PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

21 March 2000

(extract from Book 3)

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By authority of the Victorian Government Printer

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FIFTY-FOURTH PARLIAMENT — FIRST SESSION

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TUESDAY, 21 MARCH 2000

Tuesday, 21 March 2000

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

NATIONAL TAXATION REFORM (CONSEQUENTIAL PROVISIONS) BILL

Introduction and first reading

Received from Assembly.

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

QUESTIONS WITHOUT NOTICE

Workcover: small business

Hon. BILL FORWOOD (Templestowe) — Did the Minister for Small Business or her department make a formal submission to the government working party established to recommend legislative changes to workers compensation? If so, will she now table that submission?

Hon. M. R. THOMSON (Minister for Small Business) — I do not believe there was a formal submission from my department in relation to that, so there will be no documents to table.

Lawn bowls: funding

Hon. G. D. ROMANES (Melbourne) — Will the Minister for Sport and Recreation inform the house what action his department has initiated in assisting lawn bowls in this state?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Honourable members may not be aware that Victoria has 562 bowls clubs — 169 in metropolitan Melbourne and 393 in regional Victoria. The government recognises the importance of sport as a community builder. Bowls is an important community activity for older Victorians in particular, but not exclusively older Victorians. In its campaign the government has pledged to assist the sport.

In 1980 bowls was the second most participated in sport; it is now the fifteenth most participated in sport, with 71 200 registered participants. I am pleased to announce today that Sport and Recreation Victoria will provide $60 000 in this financial year and $120 000 in the following three financial years. Exciting projects to be undertaken with this year's money include: the development of a bowls marketing plan, $20 000; the Premier's lawn bowl tournament, $5000; funding of promising talent for the 2006 Commonwealth Games, $12 000; best-practice green management strategies, $8000; the turf-grass conference, $7000; newsletter activities, $4000; and a web site development, $4000.

Workcover: small business

Hon. BILL FORWOOD (Templestowe) — I remind the Minister for Small Business of her commitment in this house on 23 November last year that she would speak on behalf of small businesses about any changes that may be proposed to Workcover. Given that she did not make a submission to the working party, how did she fulfil that commitment?

Hon. M. R. THOMSON (Minister for Small Business) — In relation to Workcover, which is a complex issue, I reiterate that the Victorian Workcover scheme's liability of $338 million must be addressed by the government.

The government needs to balance meeting its responsibilities on Workcover with its commitments prior to the election of ensuring the reintroduction of common law and ensuring that it limits the costs to small businesses that have a good health and safety record. In cabinet, ministers are now looking at and discussing Workcover options in relation to both the liability that exists from the previous government's scheme and the reintroduction of common law. I am participating in and contributing to the discussions to ensure that small business is looked after.

Electricity: clean energy initiatives

Hon. KAYE DARVENIZA (Melbourne West) — Will the Minister for Energy and Resources inform the house what action the government is taking regarding the development of clean energy in Victoria?

Hon. C. C. BROAD (Minister for Energy and Resources) — I thank the honourable member for her interest in this very important area of public policy.

The Bracks government is committed to supporting and facilitating the development of co-generation opportunities wherever possible in this state. To ensure that, Energy Efficiency Victoria is doing a great deal of work to facilitate such developments in this state. In line with that policy emphasis the Victorian government applauds the initiative of Origin Energy to commercialise a number of 20 megawatt co-generation plants in south-west Victoria and South Australia.

Investment in each of those plants will be $50 million, which is a significant contribution in terms of finance and in the supply of local electricity to the national grid.

The government's actions, including the importance it places on the development of clean energy, stand in marked contrast to the actions of the previous Kennett government. Peter Troughton, the architect of the Kennett government's electricity privatisation, indicated in a seminar held in Melbourne yesterday that throughout the privatisation process the Kennett government never considered the objectives of reducing greenhouse gas emissions and promoting renewable energy. Mr Troughton went on to say that if he had his time over again, he would want the government to develop policy and regulatory incentives in that important area. It is a shameful indictment of the previous government to have the main architect of the privatisation of Victoria's energy supplies reveal that not once during the whole process did the Kennett government consider that the important issues of greenhouse emissions and renewable energy needed to be addressed.

However, the Bracks government will address those important issues through the reform of Sustainable Energy Authority Victoria and a budget boost to Energy Efficiency Victoria, which is in marked contrast to the slashing of the budget under the previous government — —

Opposition members interjecting.

Hon. C. C. BROAD — Proud of it, are you?

The third strategy will involve requiring electricity retailers to produce greenhouse gas reduction strategies and to publicly report on their emissions annually.

Snowy River

Hon. E. G. STONEY (Central Highlands) — I refer the Minister for Energy and Resources to a statement she made last week along the lines that she would like federal funding for works related to the Snowy River. Was the minister saying that the government can support work on the Snowy River only if it receives federal funding?

Hon. C. C. BROAD (Minister for Energy and Resources) — The short and the long answer is no.

Industrial relations: employee entitlements

Hon. JENNY MIKAKOS (Jika Jika) — I ask the Minister for Industrial Relations to outline the government's response to the forced liquidation of Fabric Dye Works at Coburg last week, which resulted in its 61 employees losing their entitlements.

Hon. M. M. GOULD (Minister for Industrial Relations) — I thank the honourable member for her question. Fabric Dye Works in Coburg shut down last week, which resulted in the company going into liquidation and 61 workers losing their entitlements. There is no national scheme to protect the entitlements of workers who lose their jobs as a result of companies becoming insolvent. Those 61 workers have lost their entitlements because of an order of the Australian Taxation Office. The ATO could easily have avoided doing that, and I am advised that the company has said that it could have traded out of the situation it was in if not for the making of the order.

Those 61 workers at the Coburg factory have been left on the unemployment scrap heap. Their entitlements and their nest eggs have been lost as a result of the federal minister — —

Opposition members interjecting.

The PRESIDENT — Order! Having 10 honourable members on my left shouting at once is not conducive to good debate. I ask those honourable members to desist to allow the minister to finish her answer.

Hon. M. M. GOULD — The workers have lost their entitlements, and Mr Reith, the federal workplace relations minister, has for two years been sitting on his hands doing nothing about workers. That has resulted in a hodgepodge situation, with the workers getting nothing and the Coburg Fabric Dye Workers getting a miserly scheme that is capped and funded by taxpayers, while the employees of the New South Wales company National Textiles — surprise, surprise! — are getting all their entitlements.

It is the responsibility of all employers to ensure that their workers' entitlements are protected. It is not the responsibility of taxpayers or of the government to provide an open cheque book. Mr Reith needs to introduce a scheme that protects workers and their entitlements rather than the capped scheme that he has proposed.

Rail: regional links

Hon. R. A. BEST (North Western) — I refer the Minister for Industrial Relations to the proposed fast-track rail linkages between Melbourne and key regional cities. Will she establish a special task force to deal with any industrial relations issues; and if not, how will she ensure that potential private investors have the confidence to bid for the project?

Hon. M. M. GOULD