lodgment capability for many of the services provided under the business registration acts. However, the development of this capability will not make electronic lodgment compulsory, and businesses will still be able to conduct these transactions by mail or in person. The bill is intended to enable businesses to conduct transactions electronically, but not create new obligations or impose additional costs. As e-commerce becomes more common in the future, the ability to provide electronic service delivery will become more important for both consumers and government agencies. This bill is a major step in that direction.

I commend the bill to the house.

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

Debate adjourned until next day.

LOCAL GOVERNMENT (GOVERNANCE) BILL

Second reading

Debate resumed from 12 April; motion of Hon. C. C. BROAD (Minister for Energy and Resources).

Hon. N. B. LUCAS (Eumemmerring) — The opposition does not oppose the Local Government (Governance) Bill. For many years senior local government officers — town clerks and city engineers — had equal standing in councils. Many problems arose because of the arrangement because no particular officer was in charge.

My late father worked in local government for 47 years. He started as a junior and ended up as the town clerk of the former City of Malvern. He was directly responsible to the council, as was the city engineer. That was totally illogical. Later the government of the day decided that changes should be made. The act was amended so that there was a separate chief executive for each municipal council. A further new requirement was that all senior local government officers be employed under contracts. That was the situation when I was in local government, and I encouraged council to examine that.

When legislation was introduced requiring chief executives' contracts to be for fixed periods of up to five years, the requirement was that at the end of that period the positions should be advertised in the

newspapers circulating throughout the state. That has now been the case for some years. Currently all chief executive officers are employed under contracts ranging between three and five years.

Recently I became aware that chief executives, people worth keeping, had entered into further contracts to continue their employment with councils. To achieve that, councils advertised the positions and re-employed the chief executives. The government proposes that such a requirement be taken away. The opposition does not oppose that.

A number of the 78 councils do not wish to advertise. Those that have advertised have usually employed consultants throughout the recruitment process only to re-employ the same chief executives.

Municipal representatives of country and regional Victoria have advised me that the advertising and recruitment process may cost councils between $10 000 and $15 000. The other day the chief executive of a metropolitan council indicated that the cost of reappointing him to his existing position was about $20 000. For that reason the government is proposing that if local councils wish to pass a resolution not to advertise on the basis that the chief executive is doing a good job, they do not have to go through that expensive process. I see merit in that provision, but I can also see a potential problem. However, it is not insurmountable. If the motion before council is not to readvertise the position, and it is put to the vote and carried by, say, six votes to five, the chief executive may wonder whether he or she has the confidence of the council to proceed with the reappointment with only a one vote majority. Certainly that may happen in the future. But in circumstances where the whole council or all but one or two of the councillors are in complete agreement with the proposal, the measure should not be opposed.

Therefore, the provision requiring all councils to advertise the appointment of a chief executive will no longer be a requirement if the council resolves to not go down that path; but the bill imposes a couple of conditions on councils. Firstly, this process cannot occur unless it is in the six months immediately prior to the chief executive's contract expiring. Secondly, the council is required to provide 14 days notice to the community by public notice in the newspaper of its intention to put forward the motion. If an advertisement in your local paper says that your city or shire council intends to give notice that it will reappoint its chief executive without the position being advertised, what do you do as a member of the community if you do not agree with that decision? I assume a member of a community in that position would contact his or her local councillor and express those views.

I wonder why the provisions of section 223 of the Local Government Act were not included. That section provides an opportunity for members of the public to make their views known to the council. It provides the process by which the council could give notice and members of the public with a view on the issue could make a submission and be heard. In this case the local government is saying, 'It is our intention that this reappointment will be made'. But it is also saying that there is no provision for interested and concerned people to object, as is the case under section 223 of the Local Government Act. It will be a case of 'Ring up your local councillor'. Therefore, the main issue in the bill is whether the council should be able to reappoint without advertisement.

Another provision relates to the total remuneration of the chief executive when he or she is appointed in the above circumstances. Those details must be available for public inspection within 14 days after the passing of the resolution of appointment.

When I was a chief executive in local government members of the public could come in and examine the details of salaries and other remuneration benefits of senior municipal officers. Some people came in just to have a look — the press and a few other 'nosy' people — and I did not have too many hassles with that. The council clearly had to make a decision about those details and it did. We were paid what we were paid and so were other chief executives in local government. That information will continue to be made available to the public.

A miscellaneous amendment in the bill relates to the transfer of former library land. The provision corrects an incorrect form of words provided in section 43 of the Libraries Act. Other clauses deal with the potential application of current legislation affecting libraries. Some provisions are not required and are irrelevant. It is a minor housekeeping detail.

The other proposed amendment is to section 227A of the Local Government Act relating to interest. The existing provision includes an oversight, and the bill corrects the maximum interest payable for unpaid amounts other than rates and charges to make them consistent with the interest rate charged on unpaid rates and charges.

The bill is short and does not require a long speech. It contains three pages of proposed legislation. The

provisions are not opposed by the opposition. I wish the bill a speedy passage.

Hon. G. D. ROMANES (Melbourne) — I am pleased to speak on the Local Government (Governance) Bill, particularly as a major portion of the bill deals with the appointment of chief executive officers (CEOs) of municipal councils. The appointment processes imposed by legislation under the former Kennett government have been problematic for many councils. This bill will restore the power and autonomy of councils, matters that became complicated as a result of previous amendments to the Local Government Act 1989. The former government took a strong interest in setting conditions for the appointment and termination of employment of CEOs and senior municipal officers.

I believe some of the changes made by the previous government, which many CEOs adopted, encouraged a damaging perception on the part of CEOs — that they were accountable to the state government, another level of government, and not to the local councils, shires and people who elected them. From my own experience in local government before I was elected to Parliament I know that that created difficulties for councils that had been newly elected following the amalgamations in clarifying their roles and responsibilities. In many cases it precipitated a tug-of-war relationship between CEOs and councils.

From comments made to me over past weeks I know that many local government councillors still feel their CEO is not always responsible or accountable to them and often sees himself or herself as having a role or autonomy outside of the policy and wishes of the council, which represents the people. The situation introduced by the previous government of giving the state government greater control over and the ability to interfere in the appointment of CEOs is contrary to both the spirit and the legal power under the Local Government Act, which deems local government bodies to be responsible for peace, order and good governance in their municipalities.

The bill removes the requirement to advertise a CEO position before a CEO is reappointed. It gives back to local government bodies the important choice between reappointing or advertising. The removal of the requirement to advertise takes away the over-prescriptive nature of what is currently in place under amendments made by the previous government. It removes an unnecessary requirement. In many cases the performance of a CEO is found to be satisfactory and there is a desire to continue the employment relationship, yet the council is forced to advertise the position. Often that risks scaring off an excellent CEO the council would like to re-employ because the process opens up the prospect of additional applicants and of the CEO not being reappointed. That may set a CEO thinking about other alternatives. It is known that in small rural communities the advertising process can send the wrong message to people in the area.

Furthermore, if done properly the advertising process is costly in terms of advertising expenses and time for any council, but particularly for small rural shires. The bill will remove that burden from rural shire councils.

The bill also removes a requirement for councils to give the minister notice of any resolution regarding the remuneration proposed for and the termination of employment of CEOs. That is one of the ways the state government has in the past exerted some control over, and in some circumstances intimidated, local government bodies in their decision making.

The bill introduces transparency in the reappointment process. A council that decides to reappoint its CEO will be required to give public notice of its intention to move a motion to do so. As the Honourable Neil Lucas mentioned, it also provides for a proposed remuneration package to be made available for public inspection.

My understanding is that the changes are welcomed across the local government sector. However, a particular CEO has put to me that the requirement that a reappointment cannot occur earlier than 6 months before a CEO contract is due to expire might still be considered prescriptive rather than enabling; that the timing should be left to the judgment of particular local governments; that the state government, through these processes, should give full responsibility to councils to make sensible decisions without having the excuse that their hands are tied by another level of government; and that local government, through its selection processes for staff, should be fully responsible and accountable — and of course we know that happens at the ballot box.

Hon. N. B. Lucas — Don't you agree with the six months?

Hon. G. D. ROMANES — I said that I am putting forward a view that has been put to me

Hon. N. B. Lucas — Do you agree with that view?

Hon. G. D. ROMANES — I am putting forward a particular view. As I have mentioned, Mr Lucas, the majority of the sector welcomes the bill.

Hon. N. B. Lucas — Do you agree with the view?

Hon. G. D. ROMANES — I am putting forward a particular view, because a CEO said to me that many CEOs consider their future 12 months out from the end of a contract. In some cases where councils cannot indicate their intentions about whether or not they desire to reappoint a CEO until 6 months before expiry, a particular CEO may have already acted to secure a future elsewhere. That issue should be thought about and be open to further review by the minister over the coming years to see if in reality the concern will present difficulties for local governments in their future selection processes.

I believe the provision of the Local Government (Governance) Bill to take away the prescription from the appointment processes will be good for local government overall, and particularly for the relationship between CEOs and local governments. Theirs is a critical relationship that has to be nurtured and developed. It was not aided by interference by the former Minister for Local Government and Planning in the Kennett government in the Darebin and Nillumbik councils. That interference was counterproductive to the municipality as a whole, let alone the staff in the local government sector.

Some developments since that period bode well for the development of effective local government and good relationships between CEOs, their staff and local governments. I have in mind the development by the Victorian Local Governance Association and the Municipal Association of Victoria of the Code of Good Governance. The code was developed following a meeting in 1997 at which CEOs and mayors from a number of local governments in Victoria were brought together under the auspices of the then Lord Mayor of Melbourne, Cr Ivan Deveson. At that time a decision was made to develop a self-regulatory code for the local government sector to be called the Code of Good Governance.

The code, which has had the support of many people across the state during the past two or three years, identifies the essential features and principles of good local governance. It also addresses the relationship between democratic governance roles and corporate governance roles. It acknowledges that as being a very vital element in the work of local government, that it is important to get it right and that councils, staff and councillors should be supported and assisted to work through the many issues and challenges that arise when a professional administration works alongside elected bodies.

Therefore the proposed legislation is most welcome to the local government sector. It puts local government back in the driving seat. Local government no longer feels its hands are tied and that state government is looking over its shoulder wielding a big stick whenever it suits. The legislation is a big step forward. It is an expression of the desire of the Bracks Labor government to work in partnership with another level of government and to improve the processes for reappointment of chief executive officers (CEOs) and, through a flow-on effect, other local government staff.

I will not refer to the miscellaneous amendments that go with the proposed legislation because I have concentrated on the major thrust of the bill, which relates to the appointment of CEOs. The bill represents a major step forward in the partnership between state and local governments, and I commend it to the house.

Hon. E. J. POWELL (North Eastern) — I am happy to speak on the Local Government (Governance) Bill. The bill is short and most speakers have confined their remarks to the section dealing with employment of chief executive officers.

As mentioned in the second-reading speech, the bill continues local government best-value reforms already introduced by the Bracks government. Some councils have expressed concern about the implementation of best value, including its costs, the measurement of service delivery and so forth. However, the bill is not about best value so I will discuss the issues before the house.

The bill removes the requirement on councils to advertise chief executive officer (CEO) positions before appointment or reappointment. I have some experience in the appointment of CEOs, having been a councillor with the former Shire of Shepparton and also a commissioner with the Campaspe shire. Over time I have spoken to a number of councillors and have found that most support the removal of the requirement to advertise, mainly because if they were happy with their CEOs and they had given the councils good and lengthy service they did not see why they should have to bear the cost of advertising the positions.

On the other hand, the former coalition government had good reasons for requiring positions to be advertised — the best person would get the job and councillors would not be placed in awkward positions by making the decisions to advertise. In some of the councils I have been involved in, the councillors sometimes changed often while the CEO remained. Councillors sometimes felt it was wrong to tell the CEO, ‘You are not doing the right thing. We want to advertise your position’. By making advertising compulsory, councillors could not be seen to be saying they did not think the CEO was a

decent and fit person to do the job. They could open up the position to people from all around Australia to see who else might like to run the council.

A CEO is of vital importance to a community and particularly to a council. A CEO is responsible for the organisation and structure of his or her council and may appoint and dismiss staff. As such the CEO is pivotal to the council. It is fair to say that some regions can prosper and expand greatly because of the quality of their councillors and their CEOs. The coalition government therefore saw the role of CEO as vital. That is even more the case today as councils become multimillion dollar businesses. Councils are now much more involved in regional development and some are clustering to obtain more grants.

Therefore, although the opposition does not oppose the issue of advertising for CEOs it points out that councils will now appoint CEOs for much longer terms, mainly because there is no requirement on them to advertise to reappoint. If somebody does not like a CEO or believes he or she is not doing a good job there will be no automatic requirement to advertise.

That is not to take away from the bill. I understand that the bill states that councils may advertise. However, I want to put on the record some of the reasons the former government included that clause in its bill. It was not done to create an imposition on councils, nor was it done to make councillors' lives harder. It was a recognition that a CEO is one of the most pivotal positions in local government. It affects the community as well as the council, and it is important to get the best person for the job rather than reappoint the incumbent because it is easier or cheaper to do so.

I agree that most councillors I have spoken to are a lot happier now that the imposition about advertising CEO positions before appointment has been lifted. Nevertheless it must be borne in mind that the former government included it not because it wanted to make life harder, more costly or less efficient for local government, but because it wanted councils to look at the broad spectrum of people from which they could make appointments.

CEOs are already on a contract term of about three or five years. The Honourable Glenyys Romanes expressed some concern that the bill prevents a council from resolving to reappoint a CEO more than six months prior to the expiry of the term of a CEO's contract. I understand her concern that CEOs, particularly in country areas, may have relocated their families from the city and decided to make their homes in that area. They need to know they will be in the area for a length of time. If too much time is allowed — that is, if you let CEOs know nine or twelve months before the expiry of contracts — the view is that they could rest on their laurels because it gives them too much leeway.

The community should know if the CEO has a long contract agreement. Until now, his or her work has been assessed by the council from the day he or she started work until the day the contract expired. The giving of six months notice prior to the contract expiry date of whether the CEO will be reappointed is better than a 12-month provision; an extended notice of reappointment is not necessary. That type of prior notice provision for all staff members would get the best out of them.

Part of the revised process is to give the public notice of an intention to reappoint a CEO. That will impose checks and balances. The community will be aware of the council's appointments, which otherwise could have been made behind closed doors. The process will be open and transparent. That feature of the bill is important. Some people may not agree with a council's decisions and believe them to have been unfair, in which case they usually blame the CEO because he or she has had to implement a council's decisions. Now people will know why a council has decided to appoint or reappoint a CEO.

Advertising in the newspaper's public notices for appointment to the position of CEO could be costly. The community could have a problem with an incumbent CEO and want the opportunity to oppose a council's decision to reappoint him or her; the process must be open and accountable. If the community has lost confidence in the CEO, its members should be able to query why he or she is to be reappointed. Also, they may regard the incumbent's reappointment as good and may want input before a decision is taken by council to reappoint. For probably the first time the community will have a say before any decision is made on whether a council should reappoint an incumbent CEO.

I ask the minister to tell the house whether the community will have an opportunity to say it had lost confidence in an incumbent CEO and did not agree with a council's decision. Will members of the community have some input into telling councillors whether they agree or disagree with a council decision to reappoint an incumbent CEO?

Will the government clarify whether the community can say it does not agree with the council decision to reappoint the incumbent CEO? Will a process of

objection be allowed? Will the community be able to examine the process and have prior input?

The bill removes the requirement on council to give the minister any notice about a council resolution to alter the remuneration or employment conditions of a CEO. I understand the former minister never became involved in such decisions made by council. I know a number of councils did not advise the former minister of the details of remuneration or employment package of their CEOs, which meant they actually ignored part of the act; in any case, in those circumstances I understand no disciplinary action would have been taken against the council by the former minister.

The act provides that the minister be given reasonable notice of a decision by a council on the remuneration, termination of employment or employment of a CEO. The act stipulated that reasonable notice be given. Many councils have been simply appointing CEOs and placing terms and conditions of employment into the CEO's employment contract without so advising the minister. I understand no proposed appointment, extension of appointment or alteration of remuneration lodged by councils in accordance with the legislation was rejected by the minister; in other words, the minister did not reject any proposal when the councils let the minister know they were to employ CEOs on certain terms and conditions.

The bill also makes minor housekeeping amendments. The amendments make sense and tidy up parts of the act. Aspects dealing with libraries should be clarified.

The opposition does not oppose the bill. Many councils would praise the bill because it removes the requirement on them to advertise. At times there are good reasons for advertising. When I was a councillor, the council appointed the CEO after advertising widely; it even received applications from overseas as well as from the incumbent CEO. When it was controlled by commissioners my council did the same thing: it advertised across Australia, not just Victoria, and received some good applications. I do not oppose the removal of the obligation upon councils to advertise for appointment of a CEO, although, as I said, sometimes and in certain situations it was a good thing for councils to advertise. I understand the bill allows councils the right to continue to advertise, if they so wish.

I am happy to have had the opportunity to contribute to the debate and I do not oppose the bill.

Hon. S. M. NGUYEN (Melbourne West) — I am happy to contribute to debate on the Local Government (Governance) Bill. I have listened to the contributions of other honourable members and support the bill, which is concerned with the appointment by local government councils of chief executive officers (CEOs).

The CEO plays an important role for his or her council because the CEO protects the council. He or she must be involved in the business of a council. Every decision made by council must come to the CEO for implementation on the day following a council meeting.

The bill deals with the reappointment of a CEO by the mayor and councillors. Before the last election the Labor Party promised to return power to the community. The government's policy is to involve the community in open and transparent consultation with its councils. Its policy states:

> Labor strongly believes that local government should be given proper encouragement and support to develop the confidence to get on with the job of addressing local needs and concerns while being fully accountable to its local community.

The Labor Party intends to deliver on that commitment. The Bracks government's view is different from the former Kennett government's policy on local government. It believes councillors and mayors are elected by the people and should be more in touch with the everyday management of municipal business to ensure the CEO is doing the right job for the community. At the same time councillors and mayors should be more responsible to the voters, the community, the ratepayers, and the residents who elected them.

Hon. N. B. Lucas — How does the bill give more power to the community?

Hon. S. M. NGUYEN — Members of the community can go to the councillors and say, 'We want you to do this and that'. Council can make a decision at its meeting on the night and ask the CEO and municipal staff to run the business.

Hon. N. B. Lucas — Where does it say that in the bill?

Hon. S. M. NGUYEN — In the past few years the CEO has had more to do with the minister and therefore has been more responsible to the minister than to the mayor and councillors.

Hon. C. A. Furletti — Who says that is the case?

Hon. S. M. NGUYEN — That is the way they run.

Hon. C. A. Furletti — That is nonsense. Have you read the Local Government Act?

The DEPUTY PRESIDENT — Order! The honourable member should address his remarks through the Chair.

Hon. S. M. NGUYEN — The bill will give the council the choice to readvertise the CEO position. Council will be allowed to say that it wants a new CEO. The bill will allow a council more say in the appointment of a CEO.

Hon. N. B. Lucas — Have you read the bill?

Hon. S. M. NGUYEN — I have read the bill.

Hon. C. A. Furletti — How many pages?

Hon. S. M. NGUYEN — I am not talking about pages but about what is in front of me. I am not counting pages. The bill will allow councils to readvertise the CEO position before they reappoint the CEO. In the past I have learnt that when the CEO has more to do with the community he or she understands the community better. The role of the CEO is to go out and meet with community groups, to understand community needs and to work with the council and the mayor. The advertising of the CEO position will allow councils to choose what activities the CEO can do to serve the community. From my experience with the former Richmond council, I know that when we appointed a new CEO we had to go through a lengthy process of employing a consultant and the establishment of a panel to go through all the issues and items. It takes a long time, sometimes about six months, to discuss the appointment of a CEO. We also had to employ a consultant to talk to the managers. If the council is happy with the CEO, the position will continue without the need to go through a lot of paperwork and consultation.

In rural areas it is often difficult to attract large numbers of applicants for council positions. Small towns just do not have the resources. The bill will allow the CEO in such cases to continue without the council having to readvertise. The appointment of a CEO before a council election can be delayed to give the newly elected council the chance to discuss the appointment of a new CEO.

Hon. N. B. Lucas — Where does it say that in the bill?

Hon. Bill Forwood — Which clause?

Hon. S. M. NGUYEN — It is clause 3(1) which substitutes proposed new section 94(4)(a).

Hon. N. B. Lucas — You are talking about delaying things for elections.

Hon. S. M. NGUYEN — Yes.

Hon. N. B. Lucas — The bill does not mention elections there. You are reading something that the minder has given you!

Hon. S. M. NGUYEN — I am talking about the bill. The bill also allows the council to pass a resolution to reappoint the CEO without advertising. The local community views the role of the CEO as important. If CEOs do their job, councillors and mayors will have more time to get involved with the concerns of ratepayers. The bill will ensure that the minister is not directly involved in the appointment or reappointment of chief executive officers. For those reasons I support the bill.

Motion agreed to.

Read second time.

Third reading

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

That this bill be now read a third time.

I thank Mr Lucas, Mrs Powell, Ms Romanes and Mr Nguyen for their contributions. I note that they all have considerable track records in local government and have drawn on their experience in contributing to the debate.

The Honourable Jeanette Powell asked whether there would be a process allowing for objections following the advertising of chief executive officer appointments. The intention of that provision is to ensure the decisions of councils are transparent.

The measure does not intend to provide for direct public input into such decisions. It is assumed that, provided they have access to transparent processes that indicate what the decisions of councils are on these or any matters, if members of the public are unhappy with council decisions they will deal with them through the usual democratic processes. I commend the bill to the house.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

FEDERAL COURTS (CONSEQUENTIAL AMENDMENTS) BILL

Second reading

Debate resumed from 12 April; motion of Hon. M. R. THOMSON (Minister for Small Business).

Hon. C. A. FURLETTI (Templestowe) — I am pleased to indicate to the house that the opposition supports the Federal Courts (Consequential Amendments) Bill. The bill is before the house as a result of consequential amendments required to be made to a number of state acts that form part of national cooperative schemes and which are necessary to be addressed because of a High Court decision in the case of *re Wakim* in 1999. Honourable members will recall that on 24 November last year this house passed the Federal Courts (State Jurisdiction) Bill, which substantially addressed the disarray and indeed the fallout caused by the High Court's decision which invalidated many of the cross-jurisdiction or cross-vesting arrangements in place between the state and the commonwealth.

In my contribution at that time I sought to bring to the attention of the house the history of the arrangements between the commonwealth and the states and I do not intend to tread that same ground. However, it is important to remind the house that the commonwealth judicial system — that is, the judicial systems of the commonwealth — was joined in as close to a national scheme as could have been done by means of cross-vesting legislation that was introduced in 1988 in the form of one of the acts that is the subject of part 6 of the bill — that is, the Jurisdiction of Courts (Cross-vesting) Act 1987.

The act allowed any one of the nine Supreme Courts to exercise the jurisdiction of and to apply law that would be applied by any one of the other nine, and enabled any one of the nine Supreme Courts in which proceedings were commenced to transfer those proceedings to any one of the other nine. The purpose of that legislation was to obviate or remove any jurisdictional problems or difficulties that had been developing over a long time and was in real terms a true sense of cooperative federalism — which is an expression I used late last year.

The judicial system that was implemented by the cooperation between the states and the commonwealth overarched geography and local jurisdictional boundaries. It became an integrated system that was very well utilised, to the benefit and advantage of those involved in any type of dispute where there was any confusion or doubt as to whether the jurisdiction lay at a state or federal level. The extension of that form of cooperative federalism was the enactment in the state acts of cross-vesting jurisdiction in federal courts and commonwealth administrative tribunals. The state and federal governments again became part of the cooperative federalism associated with a number of schemes and cooperative agreements that were implemented by means of legislation.

The bill is essential because it amends seven acts which incorporate reference to the cross-vesting of powers, which the High Court in *re Wakim* found to be ineffective and unconstitutional. The amendments before the house will rectify the statutory enactment of the cross-vesting arrangement and deal with the acts that put into place the various cooperative schemes between state and federal governments that have been in existence for some time.

The house will recall that the Federal Courts (State Jurisdiction) Bill addressed the rights and liabilities of litigants who have had their matters dealt with in federal courts and it dealt with the enforceability of judgments that had been obtained and which, because of the Wakim decision, had been found to have been ineffective. At that time new terminology was introduced — that is, ineffective judgments that had been received. I referred in my contribution late last year to a number of devices that had been drafted and implemented to resolve the difficulties that Wakim had caused to litigants in that jurisdictional hiatus.

The bill is complementary to the Federal Courts (State Jurisdiction) Bill and aims to rectify the problems and maintain the integrity of the legislation that administers a number of cooperative agreements, including the agriculture and veterinary chemicals scheme, a competition policy scheme, the Corporations Law scheme, the gas pipelines scheme, the National Crime Authority scheme and the price exploitation scheme. Six of the seven statutes referred to in the bill address the operation of those schemes. The seventh act that is amended and modified by the bill is the Jurisdiction of Courts (Cross-vesting) Act 1987, to which I referred earlier.

In summary, the bill has three major purposes. It is a technical bill which repeals the now invalid provisions that purported to confer state jurisdiction on federal courts so that the relevant matters are now heard by the state's Supreme Court. It repeals provisions which

purported to apply commonwealth administrative tribunal decisions and legislation as state laws. It also brings the cross-vesting provisions into line with the commonwealth revision of the cooperative schemes.

The legislation is complementary to federal legislation. State Supreme courts are given limited federal jurisdiction in terms of the Supreme Court's ability to refer federal matters to federal courts and to identify the particular proceedings which the Supreme Court has the power to so refer. It is because of that last intention that there is the need for the section 85 statement which is part of the second-reading speech. I note with interest that the government — notwithstanding the criticism, whining and moaning that the previous government had to endure — recognises the need to alter or vary the provision affecting the jurisdiction of the Supreme Court. Labor members now agree that, in most instances, that is a proper and suitable action to take.

The opposition recognises the need for prompt and relatively urgent attention to rectify the state of commonwealth–state relations insofar as they are affected by the Wakim decision. It is anticipated that the legislation will amend the statutes which affect the cooperative agreements between the states and the commonwealth.

The principal purpose for the section 85 statement with respect to the Gas Pipelines Access (Victoria) Act is that rather than the state court in which the dispute arose being the appropriate jurisdiction the nature of the gas pipelines means that the state with the closest connection or which derives the greatest benefit from the pipelines will be declared the appropriate jurisdiction.

Because of the limiting of the Supreme Court's jurisdiction in those circumstances, one could say it is a somewhat artificial meandering; nevertheless it is necessary to ensure proper governance and administration of those types of partnerships. For those reasons the opposition supports the bill and wishes it a speedy passage.

Hon. JENNY MIKAKOS (Jika Jika) — I support the bill and note with some pleasure that it has bipartisan support. As Mr Furletti said, the bill follows on from the Federal Courts (State Jurisdiction) Act that was debated in this place last year and which also received bipartisan support.

The bill arises from a High Court decision *re Wakim*, which brought a degree of uncertainty about a number of Federal Court decisions and caused considerable consternation and anxiety among members of the legal fraternity. My recollection of the debate on the Federal Courts (State Jurisdiction) Bill was that it was supported by the legal fraternity. I am sure this bill will be supported by the profession because it clarifies among other matters the continuing uncertainty about the referral of state matters from the state to the federal court systems. During the debate on the Federal Courts (State Jurisdiction) Bill the minister said there would be further consequential provisions arising from that bill.

The Federal Courts (Consequential Amendments) Bill is complex and technical. Essentially, it seeks to do three things. It amends seven pieces of state legislation relating to the national scheme legislation. Those pieces of legislation which have been enacted across all Australian jurisdictions relate to issues such as the implementation of the goods and services tax, pricing, gas pipelines and many other matters. The bill will bring cross-vesting of matters relating to those various pieces of national scheme legislation into line with the implications of the Wakim decision. The Jurisdiction of Courts Legislation Amendment Bill currently before the federal Parliament will insert a number of schedules into various pieces of national scheme legislation to contain references to various state acts. As a result, decisions of the commonwealth will be regarded as matters which, despite the fact that they are laws of the state of Victoria, can be heard by the Federal Court under the commonwealth Administrative Decisions (Judicial Review) Act. It is a significant provision because it will give greater certainty to a range of national scheme legislation and decisions made under various national schemes.

With gas pipelines it is agreed by all state jurisdictions that where there is a cross-boundary dispute the matter will be heard in the state determined to be the state most closely connected with the pipeline. This means that where a dispute affects the state of Victoria but it is regarded by way of example that the state of Tasmania has an interest more closely connected with the issues in dispute, the Supreme Court of Victoria has restricted jurisdiction. In effect, it limits the jurisdiction of the court which is necessary in the circumstances.

That is the reason for the section 85 statement to which Mr Furletti referred. I believe it is justified in the present circumstances.

Other aspects of the bill relate to the removal of now invalid provisions and references to the federal court system and the Administrative Decisions (Judicial Review) Act (ADJR act) across a range of state acts. Those references were held to be unconstitutional and will be deleted as a consequence of the Wakim decision. The other aspect of the bill relates to the

removal of the now invalid provisions that seek to apply the commonwealth ADJR act as a law of the state of Victoria.

It is not necessary to go into the bill in detail because it is supported by the opposition and has much support from members of the legal profession. It is imperative that the bill be passed as a matter of urgency. The whole area must be clarified. Mr Furletti has expressed concern that the bill may not solve the cross-vesting problem. I have also raised similar concern in debate on the previous bill. All members of the legal profession will be watching with interest the decision about to be handed down by the High Court over the next few days about a similar matter that was considered in the Wakim decision and other possible constitutional challenges over the coming months.

I understand the Attorney-General is engaged in ongoing discussions with other states as part of the national Standing Committee of Attorneys-General to find a long-term solution to the cross-vesting problems arising from the Wakim decision. It may be that nothing short of a referendum and an amendment to the federal constitution will solve the problem. I hope the bill, in conjunction with the act that has already commenced operation, brings about a workable solution. I commend it to the house.

Hon. P. A. KATSAMBANIS (Monash) — The opposition supports the Federal Courts (Consequential Amendments) Bill, which seeks to address the significant legal issue that arose from the High Court decision regarding Wakim that questioned the ability of state courts to cross-vest jurisdiction that lies initially within the state court's jurisdiction into the federal court.

That has caused significant concern in the legal community. It created uncertainty in the law. When one makes, interprets and applies law for the benefit of the Victorian and Australian public one of the most important issues — not always the most important — that should be considered is that the law as it stands is certain and clear to enable parties to transact based on that certainty and clarity.

The decision in Wakim overturned decades of accepted legal practice where jurisdiction was cross-vested between state superior courts, state supreme courts and the Federal Court, to enable justice to be dispensed effectively.

On 24 November last year the Federal Courts (State Jurisdiction) Act was considered. Most of the speakers on that day said there was no certainty that the bill would address all the issues raised in Wakim and create the type of certainty we have come to expect from the legal system, particularly when it relates to cross-vesting of laws between jurisdictions.

In supporting the bill at the time, I stated that I hoped it would fulfil its intentions. My remarks were made more in hope than in certainty. There is no legal mind in the nation, except perhaps among the justices in the High Court, who can settle this matter fully. I also expressed the hope that the house did not have to come back in a few months to consider options to remedy the issues raised in the decision. As yet we have not. This is a follow-on bill, not one that tries to correct some anomaly created by the previous bill. This bill follows on from the Federal Courts (State Jurisdiction) Act and addresses specific concerns relating to the existing provisions in state acts that conferred jurisdiction to the Federal Court. At the time the jurisdiction was conferred to the Federal Court we thought the state had to so confer that jurisdiction. Subsequently, it has been found that the state does not have the power; therefore that purported jurisdiction is now removed.

It also removes anomalies relating to the operation as a law of this state the commonwealth Administrative Decisions (Judicial Review) Act. It makes changes to the laws relating to state cross-vesting schemes complementary to the commonwealth legislation introduced in March this year in the Jurisdiction of Courts Legislation Amendment Bill. That bill is the result of an agreement between the federal Attorney-General and the state attorneys-general to address the continuing emerging issues with the High Court decision. It is an attempt by the best legal minds in the nation to find a solution. We hope the solution is workable. It may not be permanent but one hopes it will be a workable solution until a more permanent one can be found.

Mr Furletti outlined the operation of the bill and the various areas of cooperative law, model law, national scheme law and the like. He also highlighted the additional burden caused by the gas pipelines access scheme. It is not only an issue of whether jurisdiction might be with federal or state courts; there is the additional matter of pipelines that cross boundaries and the choice of the appropriate state court in a particular matter. The bill makes it clear that the state most closely connected to the pipeline in question at the time is the one that will be seized with the judicial power in any proceedings under the gas pipelines access regime, and specifically in Victoria in relation to the Gas Pipelines Access (Victoria) Act.

I reiterate that the opposition supports the bill, mainly because it agrees with the principle of the need for certainty in the law and particularly its application and the appropriate forum for bringing proceedings in any jurisdiction.

Just as we hoped last year that the Federal Courts (State Jurisdiction) Act would solve the problems raised by *re Wakim*, we hope this bill adequately addresses the issues raised. Only time will tell whether that is the definitive solution, and I suspect that these provisions will probably be open to judicial interpretation in the years ahead. I hope when they are interpreted one of the prevailing doctrines considered at that point will be the fact that members of the public demand certainty in their legal processes, and particularly in the jurisdiction in which they bring a particular action. If we do not have that sort of certainty it will bring disrepute upon our legal system. No-one wants that. I support the bill.

Hon. D. G. HADDEN (Ballarat) — I support the Federal Courts (Consequential Amendments) Bill. I refer the house to the High Court of Australia decision on 17 June 1999, in *re Wakim*, ex parte McNally, which invalidated the Jurisdiction of Courts (Cross-vesting) Act to the extent that it purported to give the federal courts created under chapter 3 of the constitution, including the Family Court of Australia, the jurisdiction to exercise a state jurisdiction.

The High Court decision of *re Wakim* affected the cross-vesting schemes as well as various schemes with respect to corporations, agricultural and veterinary chemicals, competition policy reform, gas pipelines access, national crime authority, and price exploitation with respect to goods and services tax.

The consequential amendments foreshadowed last year are now before the house. They were developed in consultation with the commonwealth, the states and the territories. The Federal Courts (State Jurisdiction) Act 1999, together with this bill, form the uniform legislative scheme developed under the auspices of the Standing Committee of Attorneys-General. It was as a direct and uniform response to the High Court decision of *re Wakim* of June last year, to which I have just referred.

The Federal Courts (State Jurisdiction) Act was passed to deal with applications under the scheme that would have been dealt with by the Federal Court. That act provides that the rights and liabilities of persons under ineffective judgments of a federal court that purported to exercise state jurisdiction are taken to be rights and liabilities under judgments of the Supreme Court, and it also provides for the transfer of proceedings before a federal court in relation to state matters to the Supreme Court.

Although somewhat technical as previous speakers have mentioned — and I certainly concur — the bill achieves three main purposes. Firstly, it removes the invalid provisions or references to confer state jurisdiction on federal courts, and relevant matters are now being heard in the state's Supreme Court. Secondly, it removes the provisions which purported to apply the commonwealth Administrative Decisions (Judicial Review) Act as a law of the state. Thirdly, the bill brings the cross-vesting provisions, both generally and in relation to corporations, in line with the revision of the schemes proposed by the commonwealth and also complements relevant provisions in the recently introduced commonwealth Jurisdiction of Courts Legislation Amendment Bill. That bill provides that the judicial review of actions and decisions of commonwealth officers and authorities will usually continue to be dealt with by the Federal Court, although the state Supreme Court is given equivalent federal jurisdiction in limited circumstances. Provision is also made for special federal matters as defined under that commonwealth act to be heard in the Supreme Court in certain limited circumstances.

In summary, the bulk of the bill relates to the application of commonwealth administrative laws under various national schemes, and the ability to review decisions of commonwealth officers and authorities.

The section 85 statements, of which there are two, are very important, and are contained in parts 5 and 6 of the bill. They alter or vary that section, and in this case provide that a cross-boundary dispute be heard in the state which has the greatest interest in the dispute. In clause 22 that section is more specifically referred to as the one 'most closely connected to the pipeline'. Part 6 amends the Jurisdiction of Courts (Cross-vesting) Act of 1987, and section 85 statements are contained in that part of the bill, as they properly should be.

The bill amends seven pieces of legislation. Each of them forms part of a national scheme with respect to cross-vesting, and it is anticipated that the other states will follow suit with Victoria some time later this year. The bill makes consequential amendments to the bill that was passed late last year and which is now an act of Parliament. I hope it will provide a workable solution for all concerned who access our courts and find difficulties with respect to state and federal laws. I hope those problems will be worked through and overcome. On that basis, I commend the bill to the house.

The DEPUTY PRESIDENT — Order! I am of the opinion that the second reading of the bill requires to be passed by an absolute majority. As there is not an absolute majority of the members of the house present, I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

The DEPUTY PRESIDENT — Order! I am of the opinion that the bill requires to be passed by an absolute majority. In order that I may ascertain whether an absolute majority has been obtained, I ask honourable members who are in favour of the motion to stand where they are.

Required number of members having risen:

Motion agreed to by absolute majority.

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.

I thank the Honourables Carlo Furletti, Jenny Mikakos, Peter Katsambanis and Dianne Hadden for their contributions to an important debate.

The DEPUTY PRESIDENT — Order! The question is that the bill be now read a third time. I again ask honourable members who are in favour of the motion to stand in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

Remaining stages

Passed remaining stages.

ADOPTION (AMENDMENT) BILL

Second reading

Debate resumed from 12 April; motion of Hon. M. R. THOMSON (Minister for Small Business).

Hon. W. I. SMITH (Silvan) — I am pleased to speak in support of the Adoption (Amendment) Bill. The history of adoption in Australia reflects society's changing opinions and value systems. I will talk briefly about that because it is important to understand what is happening with adoption in Australia. The purpose of the bill is to amend the Adoption Act to give effect to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, to give effect to certain bilateral arrangements for intercountry adoptions and to deal with miscellaneous matters.

The Adoption Act applies to the adoption of children who are Australian citizens and who have been relinquished for adoption. Such adoptions are known as local adoptions. In addition, the legislation governs the adoption of children who are not citizens of Australia but who have entered Australia for the purpose of adoption. Such adoptions are referred to as intercountry adoptions. The amendments contained in the bill flow from Australia's ratification of the Hague convention in December 1998 and from bilateral agreements between Australia and prescribed overseas jurisdictions to recognise adoption, particularly that of China.

It is interesting to read the national interest analysis of the Hague convention, which looks at the reasons for Australia's taking on of the proposed treaty action. The analysis states in part:

> … the convention is to establish international procedures, standards and cooperation mechanisms between government authorities involved in safeguarding the interests of children subject to intercountry adoption.
>
> There has been a dramatic increase in intercountry adoptions in many countries since the late 1960s. Intercountry adoption has become a worldwide phenomenon, often involving the movement of children over long distances and from one society or culture to another. These adoptions can give rise to complex human rights and legal issues.
>
> …
>
> The importance of the convention for Australia lies in the benefits of having internationally agreed minimum standards for processing intercountry adoptions. The convention establishes legally binding standards and safeguards to be observed by countries participating in intercountry adoption ….

Currently 19 countries are parties to the convention.

It is interesting to analyse adoption trends in Australia. According to Australian Bureau of Statistics figures, in 1971–72 there were 9798 adoptions in Australia and by 1995–96 the figure had reduced to 668 adoptions — a dramatic decrease due to a range of complex and varied reasons relating to medical and social changes in Australia.

I will go through some of the changes that have occurred because they reflect the changing value systems in Australia. There has been a reduction in

unplanned and unwanted pregnancies because there is a diminished social pressure on single women to give up children. It is important that single women now have the choice of keeping their children and are not subject to the pressures that were placed on women in the 1950s and 1960s to give up children. Those women may well have wanted to keep their children but could not because society did not allow them to and because they could not afford them.

As a consequence of a lower fertility rate than previously existed and the fact that many couples have decided they do not want to have or raise children, the demand for adoption in Australia has decreased. Changes to legislation concerning who might be involved in adoption have also contributed to the decline.

A significant social change in the attitude to single women who become pregnant was assisted by the introduction federally of the supporting mothers benefit in 1973. Furthermore, the relaxation of the conditions under which a pregnancy can be terminated in the two most populous states — Victoria in 1969 and New South Wales in 1972 — obviously had an impact on unplanned and unwanted pregnancies.

Significantly there has also been a changing community attitude to contraception. At one time single women who asked their general practitioners for oral contraception could not get it — they had to be married. In the 1970s, and particularly in the 1980s and 1990s, family planning centres and birth control clinics were established, which gave women a choice about contraception and pregnancies.

In addition, the dramatic increase in the number of women in the workplace over the past 20 years has given women the ability to make choices and single mothers the ability to support their children financially. There have been developments in in-vitro fertilisation (IVF) and gamete intra-fallopian transfer (GIFT) programs. For example, in 1994 in Australia 2715 births followed IVF or GIFT treatments.

In the period from the 1960s to the 1990s there was a fundamental shift in adoption philosophy. In the 1960s the adoption policy was closed. A child did not know the birth parents and was not allowed to do so. It was all about total secrecy and the complete inability of a child to find out where he or she had come from.

That practice has been totally discredited. Now the system is one of open adoption. The reversal has been so complete that a couple who wish to adopt a child must now give assurance that they will allow regular contact with the natural parents. In some states the natural parents can chose the adopters.

Every encouragement is given to natural parents not to surrender their child for adoption. There must be intensive counselling before a birth mother's consent is valid. The post-natal period for giving consent has been increased dramatically. Once upon a time mothers signed their babies away immediately after birth and certainly before the expiration of the first 24 hours. Today in some states the time required is as much as from 3 to 28 days.

The best example of how the policy has changed is that between July 1992 and July 1996, 24 121 people applied to the department for information about their birth parents — a great turnaround of attitude in society.

The other means left to Australian couples who wish to adopt children has been overseas adoption. Intercountry adoption came to Australia after the Vietnam war and the fall of Saigon in 1975, when Australians started to adopt children more readily from overseas.

In raising some issues for the minister's attention, I ask whether it is possible for change to occur. I refer to an article about adoption and in particular intercountry adoption that was written by J. Neville Turner, a senior law lecturer at Monash University and past President of Oz Child. I refer to it because I have talked to parents who have adopted children from Korea and Romania who have read the article and believe Mr Turner's points are valid.

Mr Turner asks two questions. Firstly, why has the Victorian government been so reluctant to permit non-government agencies to arrange foreign adoptions? I understand a non-government organisation in South Australia arranges intergovernment adoptions and is highly regarded internationally. Mr Turner states:

> The difficulties facing Victorians wishing to adopt children from Third World countries are unnecessarily onerous. The monopoly over foreign adoptions presently held by the Victorian government should be broken to allow motivated non-government organisations to arrange such adoptions.

Secondly, why do Australians not take more children? I know the Hague convention guides us on intergovernment adoptions, so why is that so? We all know that many children in many countries, particularly India, Pakistan and Sri Lanka, live in unimaginable conditions. Many are orphaned or have parents who do not want them, many are employed and many are involved in labour. It is therefore valid to ask what countries we are looking at and what children we are selecting for adoption.

Anybody who read the article in the *Sunday Herald Sun* about babies born of Serbian women who were raped during the war would immediately ask why families cannot adopt those children. The adopting couples do not have to be infertile; many Australian families would open up their homes to such children and bring them in.

Couples who wish to adopt children face many formidable difficulties. One of them is time delays. I spoke to a couple who a year ago were successful in obtaining the child of a single mother who could not afford to keep her child and was happy for the child to be adopted in Australia. The couple's application for adoption took four years to succeed. Admittedly Romania was going through a turbulent political time and the couple was put back from the top of the list because of that and had to undergo the rigours of the process again. It cost the family $25 000 to get the child. By the time he arrived in Australia he was four years old. Therefore people who perhaps desire a new born or young child often end up having an older child by the time the adoption occurs.

The other problem is that for intercountry adoptions parents have to have excellent incomes. Adoption is not cheap; it is a service for people who have good incomes. As I said, the couple who adopted from Romania paid $25 000. I understand that adopting a child from China costs A$9400. I know the fees are set by the country, and they are US$4600. On top of that intending parents need to pay for the airfare, accommodation and other costs.

According to Mr Turner the extra costs also result from the charges incurred by the Victorian government because the department may appeal to a court in a foreign country. I am told — I do not know how true it is because I have not had time to do the research — that it is much more expensive to go through the system in Victoria than it is in any other state.

I conclude by saying that I support the bill. I raise those issues, knowing that they are complex and difficult and not knowing how easy they will be to resolve. However, I point to the example in another state of a non-government organisation, which is highly regarded internationally, and also to the fact that there are many children in the world to whom I suspect many Australians could give homes. Adoption is the most permanent, solid and secure form of substitute parenthood for those children who have been denied an upbringing by their birth parents. It is very important that orphaned children who are not wanted have a chance in a secure and loving home.

Hon. S. M. NGUYEN (Melbourne West) — The Adoption (Amendment) Bill is important to many families in Victoria. The Honourable Wendy Smith made a number of important points about the bill. I shall speak about the support needed by the many single males and females who have been adopted as children from overseas.

Coming from an ethnic background, I have known many children living in Vietnam during the war who did not have families. When the war was over many of those children were brought to Australia and have now become respected members of the community. Many now want to know where they came from, who their parents are and all those sorts of things. I have many friends who were adopted and have been living here for more than 20 years.

The purpose of the bill is to amend the Adoption Act in ways that are consistent with the fundamental purpose and intention of the act and the Victorian government's ratification of the Hague convention on intercountry adoption.

The state government is also trying to negotiate with China, and in that context I refer to a press release of 20 January concerning an adoption agreement with the People's Republic of China, in which the Minister for Community Services announced:

> I am very pleased to announce that after a long and sensitive period of negotiations this new intercountry adoption program should be ready to commence in March.

The program will allow 100 Chinese children to be placed with Australian families each year. Many Australian families want to adopt children from overseas. Some people prefer to go to China or a poor country to help children without families who are living in poverty. I have been approached by many families who want to adopt a child from Vietnam. They ask me how to go about it. Vietnam was not ready to enter a formal agreement with Australia so adoption is still very hard. Many things have to be gone through formally before families can adopt a child. People who try to sponsor adopted children sometimes experience difficulties because of a lack of support from both ends. I hope the bill will assist not only Australian families but also Chinese–Australian families who want to sponsor a Chinese family or children. It will help to speed up the program, and the model can be used in other Asian countries where we know there are many children that families in Australia want to sponsor.

The Honourable Wendy Smith referred to an article published on Sunday about unwanted children, such as children born without fathers because their mothers

were raped during war. The children could be welcomed to Australia if there were an arrangement between the families who want to adopt children. Today many single females who want a child cannot do so because they are not married. Some who earn a good income sufficient to raise a child want the opportunity to be mothers. The centre for adoption affairs in China processes more than 6000 overseas adoptions each year. There is a big demand by families who want to adopt an overseas child.

The amendments mirror the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 and the Family Law (Bilateral Arrangements — Intercountry Adoption) Regulations 1998. The amendments reflect cooperative arrangements between the commonwealth, states and territories to implement the Hague convention through state legislation.

Amendments to strengthen those sections dealing with the wishes of the child ensure that, depending on his or her age and maturity, the child is counselled and informed of the effects of the adoption order and that that occurs at least 28 days before adoption. Further, the amendments ensure the counsellor is independent of both relinquishing and adoptive parents.

The bill also strengthens those sections relating to the approval process by explicitly requiring that applicants for adoption be approved by either the secretary or an approved agency. It will also allow a court to hear from interested persons when determining an application to discharge an adoption order under section 19. The amendments will also allow for the period of approval of agencies to be up to three years. It is important that we help families adopt children from overseas. I commend the bill to the house.

Hon. ANDREA COOTE (Monash) — I am pleased to speak on the Adoption (Amendment) Bill which flows from the Hague convention. The amendments strengthen the current provisions of the act dealing with the wishes of the child and provide greater clarity and efficiency in the approval of applications and discharge of adoption orders. The bill also enables an order to be made to a court to add conditions to an existing adoption order.

On 25 August 1998 the Australian Ambassador to the Netherlands lodged Australia's instrument of ratification to the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. In Australia the convention came into operation on 1 December 1998 after the enormous input of the former Minister for Youth and Community Services, the Honourable Denis Napthine, now the Leader of the Opposition, and I acknowledge the work he put into the amendments.

Worldwide the issue of children is emotive. All honourable members would agree that anything to do with the neglect or abuse of children is abhorrent, be it sexual abuse, child labour, child abuse of any sort, such as neglect and poverty. It is appalling to see children being used as political tools — for example, Elian Gonzales in America and the Cuban exercise with the child being used as a political football. Trade in children is also appalling and abhorrent to developed countries. Honourable members have had their hearts tugged by images of children in war-torn countries such as Romania, and watching those children on the television night after night and seeing them so neglected. That is also true of children from other countries such as Ethiopia, which is suffering from drought and poverty and where the children are basically starving.

On a personal level, having a child of one's own is a pleasurable, traumatic, stressful, emotional and rewarding experience. However, all honourable members know the process takes nine months. People who are not able to have children also experience the same trauma, stress, emotion and cost, but they also have to contend with many of the issues that I outlined initially, such as children who have been abused, starving, mistreated in some way or another, or are drug dependent.

The adoption procedure for those people is extremely arduous. I recognise that it is important to have proper constraints in place, and that it is important for all parties concerned that the children are provided with the highest possible protection at every stage.

I have spoken to parents who have come to the realisation that they are unable to have children, which is stressful in itself, and who must then go through an arduous adoption procedure. I will outline to the house the basis of the procedure. The first step is a phone call, which seems to be the simplest part of the whole deal. That is followed by an information night, registration and applications being offered to registrants as needed. An application must be accompanied by a documentation fee, four references, individual medical tests, police checks and a family information form. The adoptive parents must also provide a life story, genogram, country project, financial statement and a child characteristic form.

A private contract worker is then assigned for three months to have a good look at the applicants. Recommendations are made by a unit manager through

the department. The process can take 12 months. One must keep in mind that couples who are able to have their own children have a much easier time, certainly in the initial period.

The prospective adoptive parents must be approved and documents must be prepared and sent overseas. A child is allocated — and it is not unusual for allocations to take up to 18 months. The waiting time between allocation and travel can be another 3 to 12 months. Approved applicants then collect the child overseas once a visa is issued. The placement is supervised, which can take another 6 to 12 months, depending on requirements. Adoption is then recommended and a court decision is made. As the Honourable Wendy Smith pointed out, it is a long and drawn-out process. I have listed just the procedure.

I now turn to cost. As Ms Smith pointed out, it is exceedingly expensive to adopt a child from another country. I did not do the figures on the exchange rate for the American dollar, but to adopt a child from China costs US$4756 and from Korea US$6600. In addition there are administrative costs, which I will outline. The application fee is $1000 and the assessment fee is $2685. There are small charges if, for example, applicants require an update to have their address changed. A sum of $1500 for approval and preparation of documents is required by some countries. The allocation fee for the child or children is $155. The list goes on. Those costs are incurred before one even looks at the cost of travel. Both adoptive parents are required to travel overseas to adopt the child or children. It is a very expensive exercise.

On top of the cost is the personal intrusion. The age of the applicant is considered and there is a minimum age of 30 years. In some instances if one of the partners is over 55 that is taken into consideration. Marital status is considered. I was most amused to read that if an adoptive parent had been divorced three times he or she must be proven to have been in a current marriage for at least two years. Sexuality is another issue, as is proof of infertility in some instances. It is an intrusive process, unlike the process that people who have children naturally have to go through.

In an article in *Newsweek* of 16 June 1997, Dr Andrew Adesman, who counsels families at the Schneider Children's Hospital in New Hyde Park, New York, points out:

> The irony is that adoptive parents have an option that birth parents don't. I don't get a chance to decide whether or not I want to accept the child that my wife gives birth to.

That is another issue — and adoptive parents are very lucky to be able to choose their children.

The country's requirements must also be considered. It is important for Australians to understand the constraints adopting countries put in place. Volume 29 of 1999 of the Department of Human Services newsletter *Overseas Connections* refers to Australia's relationship with adopting countries and the constraints that are in place. For example, the Colombia program has been inactive in Victoria in recent years but remains open to interested applicants. In Ethiopia applicants are more readily processed for older children or siblings where one sibling is over four years of age. Two programs are in place in Guatemala, and it should be noted that the fees for adoption from Guatemala are substantial. The fees for China or Korea are not unsubstantial, so I would be interested to know how much the fees are for adoption from Guatemala.

In Poland the applicants need to be of Polish descent or have strong ties with the country. Children are usually older and have special needs. Hong Kong has a small program. In India girl children tend to be available, as is the case in China. The program in Sri Lanka is small and the waiting time for allocation can be up to three years.

As I said, the adoption process is stressful, with the initial stress being experienced when the parents realise they cannot have children. Then there is the stress of the procedure and meeting the costs and the country requirements. The process is very difficult for the people concerned.

It is imperative that adoption is secure and lasting and that children have a good support system and come to Australia in the knowledge that they will settle in a family and be loved and cared for into the future. It is important that the country is seen to support the Hague convention, and that Australia's intercountry adoption process follows world best practice.

I ask the minister to take note of the concerns I have raised about the procedure and the trauma for the people involved. I understand we must protect all parties involved, but I consider the costs are high and the procedure is arduous for the people concerned. I have great pleasure in supporting the bill.

Hon. D. G. HADDEN (Ballarat) — I support the Adoption (Amendment) Bill. The purpose of the bill is set out in clause 1:

> (a) to give effect to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;

(b) to give effect to certain bilateral arrangements for intercountry adoption;

(c) to deal with miscellaneous matters.

The amendments are consistent with the Victorian government's commitment to implement in legislation both the Hague convention and bilateral arrangements regulations. The amendments reflect cooperative arrangements between states, territories and the commonwealth to implement the Hague convention through state legislation.

A further agreement between the commonwealth and the states provides for automatic recognition of adoptions from the People's Republic of China, which will be achieved by mirroring the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998, and the Family Law (Bilateral Arrangements — Intercountry Adoption) Regulations 1998.

The bill strengthens the sections dealing with the wishes of the child and ensures that, depending on the age and maturity of the child, the child is counselled and informed of the effects of the adoption order and that that process occurs at least 28 days before the adoption order is made. The amendment is contained in clause 12, which substitutes section 14 in the principal act with a proposed new section. Further amendments ensure that the counsellor will be independent of both relinquishing and adoptive parents. Clause 14 inserts in section 19 proposed subsection (5A), which provides a process for the discharge of an adoption order. Proposed subsection 9(f) requires the court to hear from interested persons.

The court may allow the child, the natural parent, the adoptive parent, the secretary of the department or the principal officer of an agency concerned to appear before it and address the court, and as provided in proposed subsection (9)(f) of section 19, any other person whom the court determines has a sufficient interest in the matter. The bill strengthens the approval process for adoption by requiring applicants for adoption to be approved by either the secretary to the department or an approved agency. Proposed subsection (5A), which is inserted in section 19 by clause 14, allows the court to hear from interested persons in relation to the discharge of adoption orders.

Clause 15 amends section 25 of the principal act to allow for the period of approval of agencies to be up to three years. Proposed new section 60, which is inserted by clause 16, allows for additions and variations of conditions to an existing adoption order where there is agreement between the adoptive parents and the relinquishing parents.

During the consultative process, in June 1999 a number of issues papers were circulated to various departments and organisations. The proposal to allow for the addition of new conditions to an adoption order under proposed new section 60 may be of concern to adoptive parents groups, but is likely to be welcomed by relinquishing parents groups. Proposed new section 60(3) provides that no order increasing the contact between a child and the relinquishing parent can be made without the consent of the adoptive parents. Therefore, the changes proposed would allow the addition of conditions only where the adoptive parents consented to those conditions.

Relinquishing parents may generally have concerns that the amendments have not addressed issues of equity regarding the availability of information to both adoptees and adoptive parents as compared with availability of information to relinquishing parents. It is likely that the issue will be dealt with in the next stage of review, which will be the parliamentary committee inquiry into past adoption practices that is scheduled to commence later this year.

Adoption is an emotive and often contentious area of the law and an emotive and contentious issue in society. I know some honourable members can cite instances — I can — of both friends and family who have relinquished their natural children. In one instance I am aware of it was successful when the person had positive contact with the child 20 years later, but in another instance my relative has never been able to regain contact with her natural first-born child, causing considerable trauma to that person and her family. Adoption is not and never will be an easy area, given that it touches our humanness to the core. I commend the bill to the house.

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.

I will reply to a number of issues raised by Mrs Coote and Ms Smith. Intercountry adoption is not a cheap option. The expense relates to the country from which the child is being adopted, and there is not a lot that can be done about that. I have been informed by the department that there are no waiting lists for adoptive parents and that it is not limited to infertile couples who

do not have children but is open to couples with families.

Victoria is not taking more children because of the concerns Mrs Coote mentioned regarding the trading of and trafficking in children. Not all children in overseas orphanages are necessarily put up for legal adoption. Victoria is taking all the children that it can guarantee are available for legal adoption, and rigorous checks are made to ensure that proposed adoptive children are available for overseas adoption.

With regard to non-government agencies, I have been informed by the department there is only one non-government agency operating in Australia — a South Australian agency. However, a number of responsibilities remain the responsibility of the government, which is why it is not willing to go down that path given the requirements and responsibilities it would have to take on.

In regard to applications for approval, as was discussed by honourable members who contributed to the debate it takes about a year from the notification of adoption to obtain approval and then on average it is a further year from the time approval is sought and granted for the country to process the application and provide the child. It is a lengthy period.

In respect of the intrusiveness of the inquiries made, no-one would like to think that the government does not put the needs of children first, and although some people may feel the inquiries may be unreasonable the government wants to guarantee that any family receiving a child from overseas will provide a secure and loving environment and that the child will have the ability to grow and develop in a positive way. For those reasons there are demands on couples to provide information that may otherwise be thought to be intrusive.

I thank Ms Smith, Mr Nguyen, Mrs Coote and Ms Hadden for their contributions.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

ADMINISTRATION AND PROBATE (DUST DISEASES) BILL

Second reading

Debate resumed from 12 April; motion of Hon. M. R. THOMSON (Minister for Small Business).

Hon. C. A. FURLETTI (Templestowe) — The opposition supports the Administration and Probate (Dust Diseases) Bill, which amends the Administration and Probate Act by the enactment of provisions relating to dust-related diseases. The bill remedies perceived shortcomings in the legislation to make it possible for persons who died from injuries sustained before the outcome of the action to sue for pain and suffering, bodily or mental harm suffered by the person, and for the curtailment of the person's expectation of life which, under current legislation, is not possible.

Until about 1942, common law, which is the cornerstone of the legal system, provided that if a person died with a personal right of action against another person, or if the person against whom an action was taken died before the action was resolved, the action died with the person regardless of whether he or she was the plaintiff or the defendant.

Recognising the difficulty associated with that law in 1942 Parliament introduced the Survival of Actions Act the relevant parts of which, in effect, became section 29 of the Administration and Probate Act 1958. It provided, subject to a number of exceptions, that when a person dies, all causes of action subsisting or vested in that person survive for the benefit of the deceased's estate. It also provided that the action would not include damages for pain or suffering, any bodily or mental harm suffered by the person, or the curtailment of the person's expectation of life.

That meant that the heads of damages were personal to the plaintiff. It was the plaintiff who suffered pain or suffering and it was the plaintiff who suffered the mental or bodily anguish arising from the injury. Needless to say, because of their deaths, plaintiffs certainly suffered curtailment of their expectation of life.

In those early days the common law considered those heads of damages to be personal to the plaintiff. The dependants or the estate of the person who suffered the injury and subsequent death could not benefit and have a windfall from those non-economic damages. In other words, the right of the estate to continue the action for loss of wages, funeral expenses and specific heads of economic damages remained but not in respect of non-economic loss.

At about the same time statutory rights were introduced and enacted in the form of the Wrongs Act, which was consolidated in 1958. Part 3 of that act deals with wrongful acts or negligence causing death. Section 16 establishes liability for wrongful death. Section 17 provides that if a person's death has been caused wrongfully dependants have a right to bring an action against the wrongdoer. That action must be brought in the name of the executor or administrator of the deceased. However, in that action the executor or administrator represents the dependants.

There is a fine difference between a Wrongs Act claim, which allows a claim for the dependants of the deceased, and an action under the Administration and Probate Act, which is an action brought by the estate of the deceased. In those circumstances, under an Administration and Probate Act claim the beneficiaries of the deceased would be entitled to any damages awarded. However, under the Wrongs Act only the dependants benefit but not, for example, if a person had made a will leaving everything to parents rather than to a wife and children. Under an administration and probate claim — a section 29 claim — persons entitled under the will and testament of the deceased would benefit. There is a subtle but significant difference between the two types of legislation.

Section 29 of the Administration and Probate Act is amended with the insertion of new section 29(2)(2A). In respect of survival it states the following where:

> (a) a cause of action survives under sub-section (1) for the benefit of the estate of a deceased person; and
>
> (b) the death of that person is from a dust-related condition which has been caused by the act or omission which gives rise to the cause of action …

Clearly negligence must be involved in the condition that leads to death. It further states that when:

> (c) proceedings in respect of that cause of action were commenced by that person before his or her death and were pending at his or her death —
>
> the damages recoverable for the benefit of the estate of that person shall include damages for all or any of the following:
>
> (d) that person's pain or suffering;
>
> (e) any bodily or mental harm suffered by that person;
>
> (f) the curtailment of that person's expectation of life.

It amends the exclusions in section 29(2)(c)(ii) in that if one has a dust-related disease the provisions of the act do not apply.

The opposition has a number of concerns. The definitions clause defines a dust-related condition as one of the 13 or so diseases specified in the first schedule, which include aluminosis, asbestosis and a number of other conditions, including mesothelioma. Each of those diseases is such that once a person is diagnosed the onset of death is rapid and a person may survive only 12 to 18 months. I know of a close friend whose father suffered from asbestosis and within six months, granted he was advanced in years, died.

Because of a claim by my friend's mother, my friend had to sue the former employer. Her father had been retired for many years and his cause of action arose possibly 30 or 40 years before he died, so those types of personal injury actions are complicated and difficult in terms of the preparation of the case, the gathering of evidence, and the establishment and quantifying of damages. They are not simple matters to deal with. When I was practising law a few years ago it was not unusual for three to four years to be the normal time for the resolution of personal injuries claims, notwithstanding all efforts to expedite their hearing and disposal. Naturally more complicated and difficult cases involving the tracing of medical evidence and so forth will take longer and be more complex.

Suffice it to say that the reason for the bill and the reason why the opposition supports it is that it recognises the fact with the onset of a death being as rapid as it is with dust-related diseases, it is imperative that the matters be dealt with as soon as possible. Each of those diseases attacks the respiratory tract and leads to a painful and rapid demise.

The opposition supports the bill in most respects, but it is important to ask the government why this type of significant amendment to the common law and to the statute — the Administration and Probate Act — is restricted only to claims related to dust-related conditions. If the law is to be changed to the extent that it is, I would have thought a blanket provision would be inserted which says that if a person is in the course of proceedings alleging damage and personal injury caused by somebody else, the right of that person to claim damages for pain and suffering, mental and bodily harm and for curtailment of that person's life should continue notwithstanding the cause of death. I see no logical reason why it should be restricted to death caused by dust-related conditions.

The only possible justification is that this is a payback by the government to its masters because most dust-related conditions arise through the workplace. Although I accept that the Bracks government is a puppet of the unions, I am surprised at the speed with

which this bill has been introduced into the house. I am also surprised about the government's lack of consultation and consideration prior to introducing good legislation for all Victorians. Although the opposition does not deny that the benefits provided by the bill are significant, it believes they should not be limited to a relatively small number of people within the category of those who are dying as a result of dust-related conditions.

The other aspect of concern to the opposition is the somewhat emotional and inappropriate use by the government of the particular case of Ms Kerry Halleur. In her second-reading speech the minister said that with only weeks to live — and I will paraphrase here — Ms Halleur's case was delayed by the commonwealth government intentionally, jeopardising her opportunity to receive damages for pain and suffering.

This is money that Ms Halleur was intending to use for the financial support of her children. I have absolutely no doubt that Ms Halleur would have done that, but it is inappropriate for the minister and the government to use emotional language describing a specific case to justify a particular piece of legislation. The citing of a tragic event as justification for legislation and as a means of having a go at the commonwealth government is not the way the house should be treated.

For that reason, I would like to set the record straight. Kerry Ann Halleur was diagnosed with mesothelioma, and she brought action against the commonwealth government in December 1999. Her solicitors, Slater and Gordon, sought the action to be heard the day after they issued the process. Ms Halleur was gravely ill at the time. The action was brought against the commonwealth seeking damages as a result of the commonwealth government's alleged negligence in exposing her to asbestos dust while she worked at the old commonwealth offices on the corner of Spring and Latrobe streets. We knew the building affectionately as 'The Green Latrine'.

The proceedings were issued on 9 December, and Slater and Gordon wanted to proceed the following day. The commonwealth said, 'No, we cannot do that'. As Ms Halleur had worked in the building 19 years earlier, the commonwealth government clearly said, 'Where will we find our witnesses from 19 years ago in that short amount of time? Where will we find our experts? Where will we find our medicos? Where will we get employment records and the like?'.

Slater and Gordon then made application before Justice Coldrey on 14 December 1999 for the matter to proceed on that date and he found in her favour. The commonwealth appealed the decision of Justice Coldrey, which was heard on the morning of 14 December, immediately to the Court of Appeal. The appeal was heard on the same day, in fact on the afternoon of Mr Justice Coldrey's decision. The Court of Appeal comprised Chief Justice Winneke, Justice Brooking and Justice Buchanan — a panel of eminent, highly regarded and respected appeal justices.

The court found:

> In our view, the time frame which the judge's order permits to the commonwealth to get proper instructions to defend itself is so short that it cannot reasonably be argued that the defendant could get a fair trial of an action of this nature. It is clearly necessary, notwithstanding that we have sympathy for the position of the plaintiff, that justice be done to both sides in an action of this sort, and the defendant, no matter how large or how deep pocketed, is entitled to have some reasonable time to investigate the circumstances in which it is alleged that exposure of the plaintiff to asbestos has occurred.

They accordingly overruled Justice Coldrey and allowed the commonwealth until 10 January to prepare for the hearing.

My view and the reason I want to put that on record is that the amount of publicity that was generated in the case was enormous, and was critical of the commonwealth. I would like to set the record straight so the people of Victoria will know that on my information Slater and Gordon had been aware of the case since about October 1999, yet waited until 9 December to issue proceedings. The Court of Appeal questioned why Slater and Gordon had not issued proceedings earlier and had not sought to explain that point to the court.

Some of the medical evidence on which the plaintiff relied was not served on the commonwealth until the Friday before the trial was supposed to start, which was 6 or 7 January. This was done by people who said the commonwealth had delayed the matter so the plaintiff would die before the hearing so they would not have to pay pain and suffering compensation, and so on. I am advised that the commonwealth had real difficulty in obtaining expert evidence over the Christmas–New Year period, as anybody who has been involved in trying to do so would appreciate. Apart from that, I am told that Slater and Gordon mounted a fairly novel and complex legal approach to it all. Nevertheless, the matter was settled the day before the hearing and Mrs Halleur's estate got the benefit of the settlement, which included pain and suffering compensation, and the like. Regrettably, Mrs Halleur died the following day.

In setting the record straight from that perspective, I do not believe that too many defendants would intentionally seek to put off the hearing of such an action to the detriment of a plaintiff. Although delays exist and are encountered in the judicial system, in most of these instances applications are made for the rapid process known as speedy hearings. They have been granted in these types of cases, but unfortunately even speedy hearings are sometimes not speedy enough to achieve the desired outcome.

In conclusion, although the opposition supports the bill it objects to the manner in which it has been presented to the house and asks the government to urge the working party, which I understand is looking at an extension of rights, to progress its report as quickly as possible with a view to ensuring that all Victorians will derive the same benefit as this relatively small group will derive on the passage of the bill.

Hon. E. C. CARBINES (Geelong) — I am pleased to speak in support of the Administration and Probate (Dust Diseases) Bill. The bill seeks to amend the Administration and Probate Act so that claims for damages in certain causes of action in relation to dust-related conditions survive the death of the claimants.

Having been born into a working-class family and having many relatives who have worked their whole lives in dirty and dusty working conditions, I understand that many dust diseases are contracted in the workplace, although they may not be diagnosed for many years, if not decades, later. My father, Terry Cafferty, has worked as a painter on construction sites for most of his working life. I worry what long-term effect his exposure to dirty and dusty conditions will have on his health, let alone his inhalation of paint fumes. Similarly, my father-in-law, Eric Carbines, although he is not working now, spent all his working life as a carpenter and builder. Anyone who knows anything about that trade will know that it involves working in a lot of dust and dirt.

Many dust diseases are contracted in the workplace. Tragically, this year a young Melbourne mother died from mesothelioma, a disease she contracted from her workplace, which was contaminated by asbestos.

The bill will ensure that actions seeking damages for all or any of a number of complaints — pain and suffering, bodily or mental harm or curtailment of life expectancy — that have arisen from the onset of dust diseases resulting from exposure to dusty conditions can survive the death of claimants and therefore be pursued by their families and estates. That measure is especially welcome because under the Administration and Probate Act such actions seeking damages lapse when the claimants die.

The principal act, which the bill seeks to amend, has three adverse consequences. The first is that a deceased estate can be severely financially affected by the date on which the claimant dies. Under the current act if a person dies before an action is complete the action lapses. Obviously a high degree of luck is involved in completing actions and the effects on the estates of sufferers are enormous. The second adverse consequence is a particularly insidious one, because unscrupulous defendants have a financial incentive to delay settlement in the hope that plaintiffs will die and their claims will lapse. All that places unnecessary pressure on ill people in the most distressing times of their lives to press ahead with litigation as quickly as possible. It adds to the stress and suffering of both themselves and their loved ones.

The passage of the bill will bring Victoria into line with New South Wales. Clause 6 of the bill provides for the insertion of a proposed first schedule headed ‘Dust-related conditions’, which lists 14 dust-related diseases. Many of the diseases listed, such as asbestosis and mesothelioma, lead to death in a relatively short period from diagnosis. Even though a person may have contracted such an illness years, if not decades, previously, from the time of diagnosis the person’s life is relatively short — on average around 12 to 18 months. As litigation is a complex and usually lengthy process, it is a very real possibility that under the current act sufferers will die before legal action is concluded.

The bill is about ending an unjust process for sufferers of dust diseases and the sufferers’ families. It deserves the support of both sides of the house as it will allow an estate to pursue damages after the death of a sufferer.

I was disappointed to hear Mr Furletti demean the debate when he stated it was all about payback to the masters. Sufferers of dust diseases and their families will also be disappointed to hear Mr Furletti’s demeaning it in that way. Mr Furletti also said he was disappointed that the bill is limited to dust diseases. I was pleased that towards the end of his contribution he acknowledged that the second-reading speech states that the Attorney-General has set up a working party to monitor the effect of the Administration and Probate Act on other diseases, which is welcome indeed. I commend the bill to the house.

Hon. P. R. HALL (Gippsland) — It is somewhat of a rarity for me to speak on an Attorney-General’s bill; I

usually leave that to those who have some form of legal training. However, because of the significant positive impact the bill may well have on many of the people I represent, I have chosen to publicly express my support for it. It is a sad fact of life that the Latrobe Valley has a high incidence of dust-related diseases, which is related to the use of asbestos in the construction of generation plants at the former SEC for many years. I suspect also that coalmining has contributed to the high incidence of dust-related diseases in the area.

As the Honourable Elaine Carbines said, certain occupations are more prone to dust-related diseases than others. The building and construction industry is one and coalmining is another. The power generation plants in the Latrobe Valley were constructed many years ago when asbestos was commonly used and they are also places of risk. It has taken many years to recognise the effect of asbestos on the health of people who worked in such buildings.

I pay credit to the late George Wragg for the enormous amount of work he did throughout his life to raise issues associated with asbestosis and his constant fight to provide support to victims and families of victims of asbestosis and asbestosis-related diseases. George Wragg was a good Labor man and strong trade unionist, but despite that I pay credit to his work. He was committed to his cause and fought hard for the people he represented to raise awareness about the incidence of dust-related diseases and its impact on the health of workers. Throughout his life he continued to support the families of those affected by dust-related disease and to fight for their rights. Unfortunately George Wragg died last month. However, he left behind a community that has a great deal of respect and high regard for him.

George wrote a book on the subject entitled *The Asbestos Time-bomb*. Throughout the world it was regarded as a significant reference book on asbestosis. I am also informed that at the time of his death he was close to completing another book called *Legacy of Evil*, which deals with the impact of asbestos damage on communities. I understand that his daughter Cheryl intends to finish the book for him, and that would be a fine tribute. George Wragg was a key figure in raising awareness about asbestos-related diseases, particularly in the Latrobe Valley and as they apply to the workers at the former SEC.

The effect of the legislation is summarised in the second-reading speech, which gives the most simple explanation of it. It states:

> … this bill will amend the act to permit the survival of certain causes of action for non-economic loss in relation to dust diseases that currently lapse on the death of the plaintiff.

I thank my colleague the Honourable Carlo Furletti for his clear legal interpretation of that statement. The measure is important because the circumstance referred to is a particularly difficult time for victims of dust-related diseases and particularly harsh for the surviving spouse and dependent children. As death can strike quickly in such instances enormous stress is placed on the individuals concerned to settle any outstanding claims they may have. It is perfectly reasonable that if such actions have not been completed at the time of death the survivors have the right to continue and finalise settlement of any claims.

As I said, I am happy to support the bill because of the high incidence of dust-related diseases in the Latrobe Valley, particularly as it will benefit many of the families concerned.

In conclusion, I note that my federal colleague the honourable member for McMillan urged in the *Latrobe Valley Express* of 30 March that my colleague Philip Davis and I support the speedy passage of the bill. I am happy to do that on behalf of the people I represent. I know it will provide assistance to them.

Hon. D. G. HADDEN (Ballarat) — I support the Administration and Probate (Dust Diseases) Bill, the purpose of which, as set out in clause 1, is to amend the Administration and Probate Act to provide for the survival of claims for damages in certain causes of action in relation to dust-related conditions and to make other minor amendments to the principal act.

The definition of a dust-related condition is contained in clause 3. It means a disease specified in the first schedule or any other pathological condition of the lungs, pleura, peritoneum or sinus that is attributable to dust.

As I said, the purpose of the bill is to amend the principal act to provide that causes of action seeking damages for pain and suffering, bodily or mental harm and curtailment of expectation of life arising from certain dust diseases survive the death of the plaintiff and can be pursued by the deceased plaintiff's estate.

Such damages claims lapse on the death of the plaintiff, according to what is called the old common-law rule that a personal action dies with the person. That creates enormous financial difficulties for the family of a person who dies in those circumstances. The ability to claim damages is important to a family. The ability for

that action to continue should survive for the benefit of the deceased plaintiff's estate.

Other honourable members have mentioned the adverse consequences of the current old common-law rule on the financial position of and impact on the deceased's estate where the plaintiff dies before or after the action is finalised with the potential for great differences between the amounts that may be awarded before and after death and how that places enormous pressure and stress on sick and dying plaintiffs who proceed with such litigation.

The explanatory memorandum states that clause 4:

> provides that certain claims for damages in certain causes of action are to survive the death of a plaintiff.

New section 29(2A) inserted by clause 4 provides:

> Where —
>
> (a) a cause of action survives … and
>
> (b) the death of that person is from a dust-related condition … and
>
> (c) proceedings in respect of that cause of action were commenced by that person before his or her death and were pending at his or her death —
>
> the damages recoverable for the benefit of the estate of that person shall include damages for all or any of …
>
> (d) that person's pain or suffering;
>
> (e) any bodily or mental harm …
>
> (f) the curtailment of that person's expectation of life.

The reforms introduced by the bill will not apply to Victorian workers covered by the Accident Compensation Act until their common-law rights to sue for serious injuries are restored. Concerns have been raised about the application of the legislation to plaintiffs with diseases other than dust-related diseases. Some people have asked why the bill does not apply to all plaintiffs instead of only to those with dust-related diseases.

The answer is that the most pressing cases where plaintiffs die before their legal action is completed arise from dust-related diseases. The legislation is modelled on similar New South Wales legislation which applies only to dust-related diseases. The Department of Justice has established a departmental working party to examine fatal illnesses other than dust-related diseases and to report on the need to extend or amend the legislation. On that basis, I commend the bill to the house.

Hon. J. W. G. ROSS (Higinbotham) — I am pleased to contribute to the debate on and support the Administration and Probate (Dust Diseases) Bill. As other honourable members have said, it is a small but important bill and will reverse the common-law rule that a personal action for damages for pain and suffering resulting from having contracted lung diseases caused by certain types of dust dies with the plaintiff. The pecuniary entitlements do not die with the subject; we are talking about non-pecuniary entitlements. In some respect the legislation is tied to the ambition of the Australian Labor Party to restore common-law rights in occupational settings. Nevertheless, it is not my intention to deal with the legal details that have been so comprehensively articulated by my colleagues Mr Furletti and Mr Hall.

The second-reading speech referred to the case of Ms Kerry Ann Halleur, who died in January 2000 from mesothelioma, which is a particularly virulent form of cancer most usually caused by exposure to asbestos. The disease develops within the mesothelial lining of the lungs and is almost invariably fatal within 12 to 18 months.

Ms Halleur sued the commonwealth for damages, including compensation for pain and suffering, because she attributed her condition to exposure to asbestos fibres inhaled at the old commonwealth building, which has since been demolished, on the corner of Spring and Latrobe streets, Melbourne. In December 1999, when Ms Halleur had only weeks to live, the commonwealth delayed the case. I do not need go into the details of the circumstances because they have been fully explained by the Honourable Carlo Furletti. Nevertheless, the case generated enormous public attention and sympathy. It was especially distressing because Ms Halleur was seeking damages to provide for her two children, one then aged eight weeks; the other, two years. It was an extremely tragic and particular circumstance.

Although the sentiments of the government in justifying the introduction of the bill to the house were, by reference to Ms Halleur, beyond argument, it behoves honourable members to take cognisance of the entire range of implications of the bill. The tragic case of Ms Halleur is probably atypical of the general problem of pneumoconiosis, a generic description of diseases caused by exposure to a variety of dusts, usually in occupational settings. However, in many instances the diseases occur outside the workplace.

Accounts have been given to me of people living in public housing in the Australian Capital Territory where blue asbestos was used as an insulation material in the construction process. They were living in dread

of the possible implications. I recall one acquaintance describing how the blue dust used to fall from the ceiling of her home. After some time she found it was blue asbestos. Although there are many occupational implications of the bill, a large number of non-occupational settings are also involved.

The great legal difficulty with this subject involves the often long latent period of the disease. Often 20 or 30 years may pass before the disease is expressed in its symptomatology and there is objective evidence of the presence of the disease.

I believe I have a contribution to make to the debate because one of my early careers was as an industrial hygiene inspector with the Victorian Department of Health, as it then was. At that time I was one of four inspectors responsible for monitoring industrial processes across the state. I am pleased to say that time and circumstances have evolved to such an extent that inspection services and processes for the prevention of occupational diseases are such that many diseases are in decline.

Honourable members may be interested to know that by using a conimeter, which is a small device that samples a quantity of air, and projecting dust particles onto a slide, one can determine occupational exposure to pneumoconiosis-inducing dusts. It is possible to count the number of particles of dust per volume of air by using a graticule. Standards set by the National Conference of American Industrial Hygienists have been picked up in Australia as the basis of inspection and assessment of workplace safety. The usual technique is to measure the number of particles per unit volume in the vicinity of the airspace of workers.

The bill specifies particular diseases. The definitions section more generally refers to substances that may cause pneumoconiosis. To provide the house with some assessment of the importance and extent of those diseases I will briefly refer to some of the diseases in the schedule and to their occupational and other implications so that the house is not misled in the way the second-reading speech perhaps misled it about the bill being particular legislation that has evolved in response to an almost unique set of circumstances.

Asbestos is probably archetypal of the occupational dusts that leads to long-term debilitation. It was not until about 25 years ago when blue asbestos began to be mined in Wittenoom in Western Australia that mesothelioma became the issue it is today. The disease is particularly associated with blue asbestos rather than white asbestos, which was the traditional material used as an insulator for many years. That is not to suggest that white asbestos is benign. It is associated more with the development of asbestos bodies that can be detected in the sputum and have the effect of inducing a fibrous condition in the lung known as asbestosis. The advent of blue asbestos, and the use of it on a wide basis 25 or 30 years ago, was the precipitating factor that led to the development of many cases of mesothelioma.

The occupations associated with asbestos included those involved in the lagging of steam pipes in older public hospitals and the maintenance of those facilities later when they have dried out and become flaky and dusty, constituting an extreme hazard; asbestos mining, more notoriously in and around Wittenoom in Western Australia; and the development of heat-resistant materials that have been used in the general building industry and in brake shoes and clutch plates in the automotive industry. I refer to the sad case of a young man, a friend of mine, who was a carpenter employed on general carpentry duties. He died as a result of asbestosis, leaving a young family.

Silicosis is probably one of the more typical dust-related diseases caused by the inhalation of very small particles of silica. All honourable members would be aware that sand is ubiquitous in the environment, so it is really the process of breaking up particles of sand that constitutes the real hazard. To provide the stimulus for fibrosis to set in the lungs, particles that are inhaled into the lungs generally need to be of a size smaller than 5 microns in diameter. Once again, small silica particles that are broken up by mechanical means are ubiquitous in industry.

I refer to some examples that are not readily associated with sand — for example, the electroplating industry where silica abrasives are made into cutting and polishing compounds. Unless the polishing hoods are well ventilated, small broken particles of silica that are primarily used to polish chrome and other potentially shiny metallic surfaces are dispersed into the air and inhaled as very small particles. Such fine particles are used as parting compounds in iron foundries and the subsequent fettling of iron objects that have been cast. The moulds in which the iron is poured to create iron objects are invariably made of sand. Fine powders are placed on the face of the moulds prior to pouring so the mould will break away readily from the object being cast. They are known as parting compounds. Again, there is a long history of parting compounds with high quantities of silica that have been the basis of silicosis.

Bagassosis is an industrial disease associated with those who work with bagasse, which is the name given to broken sugar cane after the sugar has been extracted. That woody material contains about 6 per cent of free

silica and is responsible for many of the problems attributable to working with that material, which is fabricated into boards. The inhalation of the dust associated with the compression, abrading and cutting of the material causes chronic lung disease.

Byssinosis, which is also mentioned in the schedule, is a disease traditionally associated with the cotton industry. The manufacture of yarn thread, the carding of cotton, and the general manufacturing and fabrication in industries as small as dressmaking shops that lead to large quantities of cotton dust can cause the disease of byssinosis.

Berylliosis is a chronic beryllium-induced disease that also expresses itself as an occupationally acquired lung disease. Workers potentially exposed to beryllium are those engaged in metal machining, reclaiming scrap alloys, and industries where beryllium and its alloys are smelted and fabricated by machine.

Rural members will be particularly interested in the inclusion in the schedule of farmers' lung or organic dust toxicity syndrome. Those names are given to the occupational diseases caused by the spores of various fungi that infect either silage pits, where feed is cut and buried in pits then covered and allowed to decay down into silage, or hay in haystacks that has been stored for a long time and has developed mould. When those materials are disturbed the fungal spores that are dispersed into the environment can cause acute short-term problems of lung inflammation, or with repeated exposure the sort of fibrosis that one associates with silicosis.

Talcosis is another dust-related condition about which more is known. There is some argument as to whether talc induces the problems with the lungs or whether silica impurities are present in the talc. Talc miners and millers and workers in rubber fabrication, where talc is used to stop rubber pieces sticking together, are the sorts of persons who are exposed. My colleague the Honourable Peter Hall talked about coalminer's lung and the exposure to coal dust, which is also mentioned in the schedule.

I support the legislation and have attempted to put my contribution into a broader context and to suggest that the extent and implications of the legislation run far beyond those referred to in the second-reading speech. The diseases are relatively rare. Some are in decline because of better occupational practices and some are still increasing because of the lag time before the expression of symptoms.

I have taken the trouble to look at some graphs prepared by the National Centre for Health Statistics in the United States of America to provide honourable members with a bit of a feeling for the incidence and prevalence of the relevant diseases, which are not highly prevalent. For example, in 1968 in the United States of America, which now has a population of 274.63 million, there were approximately 3500 cases of pneumoconiosis. The rate has dropped to approximately 2000. The figures show a modest decline in a set of relatively low-prevalence diseases.

The number of deaths attributable to asbestosis is rising. The figure in 1968 was relatively low because of the emerging industries and the fact that blue asbestos, which is more hazardous, began to be used after that time. In 1968 in the United States there were approximately 75 asbestos-related deaths, and in 1992 there were approximately 800 asbestos-related deaths, which represents approximately five deaths per million.

Silicosis is a disease in decline. In 1968 there were approximately 1000 cases in the United States. The figure has now dropped to under 100 cases.

Byssinosis has been relatively steady at 10 cases per year. Coal workers' pneumonoconiosis has a rate of approximately 2000 deaths a year, and that figure has been relatively steady from 1968 to 1992.

I am pleased to support the bill and I hope that my contribution has provided a context for the wider occupational implications of dust-related diseases. An indication of the low prevalence of the diseases complements the comments made by my colleagues, in particular the comments of the Honourable Carlo Furletti about a relatively small number of individuals being affected.

Only a very small proportion of affected persons would have occasion to launch common-law actions, and even fewer might die before the action was completed. I endorse the point made by my colleague the Honourable Carlo Furletti that if the government were fair dinkum it would have implemented a far more expansive program.

Debate adjourned on motion of Hon. B. W. BISHOP (North Western).

Debate adjourned until later this day.

BUSINESS OF THE HOUSE

Sessional orders

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

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

Motion agreed to.

ADMINISTRATION AND PROBATE (DUST DISEASES) BILL

Second reading

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

Hon. B. W. BISHOP (North Western) — I shall make a small contribution to the bill. I have listened to the contributions made by my colleagues this afternoon. They were extremely good and showed the depth of research undertaken by honourable members. Dr John Ross revealed his close association and knowledge of the diseases that are mentioned in the bill, as did the Honourable Peter Hall in his comments on coal dust.

My short contribution will be directed to the agricultural area. I say to my colleague the Honourable John Ross that I note farmers' lung is also on the list. I suppose we should not be pleased to see that disease mentioned in the dust-related conditions.

There is no doubt that the bill concentrates on the administration of cases about dust-related diseases and certainly refers more to asbestos than many other areas related to the problem. I want to ensure that honourable members note that there are some dangers and risks in other dust-related industries.

I also make the point that steps have been taken, as we have taken tonight in relation to the administration of the issue, to ensure that some of the dangers and risks associated with working with dust are alleviated. Asbestos is a good example. Many years ago it was not recognised as a risk; today it is well recognised as a risk. Strict procedures are in place to protect people who come into contact with asbestos, particularly in the demolition industry. I have been involved in a couple of projects where I have observed very strict procedures in place. They highlight the knowledge we now have of dust-related industries.

I will refer to the risk and dangers of dust in agricultural industries, and describe how members of the community and society in general have done their best to address those risks. The grain industry is probably a good example. Anyone who has been present at harvest time and noticed grain being delivered into the systems around silos will have seen that they are very dusty places. Over the years it has become more important to have good dust control by using exhaust fans to ensure the safety of the people who work in those areas. If one visits the ports at Portland or Geelong, for example, one finds that when accumulating the grain ready for the export vessels, strong exhaust systems have been installed to ensure that workers are well protected from the risks and dangers associated with dust.

Harvesting is a dusty operation that occurs at a dry time of the year. The old harvesting equipment used in the grain industry was guaranteed to dump dust and chaff over the operator. The design of the machines directed the dust and the chaff on to the operator, but the modern machines are designed to carry the dust away from the operator. They are also more efficient. Considerable effort has been made in the past few years to design machines that reduce the amount of dust in the cabin. The harvesting of oats is not only dusty work but can also damage the lungs and be extremely itchy. Before the introduction of bulk handling when grain was transported in jute bags, the harvesting machines were stopped and the oats were emptied into bags. As the product was emptied into bags the dust would pour out. Your face was close to the process so you were exposed to a considerable amount of dust as the wheat or oats flowed into the bags.

The measures in the bill are an indication of the risks and dangers associated with harvesting. New harvesting machines have dustproof cabins that protect the operator from paddock and grain dust. Operators can work all day and not get a spot of dust on them. The machines are extremely well designed and technical. They do the job of harvesting well. Tractors have also been improved. Harvesters may only be used for one month of the year, but tractors are used all the year. They have sealed cabins that not only exclude dust and chemicals but also reduce the noise level. Considerable research has been undertaken on the risks and dangers of dust and that has resulted in the use of expensive equipment to protect the operators.

For some time farm women have recognised the need to protect their spouses. They have been aware of the risks with dust and have played a major part in the recognition of the danger of dust and the damage it causes. They have had an enormous impact on the development of new machines. Workers emptying silos

now use dust masks that are easy to wear. Operators also have battery-operated helmets that allow air to flow across their faces to keep the dust away.

The bill relates to concern about the administration and probate of people affected by dust-related diseases, but it is important to put on the record the advances made in industry to control and manage dust in a number of industries. Although the bill relates to the administration and probate issues of dust diseases it is necessary to also address the danger of dust diseases. I support the bill and wish it a speedy passage.

Hon. G. W. JENNINGS (Melbourne) — I join in the debate on the Administration and Probate (Dust Diseases) Bill, a short but succinct piece of legislation about which there has been agreement that the debate should not be lengthy. However, in terms of the subject matter and the gravity of the issues that the bill encompasses, it is significant legislation. It is about natural justice and the regard the government has for Victorian citizens who have suffered as a result of dust-related diseases and the continuing consequences of those diseases on them and their families.

The scope of the legislation is broad and goes to the heart of the commitment that the Bracks government has for the people of Victoria regarding a number of human and civil rights that were not previously available to Victorians. To a large extent the budget introduced today in the other place satisfies all the funding commitments the Bracks government made to the people of Victoria. The legislation complements a suite of measures that have been and will be introduced as part of the government's legislative program. The suite of measures cover human rights and worker rights for which the Bracks government received a mandate at the last election. They include workers compensation legislation that will restore common-law rights, the introduction of criminal sanctions for industrial manslaughter, and legislation providing appropriate compensation for victims of crime.

The appropriation bill will provide funding so that innocent victims of industrial or criminal activity have avenues available to them for compensation. Indeed, financial compensation does not necessarily mean full restitution for some of the illnesses and injuries that people may receive. There may be no mechanism that allows for full compensation or restitution for people who may be affected by industrial accidents, illnesses or other circumstances beyond their control, including victims of crime.

By providing for compensation in the budget the Labor government is fulfilling the commitments it made to rehabilitation programs and the proper development of support programs for people injured in the workplace. Labor will restore proper standards of health care, including those accessing rehabilitative services.

The bill comes at a time when the government is reviewing the occupational health and safety system of the Victorian Workcover Authority. It is clear from the debate that there is a requirement for employers to provide safe and healthy workplaces to minimise risk. Although the government may provide a safety net in the form of compensation and rehabilitative services, the emphasis must be on risk reduction and the prevention of injuries.

The government has an obligation to take preventive measures to reduce injuries to Victorians. The Minister for Workcover will pursue vigorously the performance of the Victorian Workcover Authority in preventing injury in the workplace, limiting the financial exposure of the state to compensation payouts, providing rehabilitation programs and preventing injuries and accidents from occurring in the first instance.

The second-reading speech clearly identifies that the bill will be enhanced by other legislation to be introduced dealing with accident compensation and Workcover reforms to ensure that safety net provisions allow for compensation should illnesses or injuries eventuate. Those opportunities should not be denied to the families of victims who may have died as a result of illnesses or injuries associated with dust diseases.

Prior to 1942 there was no opportunity under common law for action to be taken by the family of a deceased person. In 1942 the Victorian Parliament passed legislation that for the first time enabled family members to pursue claims for suffering inflicted upon the deceased person. Severe limitations were placed on the scope of those actions and the appropriate recompense available to the families. In 1958 amendments were made to allow family members to seek compensation once a family member had died, but serious limitations were placed upon the scope of those actions.

The bill does not place a limiting scope on those actions in the future. The assumption in the 1958 legislation was that the person who had died was the only person who could be compensated for the impact of personal suffering. That flies in the face of humanity because family members had to deal with a family member's death. It insulted the memory of the deceased person by not allowing family members to seek financial compensation.

The 1958 legislation caused defendants to stall the legal opportunities available to the deceased person in an inappropriate fashion on the basis of financial exposure. There was an incentive in the legal framework for the cases not to go before a court prior to the death of a person who had been subjected to an illness.

The nature of the legislative framework meant that injustice was perpetuated. Not only were limits placed on the actions that were available but also there was an incentive within the legal framework for there to be a delay in hearing cases. That meant that if a dying person wanted to pursue financial compensation on behalf of his or her family he or she was spurred on by the legislation to pursue litigation that may have been taxing and onerous while he or she was in a vulnerable state. In trying to deal with the ongoing financial viability of the family the ill person was forced to take action at a time when he or she was least able to do so.

The legislation addresses those injustices. The bill defines the people who will come within its provisions on the basis of the illnesses they may have developed as a consequence of the dust or the chemicals primarily in the workplace but which could occur in the course of normal community life.

On the basis of addressing the injustices that have occurred through the legislative framework as applied in Victoria since 1942 — and not corrected in 1958 — I am happy to support the bill introduced by the Bracks government in 2000 to finally enable the survival of actions for pain and suffering that deceased persons have gone through, enabling family members to seek some form of justice and financial compensation in circumstances where they and their loved ones have experienced great distress. I am very committed to the bill and I commend it to the house.

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.

I thank Mr Furletti, Mrs Carbines, Mr Hall, Ms Hadden, Dr Ross, Mr Bishop and Mr Jennings for their contributions.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

Sitting suspended 6.32 p.m. until 8.07 p.m.

TRADE MEASUREMENT (AMENDMENT) BILL

Second reading

Debate resumed from 12 April; motion of Hon. M. R. THOMSON (Minister for Small Business).

Hon. BILL FORWOOD (Templestowe) — The opposition supports the bill, which is not surprising given that work on it commenced under the Kennett government and it has been brought to the chamber by the minister in a spirit of bipartisanship. The bill introduces minor and technical amendments to the Trade Measurement Act, and in some sense it is the first phase of nationally agreed reforms from the 1998 Ministerial Council on Consumer Affairs.

As honourable members are aware, apart from Western Australia we now have complementary legislation across all states that enables us to have a uniform system of trade measurement. That is important because we need to know that a millimetre in this state is a millimetre in another state, and a litre in this state is a litre somewhere else. Although I know that some people still think in imperial measurements I am happy to say that most of us have now converted to metric, and although golfers I know in America measure the length of their drive in yardage, in Australia they do it in metric.

Measurement plays a continual part in our daily lives. You cannot live your life without a sense of measurement, and it is crucial that we have some confidence in the measuring system available to us all. I was impressed with the briefing I received from the experts at Trade Measurement Victoria. They were frank and forthright in their explanations of a highly technical and complex bill which is of such importance to us all. I am not sure whether honourable members understand the importance of this measure. I thank the minister and advisers from Trade Measurement Victoria for their assistance to the opposition in understanding the issues that are contained in the bill.

As honourable members would know, the bill seeks to address shortcomings in the practical application of uniform trade measurement legislation. As I said earlier, the proposed legislation is the first of two parts. This bill is the technical amendment part and the

opposition anticipates that further legislation which will go to the heart of some of the related issues will be introduced next year after there has been more extensive consultation with practitioners in the area.

The first point I make — and we all await Mr Theophanous's contribution on this weighty piece of legislation — is that the bill is technical and minor. It is important for administrative purposes, but it does not go to the heart of trade measurement legislation and is not something honourable members need be overly concerned about. It contains mechanisms for enabling the measurement regime to work more appropriately for the benefit of not only consumers, so that they will have some certainty, but also of practitioners in the field.

As all honourable members know, trade measurement legislation is designed to ensure the accurate measurement of physical quantities in trading transactions. Everyone knows what the expression 'being short-changed' means, and about the old tricks, when reputedly weights were put underneath scales so that people did not receive the correct weight. There has always been a role for a legislative process to ensure people got what they paid for — that when they looked at the dial it correctly displayed what was there, that the price was computed correctly and that they could be confident they were not, to coin a phrase, being ripped off.

Hon. J. M. McQuilten — Or weight framed.

Hon. BILL FORWOOD — The house has heard about golf; it is about to hit the racing regime. I look forward later in the debate to hearing the contribution of the honourable member for Ballarat Province, who interjected.

Victoria had its own trade measurement legislation, which was different to that of other states. It was administered by municipalities, which interpreted the legislation in various forms. In some senses Victoria was at a disadvantage because there was not uniform legislation across the states. It was important the stage was not reached where one railway gauge stopped at Wodonga and another railway gauge started at Albury.

Hon. M. R. Thomson interjected.

Hon. BILL FORWOOD — Yes; but you take my point. In the late 1980s the states got together and agreed to introduce a uniform legislation regime. I think all honourable members would agree it has served us well since then. As part of that agreement Victoria ended up with uniform legislation that is being overseen by Trade Measurement Victoria.

The bill contains a number of clauses that are significant to the administration and application of the legislation, and I would not want people to underestimate that, but they do not go to the fundamental principle — that consumers are entitled to have a fair weight and a fair price calculated on the measurement machines used in front of them. The amendments arise from the 1998 decision of the Ministerial Council on Consumer Affairs.

Clause 4 inserts into the Trade Measurement Act proposed new section 3A, entitled 'Determining certain quantities', which states:

> For the purposes of this Act —
>
> …
>
> (c) any packaging or other thing that is not part of an article is to be disregarded when determining a physical quantity.

In some senses that is really obvious, but what is important is that the clause provides a new definition of measurement, which is the measurement of an article excluding all packaging. There is no sense in people getting caught on the gross–net problem, so it is a sensible clause that should be supported. Sale by gross measurement can seriously disadvantage customers and the practice should be prohibited. That will happen with the implementation of proposed new section 3A(c).

It is interesting that in the drafting of the bill — which I understand was undertaken by our colleagues in Queensland — existing sections in the principal act have been replaced by the same provisions, plus a bit more. That is an interesting way of drafting legislation. For example, I do not know why what is set out in subsections (a) and (b) of proposed new section 3A, or the whole of proposed new section 3B, is reiterated in the bill when it already exists. However, in my time in this place I have learned not to question what parliamentary draftspeople do. While I am confident the result will be what all honourable members would require, in my lighter moments I sometimes query the mechanisms by which the legislation has come before us.

Clause 5 is one of the important clauses in the bill. Inspectors of measuring equipment on occasions come across minor nonconformities that would not, in essence, affect the price or weight of a commodity, or the outcome of a transaction, but which would have the capacity — if the inspector were to follow the letter of the law — to prevent the equipment being used in transactions. Clause 5 provides inspectors with the flexibility to ensure that in such circumstances it is possible for the equipment to be remedied in a way that

would not prevent transactions taking place and would not force traders to withdraw their equipment. It is a sensible clause that should be supported. It will in no way enable an inspector to condone a situation where trade measurement is occurring incorrectly. There is a need to be very clear about that. It will apply only in circumstances in which there has been a minor nonconformity that does not affect the outcome of a transaction.

Hon. M. R. Thomson — They have to fix it.

Hon. BILL FORWOOD — Yes, of course they have to fix it, I am not suggesting they do not, but it will allow them time in which to do that without the need to take their machines out of operation. The existing act contains no flexibility to enable that to take place. That is important.

Proposed section 7B deals with the issue of measuring instruments for prepacked articles, which is important and tidies up some language matters. It is interesting to grapple with what the word 'unjust' may mean in some sections of the existing act. Section 8 of the Trade Measurement Act refers to a person who uses for trade a measuring instrument that is incorrect or unjust as being guilty of an offence. Those of us with a love of the English language would accept that it is not possible for a measuring instrument to be unjust. I suggest therefore that it is appropriate for the word 'unjust' to be taken out of the legislation.

I do not wish to go through all the clauses of the bill. It is an important piece of legislation which the opposition supports, and I wish it a speedy passage.

Hon. T. C. THEOPHANOUS (Jika Jika) — I support the legislation. I am tempted to debate with the honourable member about whether a measuring instrument can be unjust, but I am not sure what philosophical arguments I could put one way or the other.

The ACTING PRESIDENT (Hon. P. R. Hall) — Order! You would think of something!

Hon. T. C. THEOPHANOUS — We could refer to John Rawl's theory of what is just and unjust, but I think he was talking about human beings as opposed to measuring instruments. Nevertheless, it appeared in the previous legislation, so I am happy to see that the opposition supports its removal. That is proper, if not just.

The history of trade measurement is long. Successive governments have tried to ensure a single fundamental — that buyers and sellers can sell goods confident that their measurement is accurate.

I am sure all honourable members have from time to time had constituents suggest that they have purchased goods or services that have been claimed to be of a certain quantity and that has turned out not to be the case. The most common example is petrol. Some people have taken considerable time to assess how much petrol their vehicles take. Sometimes the petrol from the bowser may not reflect what is supposed to have been sold.

The role of government is therefore to protect consumers and ensure they get what they pay for. That role is important and in years gone by it was undertaken by government. That situation has changed somewhat and now the major responsibility is contracted out to inspectors whose duty is to ensure that the measuring instruments used in business and industry are accurate.

Ensuring that buyers and sellers have confidence in the accurate measurement of physical quantity is not easy. It is achieved through a regulatory framework and through inspectors who check the instruments used. The regulatory framework includes certification and testing requirements for measuring instruments — for example, petrol pumps, which I have already mentioned. It also includes weighing scales, labelling requirements for prepackaged items and so on. Many things come under the ambit of trade measurement.

I understand all jurisdictions except Western Australia are party to uniform trade measurement legislation. Victoria's Trade Measurement Act adopts the national legislation while the Trade Measurement (Administration) Act contains state-based administrative provisions.

Hon. Bill Forwood — Why do you have the budget in your hands?

Hon. T. C. THEOPHANOUS — I will come to that. Since the honourable member mentioned the budget I will refer to budget paper No. 3. Page 322 refers to the major outputs and deliverables of trade measurement.

Hon. Bill Forwood — How much did we give them last year?

Hon. M. R. Thomson — Certainly no worse off.

Hon. Bill Forwood — It says 'not available'.

Hon. T. C. THEOPHANOUS — That is true. It was not available under your administration! The

figures for 1988–1989 and 1999–2000 are not available because the previous government did not print the amounts. That is unfortunate. This year the target for total output cost is $3.3 million, so it is a significant contribution from the state to the administration.

Hon. Bill Forwood — No, it is $2 million. The figure of $3.3 million refers to the page before.

Hon. T. C. THEOPHANOUS — Sorry, it is $2 million. I need to take off my glasses!

As I said, the figures are not available for the previous years, but as a result of the Bracks Labor government's commitment to renewed transparency, such figures are now available and will be available in future budgets.

The interesting thing is that the budget papers also indicate a number of output measures. The number of traders' instruments inspected in 1999–2000 was 27 000 and the target for this year is 28 000. There will be increased inspection this year. Some 9000 traders' premises were inspected last year. This year the figure is projected to be 9500. Monitoring visits to servicing licensees increased this year from 100 to 110.

One can see from the budget that the government takes seriously its obligations to deliver the service. It will be delivered appropriately according to the increase in the budget projections for the number of — —

Hon. Bill Forwood — There is no increase in the budget!

Hon. T. C. THEOPHANOUS — There is an increase in outputs in the budget, Mr Forwood. I know you are a big supporter of outputs as the most important measure for performance.

Hon. Bill Forwood interjected.

Hon. T. C. THEOPHANOUS — I am not sure what you are going to do with that tape measure, Mr Forwood, but whatever it is I hope you have had it calibrated properly!

As has already been stated, the reforms in the legislation arise from a national review by officials and were endorsed by the ministerial council on consumer affairs. As the honourable Bill Forwood said, Queensland is leading the legislative implementation of the reforms and has drafted the amendments. That probably explains why they were drafted the way they were. It takes Queensland a bit longer to say the same thing. For the *Hansard* record I indicate that I am only joking.

The bill proposes four major amendments. The first will provide some flexibility for owners of measuring instruments to correct minor nonconformance. I note the Honourable Bill Forwood supports the amendment. It enables inspectors to grant a user up to 28 days to correct an instrument that does not conform to requirements. However, it should be clearly understood that that does not mean consumers will be ripped off. Inspectors will only be permitted to grant users 28 days to correct a nonconforming measuring instrument if that instrument remains accurate. It is a minor amendment and does not qualitatively change the outcome of measurements. Consumers will still be protected from inaccurate measuring instruments while owners of measuring instruments will benefit from the flexibility provided by the legislation. I am pleased the opposition supports that change.

The bill also streamlines licences, and I am sure that is welcomed by honourable members. It also contains minor amendments to rectify incorrect consequential amendments that were made when the Victorian Civil and Administrative Tribunal was established in 1998 which inadvertently had the effect of rendering the Victorian legislation inconsistent with the uniform legislation, so it is another tidying up exercise. I am not sure whether the legislation has been drafted by the same people who made that mistake. However, it is rectified by the bill.

It should be noted that if the government does not properly adopt the proposed reforms, national uniformity will be compromised and Victorian businesses prevented from taking advantage of improvements in the practical operation of the trade measurement system.

I understand the first batch of proposed amendments does not affect the control of utility meters for the measurement of gas, electricity and water. The current exemptions for utility meters remain. The legislative control of utility meters under trade measurement acts of the states and territories is still being debated nationally and an amendment may be proposed at some later stage.

I hope national uniformity is agreed to, particularly as Victoria has a privatised electricity and gas industry. It is important that consumers are confident about the accuracy of the meters that measure the amount of electricity or gas they use. There are many examples of people concerned about their electricity or gas meters. I think it was the Honourable Ken Smith who told the house that if you put a brick on the top of your gas meter it slows it down. I am not sure whether that works. Not many consumers complain about slow

meters but there are a few who complain that their meters are running a bit too fast. We cannot advise them to stick another brick on top!

I look forward to the changes and to national uniformity. Honourable members should appreciate that electricity and gas industries are becoming increasingly a national affair with cross-state companies and businesses and all sorts of arrangements across state borders. It would be good to move to uniformity in those areas. It is important that the government continue to monitor inspectors, who are now privately contracted, to ensure the public and businesses have confidence in the system, and so that inspectors can carry out their duties under the act and be able to protect consumers in the future. I strongly support the legislation and wish it a speedy passage.

Hon. B. W. BISHOP (North Western) — I have listened with interest to the debate on the Trade Measurement (Amendment) Bill. I was interested in some of the history mentioned. The debate has been wide ranging, including the mention of the calibrations of a tape measure! However, the debate was conducted in good humour, which I think is a measure of the house.

I also refer to some history. I recall when weighbridges were run by the municipalities, which I suspect was a fair while ago. Tonight I will confine my remarks to weighbridges. In those days some were well run and some were not well run by municipalities. It was clear in the late 1980s that national uniform legislation was needed across Australia. As other speakers have noted, it was not quite Australia wide. Western Australia did not join in the uniformity at the time. From research I have undertaken I know that that state is currently investigating that situation.

Regardless of who administered the system, whether it was by municipalities or someone else, measuring facilities needed to be audited and checked regularly to ensure trade could take place with some credibility. The new legislation was enacted on 1 January 1996. During the debate on the bill in 1995, I note that an estimation of the costs of servicing arrangements across those facilities was between $3.5 million and $4 million — that is, the cost to audit, check and test those weighing and measuring facilities. It is now estimated to be about $2 million, which is a substantial saving. It is clear that trade would not exist without those measuring and weighing devices, so they are important.

It does not matter whether you buy and sell sand or jewellery — it makes no difference at all. I recollect my time working in the Middle East when I would go into the gold souks and see millions of dollars worth of gold jewellery hanging off the rafters. It would be sold by weight according to the carat value of the gold. The current volume and weight measures and the advancement in technology have been achieved over a reasonably short time.

I recollect that the old fuel bowsers involved lifting up the measuring tube and pumping up the fuel until it ran over into the measuring tube as a degree of measurement and then turning on the tap and draining the fuel into the car. A comparison of that with our new self-service systems, which we take for granted, demonstrates that technology has certainly increased enormously.

During the research I undertook I noted that firms such as Gilbarco are considering installing measuring equipment for fuel to allow inspectors to better check the accuracy of some of our serving equipment. When I considered the grain industry I noted that Vicgrain, the largest grain handler and storage organisation in Victoria, now has a servicing licence and understands that it not only looks after its own installations but also does contract work for other organisations. Anyone who has observed the testing of weighbridges will have noted that the trucks go in and the weights are offloaded and each weighbridge is checked to ensure its accuracy is beyond reproach.

Licensing of various organisations has certainly increased the flexibility available to the whole industry. The Honourables Theo Theophanous and Bill Forwood referred to the 28 days provision. I was glad that Mr Theophanous made it quite clear that the legislation provides that a trader has 28 days to remedy a contravention if the machine is performing accurately but has a non-conforming part. Clause 5 refers to measuring equipment not having an inspector's mark or a licensee's mark on it, or simply not complying with the stated requirements. The facility must be accurate and the clause puts some practicality and commonsense into the inspection process.

Further flexibility, which is most welcome in the grain industry in particular, is that it is possible to jointly licence one servicing or weighbridge licence so that rather than all partners being required to obtain individual licences, as was the case previously, it can be spread across all partners.

Given my involvement in the grain industry I was interested to note how weighbridges have improved. Most of the old weighbridges were put in place during the 1940s and I remember that they had a capacity of about 8 tons; that capacity was upgraded to 18 tonnes.

In those early days there was no computerisation. The truck would stop on the weighbridge, the weighbridge keeper would slide the weight across and assess when it perfectly balanced and then write the weight on a piece of paper. The truck would empty its load and then come back and be tared off, in the term that was used. The weighbridge keeper would again use the slide, and if he was pretty quick he would give it a decent hit, which often upset the farmer, particularly if the weight on the tare was a little high and reduced the weight.

When the upgrades came along the slides disappeared, and although it was a similar method the system was much less prone to error because when the balance was right the weighbridge keeper stamped the ticket with a stamping machine rather than physically entering it with a pen. I can remember quite clearly that every morning the weighbridge keeper would sweep the bridge and balance it, as it was termed, to ensure that it was ready for the day's work.

I recollect that grain trucks got bigger and bigger as people increased the size of their machinery. We moved into double weighing, which increased the complexity of the task for the weighbridge keeper. I note that today's modern electronic computerised weighbridges are huge drive-on weighbridges capable of taking 80 tonnes of vehicle and all the huge trucks we use today.

Now when the trucks drive on the driver stays in the cabin. Mr Stoney would remember that with the old weighbridges the driver would drive on to the weighbridge and get out of the truck. The driver would walk around and say to the weighbridge keeper, 'It's wheat for such and such' and the weighbridge keeper would enter that. The weighbridge keeper would weigh the truck and then the driver would drive off and empty the load. The driver would come back and tare off, then walk around again and give the weighbridge keeper the details. The stories were that when the first load, with the grain on it, was being weighed, the driver always kept his dog in the cabin of the truck, but when he tared off he called the dog out. Each time the truck was weighed he got a dog's weight of grain to boot.

Nowadays in Australia, and in particular in Victoria, the computerisation is first class and of world standard. When the truck comes on to the weighbridge the load is automatically computerised and stamped. The type of grain, its quality and what it is worth is stamped on the ticket. When the tare process is completed the details are automatically electronically transferred to the purchaser so that the money, the result of the sale, can go into the grower's bank account in a few days.

It is important to record how measuring equipment has moved with the times. The bill will ensure a more practical and flexible management process with measuring devices. It is also important to note that trade cannot be undertaken without adequate, consistent and credible weighing and measuring equipment. The credibility and accountability that we so often desire would be absent.

It is important to have weighing and measuring equipment that can consistently and accurately weigh products with maximum efficiency. The bill will inject some flexibility and practicability into our current trade systems.

Hon. JENNY MIKAKOS (Jika Jika) — I support the bill and I note with great pleasure that the opposition also supports it.

Hon. Bill Forwood — It is our bill!

Hon. JENNY MIKAKOS — But we are implementing it. As the previous speakers have said, the bill is significant and is technical in nature. It deals with an important aspect of the consumer society that we have become. Once the bill is enacted it will go some way towards increasing the confidence of Victorian consumers in their daily dealings with various traders, particularly traders who rely on weighing instruments as a means of conducting their businesses.

The previous speakers have gone into some detail about the various aspects and provisions of the bill, so I do not intend to refer to them in great detail. I noted with some interest the history relating to trade measurement covered by a number of speakers, in particular the Honourable Barry Bishop, who provided an interesting history of weighbridges.

As previous speakers have mentioned there is a national system of trade measurement that all jurisdictions, apart from Western Australia, subscribe to. The provisions proposed in the bill have come about as a result of significant discussions at the national level, particularly at the Ministerial Council on Consumer Affairs. It is for that reason that Queensland has been designated as the sponsoring jurisdiction to draft the modern legislation on which the bill is based.

The bill seeks to introduce some flexibility in enforcement of trade measurement legislation, while at the same time increasing the level of enforcement and the offence provisions relating to inspectors monitoring the usage of trade instruments. One aspect of the bill relates to a previous drafting error which occurred when the Victorian Civil and Administrative Tribunal was established in 1998 and which caused some

uncertainty as to whether VCAT is the ultimate body of appeal for trade measurement disputes. Clause 20 clarifies that issue.

As I said earlier, the main aspect of the bill relates to enforcement. In an increasingly self-regulated environment it is important that the government put teeth in regulations. For that reason many of the provisions in the bill relate to the powers of inspectors. Clause 15 amends the principal act to allow an inspector to order the weighing or measuring of a vehicle and its load. Clause 17 is an amendment to allow an inspector to photograph details of measurement instruments he or she has tested.

The bill contains a number of new offence provisions, one of which relates to class 4 instruments — instruments of lower accuracy than those used in normal retail and wholesale trade. Clause 6 is an amendment to prevent class 4 measuring instruments being used for the weighing of airport baggage. Many honourable members will be relieved that is the case.

The bill inserts new provisions in the principal act relating to the licensing of trade measurement instruments. Clause 13 amends the principal act to provide for business partners to be jointly licensed for a public weighbridge licence or servicing licence instead of each partner being required to be individually licensed. Other provisions affect the licensing of measurement instruments. Clause 9 amends the principal act to provide for the administering authority to determine the denominations and classes of reference standards of measurement to be used by a licensee under a servicing licence.

In conclusion, the bill is technical in nature and relates to an area that many members of this place would not have personal experience about or have been engaged in. However, it clarifies anomalies that existed in federal legislation and will give Victorian consumers greater confidence in their dealings with traders. I support the bill and wish it a speedy passage.

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.

I thank honourable members for contributing to the length and breadth of this weighty legislation. I thank Mr Forwood, Mr Theophanous, Mr Bishop and Ms Mikakos for their contributions.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

ADJOURNMENT

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

That the house do now adjourn.

Berwick Bowling Club

Hon. N. B. LUCAS (Eumemmerring) — I direct to the attention of the Minister for Sport and Recreation funding issues involving the Berwick Bowling Club. On 19 March I had the pleasure of attending the official opening of the bowling club by my colleague in the other place, the honourable member for Berwick. The bowling club has a long and proud history. Many years ago the Wilson family of Berwick donated some land for the development of the club. As the township of Berwick expanded the club found itself located close to the business district and the former Berwick council, after discussions with the club, found a new site for it. The club has a well-appointed clubhouse and three bowling greens. It is a worthwhile facility.

I direct to the minister's attention the excellence of the venue for major events and the substantial increase in membership of the club since the development of its new facility. I ask whether he can assist the club financially given the large expenditure it has incurred. It has a considerable number of new members and has the potential to be a major regional if not state venue for lawn bowling.

Fishing: banded morwong

Hon. P. R. HALL (Gippsland) — I raise with the Minister for Energy and Resources representing the Minister for Environment and Conservation in another place the possibility of a closed season for the fish species known as the banded morwong. It is a small fishery but several fishermen in my electorate have developed techniques for catching and selling the fish live at Melbourne markets. They have invested significant amounts of money in developing the fishery and the market for the fish. One of the fishermen who is

active in the industry has taken out a second mortgage on his house to buy into the industry.

The Minister for Environment and Conservation is currently considering whether there should be a closed season for the fishery. To my knowledge there has been no consultation with the fishermen involved. If the minister were prepared to consult with those involved in the industry she would find a willingness to make sure the fishery is sustainable, because it is their livelihood.

Instead of closing the season for the fishery the minister should speak with the people involved to see if a sustainable fishery can be achieved. A closed season would place the industry in serious financial jeopardy. Will the minister reconsider the option to implement a closed season for the banded morwong fishery?

Clunes: Crown land

Hon. D. G. HADDEN (Ballarat) — I ask the Minister for Energy and Resources to refer an urgent and important matter to the Minister for Environment and Conservation in another place. It concerns Clunes, Victoria's most original and historic goldmining town where the first registered gold strike occurred in July 1851.

I have been approached by constituents in my province over the past six months concerning Crown land in Bailey Street, Clunes, more particularly described as Crown allotments 7, 9 and 10, section 4 township of Clunes, file number 0615823. The land is a restrictive Crown grant with a municipal purposes reserve that was permanently ordered by order in council of 8 May 1865. A restrictive Crown grant was then issued to the former Borough of Clunes with a specified purpose.

The Clunes town hall, borough offices and police court, which was built in 1872, are located on the land. The rear timber building or supper room is believed to be the former Bible Christian Church built in 1867. The town hall complex has been classified by the National Trust.

Crown allotments 9 and 10 include the protected police house, police lock-up, stables and outbuildings, which date back to about 1859. The buildings were relocated, along with the police from Camp Hill to the current site in Service Street in 1872. The historic buildings are protected under the local planning scheme heritage overlay. A very comprehensive two-volume conservation and heritage report was prepared by Mr Richard Aitken in 1988 for the former Shire of Talbot and Clunes.

For more than 12 months rumours, allegations, media reports and letters have circulated in that part of my province along the lines that the Hepburn Shire Council has made arrangements to sell the Crown land and the heritage buildings to a private organisation, Wesley College, once the bill is passed.

Crown allotments 7, 9 and 10 on section 4 are Crown land upon which stand classified and protected significant historic buildings that are still intact from the gold rush era at Clunes. Furthermore, the Crown land has native title implications. No archaeological assessment has been made of the Crown land on allotment 7 at the rear of the Clunes town hall which has now been redeveloped by Wesley College. The site could be of enormous archaeological interest to the state, especially as the Dja Dja Wurrong Aboriginal people hunted, gathered and lived in that tribal area.

Will the minister ask the Minister for Environment and Conservation to ensure that those classified and protected heritage buildings on Crown land continue to be preserved, protected, available and accessible for all Victorians to enjoy?

GST: schools

Hon. B. W. BISHOP (North Western) — I ask the Minister for Sport and Recreation to direct a matter to the attention of the Minister for Education in another place. Over the past couple of weeks I have visited a number of schools in my province which have expressed concern about their preparedness for the goods and services tax (GST) programs. Schools are now much more aligned with small business-type activity. I am concerned that the dedicated and committed principals and office managers who manage all school financial activities have the equipment to manage the change that will be introduced on 1 July.

They must have in place programs to handle the situation. The schools report to me that there is little or no direction from the government. One has only to compare that with the effort poured into the year 2000 program. That was a huge and successful effort and the organisations received tremendous support from the government.

Will the Minister for Education in another place supply me with a detailed program of how schools will handle the GST when it is introduced on 1 July?

Planning: foreshore development

Hon. ANDREA COOTE (Monash) — I direct a matter to the attention of the Minister assisting the Minister for Planning. During the adjournment debate

on 14 December last year I asked the Minister for Sport and Recreation a question in his capacity as the Minister representing the Minister for Planning in another place. It concerned a matter of relevance to my province, to which I have not received a reply. I wish the matter to be rectified.

At that time I requested an explanation from the Minister for Planning about temporary height limits in the state planning agenda. The City of Port Phillip made its position on the issue clearly known. Its resolution states:

> That council note the positive statements made by the Premier, the Honourable Jeff Kennett, the Minister for Planning and Local Government, and the Minister for Small Business and Tourism, the Honourable Louise Asher, that effectively discourage, as being inappropriate, high-rise development around the bay and specifically in Port Melbourne and St Kilda.

I should like an answer.

Aged care: Khmer community

Hon. ANDREW BRIDESON (Waverley) — I direct to the attention of the Minister for Small Business, who represents the Minister for Aged Care in another place, a matter concerning a small ethnic group in my province, the Khmer community of Victoria, known as the KCV.

In late 1999 the KCV completed a report on aged care relating to the Cambodian community entitled *Cambodian Elderly in Victoria. A Needs Analysis of Current and Future Aged Care for Khmer Residents*. It was made possible through a grant of approximately $30 000 under the former government and the Department of Human Services.

Mr Khang Lim, the president of the KCV, wrote to the minister on 18 February wishing to present a copy of the report. To date the KCV has not received a response and is eager that the important work be presented to the minister. I seek the assistance of the minister.

Liquor: licences

Hon. BILL FORWOOD (Templestowe) — I refer the Minister for Small Business to a matter that was raised during question time today. In her response to my question about the 8 per cent liquor licence limit, the minister indicated that her decision to institute an inquiry under the national competition policy review guidelines was on the basis of advice received from the Department of Treasury and Finance. Will she make that advice available?

Apprenticeships: small business

Hon. W. I. SMITH (Silvan) — I raise for the attention of the Minister for Small Business a matter recorded in the *Australian Financial Review* of 2 May this year. In the article Dr Kemp is quoted as saying:

> The Victorian government was undermining the commonwealth's new apprenticeship scheme, the federal Minister for Education and Training, Dr David Kemp claimed yesterday.
>
> His accusation follows the Victorian government's decision to freeze the user choice policy in the state so private registered apprentice training providers will have their funding eligibility capped at 1999 levels for the next 12 months.

Dr Kemp goes on to say:

> A recent survey showed employers strongly supported the competitive training system and found it more responsive to their needs.

Does the minister acknowledge that the user choice policy to cap private registered apprenticeship training providers will impact adversely on small business?

Avonwood Homes

Hon. M. T. LUCKINS (Waverley) — I raise with the Minister for Consumer Affairs a matter involving Avonwood Homes. Several constituents have advised me that they have not been kept informed by either the builder or anyone from the Office of Fair Trading and Business Affairs about developments concerning their new homes. Many of these families, estimated to be around 500, have borrowed funds to purchase land and commence building, and all of them have had to make alternative plans for accommodation — renting, staying with relatives, or in a few cases they have sold properties and are relying on their houses being completed.

I spoke to a representative in the minister's department who was basically relying upon information provided through a media agency that had been contracted by Avonwood Homes and was not able to provide me with any information. There has been speculation in the media about merger talks with Clarendon Homes, which apparently have failed, and also talk of the appointment of a liquidator or administrator. The problem is that none of the families has been kept informed by the builder or the minister's office about possible action they can take.

I am concerned the situation could lead to a crisis of confidence in the building industry. I understand that builders are required to have requisite insurance under

the Domestic Building Contracts Amendment Act of 1995. I ask the minister to outline to the house the avenues of recourse for Victorians who have contracts with Avonwood Homes and explain how that insurance can be accessed to ensure completion of the homes Avonwood has contracted to build and has abandoned.

Snowy River

Hon. PHILIP DAVIS (Gippsland) — I refer the Minister for Energy and Resources to today's press statements heralding a so-called Snowy River rescue deal, which was clearly an orchestrated leak from the government preceding today's budget. This is obviously a major exaggeration of what the government proposes.

It should be understood that the $12.3 million committed to the Woorinen pipeline west of Swan Hill will contribute less than 3 per cent of the necessary water savings to achieve the stated target of 28 per cent of environmental flow. That is probably the most expensive water available in Australia. Why has the government failed to provide sufficient funds to deliver real water savings for the Snowy?

Cranbourne land transfer

Hon. R. H. BOWDEN (South Eastern) — I raise with the Minister for Consumer Affairs the case of a constituent of mine, Frank Young, of 1890 South Gippsland Highway, Cranbourne.

On 13 January 1995 Mr Young gave permission to an estate agent in Cranbourne to sell his property. The appropriate forms were signed and so on. The following day there was a strong allegation that Mr Young did not want to proceed. The sale of the property valued at $252 000 went ahead, and under normal arrangements the 10 per cent deposit and other sale mechanisms would apply.

Since then there has been a determination of the matter through the courts. The full documentation of the case is quite lengthy. The situation as of today is that the vendor has not received 1 cent of either the deposit or the purchase price, or any moneys whatsoever, yet on the 17th of this month he is required to hand over his property. In my lay capacity, I do not understand the mechanisms of the situation as they appear on the surface, but I am concerned on behalf of potential and current vendors of real estate that a vendor can offer his property through the appropriate representation and end up, as a result of action through the courts, losing his or her property or not receiving any money for his or her property.

The PRESIDENT — Order! The honourable member is raising an issue between a vendor and purchaser that I understand has nothing to do with the government. The honourable member is asking from a policy viewpoint whether this issue could be looked at. I am sure the minister could give the honourable member chapter and verse of schedule 7 of the Transfer of Land Act and the rights of each party to it, but I do not believe it is a matter of government administration, nor can the adjournment debate be used to ask for legislation. Having said that, the honourable member may want to add something or make his comments relevant to government administration.

Hon. R. H. BOWDEN — I thank you for that advice, Mr President. I seek the minister's help. I ask that the matter be reviewed on the information I have and that it be considered a consumer affairs issue.

Melbourne Aquarium: legionnaire's disease

Hon. D. McL. DAVIS (East Yarra) — I raise with the Minister for Industrial Relations, as the representative in this place of the Minister for Health, the legionnaire's disease outbreak in Melbourne. It is not my intention to score political points on this serious public health matter, but I am concerned about the public aspects of the incident.

One of the public aspects concerns the regulations covering private facilities across the state. Another concerns the standards and programs in place within public facilities and buildings. In particular I direct to the attention of the Minister for Health the need for the highest standards in many of our public facilities, such as public hospitals. The epidemiology of this disease, as the Honourable John Ross and others will understand, often concerns warm water, and hospitals are well recognised as an environment where legionella can breed. Patients in such situations are also immunocompromised and therefore susceptible to infection with legionella.

I ask the Minister for Health to investigate that aspect and ensure that the controls in the public sector are sufficient — that is, that the controls and inspections in public buildings and airconditioning units are up to standard in every way, including, I might add, occupational health and safety requirements. When the Minister for Health was in opposition he certainly demonstrated a high standard in this area. It is important to ensure the highest standards, particularly in health care facilities.

Responses

Hon. M. M. GOULD (Minister for Industrial Relations) — The Honourable David Davis raised a matter concerning the legionnaire's disease issue that is unfortunately related to the Melbourne Aquarium for me to refer to the Minister for Health. He referred to the regulations that affect public hospitals and are designed to ensure the safety of patients, staff and those who use public buildings. I will refer the matter to the minister and ask him to respond in the usual manner.

Hon. C. C. BROAD (Minister for Energy and Resources) — The Honourable Peter Hall initially raised a matter for me to direct to the Minister for Environment and Conservation. He has since corrected that and referred it to me as the minister responsible for fisheries.

The matter relates to the banded morwong fishery and the concern of fishers who have invested in the fishery about its possible closure. He requested that consideration be given to whether the objective of ensuring a sustainable fishery for the species can be achieved by means other than having a closed fishery. The fish is an interesting species, which on advice available to me lives for up to 80 years.

Hon. Bill Forwood — Eighty?

Hon. C. C. BROAD — Eighty. That makes it an astonishing fish. It brings a considerable price, which makes it attractive to fishers.

In January I received advice that in the interests of ensuring the protection of the species, which has suffered considerable devastation in Tasmanian waters, I should close the fishery for a period of eight weeks. That advice came from the fisheries department after consultation with the Fisheries Co-management Council, which advised it had decided to support the action.

The closure has just finished. I have further advice before me from the fisheries department that I should extend the closure because the work considered necessary to establish appropriate management practices to ensure a sustainable fishery has not been completed.

I currently have the matter under active consideration in terms of having appropriate consultation with the affected fishers and determining the period necessary to ensure that the research that needs to be undertaken to establish appropriate management practices can be completed before a decision is made. I will advise further on the matter after considering the advice that is currently before me.

The Honourable Dianne Hadden referred to a matter of considerable interest to her and to many of her constituents — the Crown land site at Clunes, which includes significant heritage buildings. She requested that the Minister for Environment and Conservation ensure that the heritage buildings are protected and continue to be accessible to members of the public. I will refer the matter to the responsible minister.

The Honourable Philip Davis referred to Snowy River budget allocations, particularly to some extraordinarily well-informed sources that were referred to in this morning's press. The budget contains some important allocations, which the honourable member referred to, including allocations for the pipeline works and, importantly, the river works that are necessary to ensure that when increased water flows occur they will affect the Snowy River in the best possible way.

The government has clearly signalled that it will make the necessary provisions to ensure that Victoria's share of the water savings and the costs necessary to achieve the savings will be provided — that is clearly signalled by the budget, depending on the outcome of the current negotiations between Victoria, New South Wales and the commonwealth.

Hon. M. R. THOMSON (Minister for Small Business) — The Honourable Andrew Brideson drew my attention to the issue of the Khmer community of Victoria's report on the Cambodian elderly of Victoria and said that its president, Khang Lim, on 18 February wrote to the Minister for Aged Care in another place, the Honourable Bronwyn Pike, requesting an opportunity to meet with her and forward the report to her. I will pass the matter on to the minister for her attention.

The Honourable Bill Forwood raised the issue of the 8 per cent limit on liquor licences, which he also raised in question time, and the advice given in relation to that. A review was carried out in 1998 in relation to the 8 per cent limit. It recommended that the limit be removed in respect of both general and packaged licences. The government of the day — the previous government — decided to remove it from general licences but not from packaged licences.

The National Competition Council has written to the Victorian government saying that according to its review that action does not meet with national competition policy and asking that the government remove the 8 per cent limit on packaged licences by the

end of this year or it will penalise Victoria up to $12 million per annum. The government is conducting the review in order to try to justify — —

Hon. Bill Forwood — On a point of order, Mr President, my request of the minister was explicit. I asked whether she would please make available the advice she received from the Department of Treasury and Finance on — —

Hon. T. C. Theophanous interjected.

Hon. Bill Forwood — In question time today the minister said that the decision she made was on the advice of the Department of Treasury and Finance. I explicitly asked her to make that advice available. I request that she deal with the issue.

The PRESIDENT — Order! On the point of order, the minister was working into her answer and it is up to her as to how she terminates it. I cannot guide her on that. She has been responsive to the question so far. We will soon find out whether she agrees to the request.

Hon. M. R. THOMSON — Thank you, Mr President. The advice I have received from my department has indicated that that — —

Honourable members interjecting.

The PRESIDENT — Order! Hansard cannot hear the debate if you all shout at once.

Hon. M. R. THOMSON — I have fully answered the inquiry from question time today.

The Honourable Wendy Smith referred to an article in the *Australian Financial Review* in relation to — —

Honourable members interjecting.

The PRESIDENT — Order! The house is being unfair to the minister. She has been asked a series of questions and is proceeding to answer them. Honourable members will please allow the answers to be heard.

Hon. M. R. THOMSON — The Honourable Wendy Smith referred to Dr Kemp's comments and the 12-month freeze to allow a review of apprenticeship schemes in Victoria. She asked whether I believe the freeze is impacting adversely on small business. It is important to provide a scheme that works well and ensures an increase in the amount of apprenticeships available. A review is therefore appropriate. If a freeze is necessary to ensure that the review is full and comprehensive, I support it.

The Honourable Marie Luckins raised a matter with me as Minister for Consumer Affairs — —

Opposition members interjecting.

Hon. M. R. THOMSON — This is a very serious issue for 500 Victorians, so I will give it a serious response. I asked staff of the Office of Fair Trading and Business Affairs to get in touch with the directors of Avonwood to discuss what is occurring. Late today they managed to achieve that. The staff were able to convince them to put people back on the telephones so inquiries could at least be responded to.

Up until now no-one was answering the phones and there was no way inquiries could be made. At least the stage has been reached where those who have contracts are able to get responses. They are covered by a building insurance scheme and the department is now trying to work through some issues about what that will mean for those — —

An Opposition Member — Like what?

Hon. M. R. THOMSON — Depending on the stage of the contracts it might mean compensation will be paid because some are using rental accommodation and costs have been incurred. I am waiting for an update on what that means.

An Opposition Member — You have been making some calls. Thank you. It is on the record.

Hon. M. R. THOMSON — It is a lot more than you would have done! The government is also awaiting further information about the company being put in the hands of the administrator.

The Honourable Ron Bowden asked about a constituent living in a property on the South Gippsland Highway. The property was put up for sale in 1995. My department can examine the matter. I cannot guarantee that anything can be done in this case but I am happy to pass it on to the Office of Fair Trading and Business Affairs.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — The Honourable Neil Lucas asked about financial difficulties the Berwick Bowling Club experienced in providing its new expanded facility. I encourage representatives from the club to contact my office or officers from the department to discuss the situation further, and also to discuss the partnership they may or may not have with their local council to establish access to some sort of support.

The Honourable Barry Bishop asked about the readiness of schools for the goods and services tax. I will refer that matter to the Minister for Education in the other place.

The Honourable Andrea Coote asked about the introduction of temporary height limits in the City of Port Phillip. I will direct the attention of the minister to his delayed response.

Motion agreed to.

House adjourned 9.34 p.m.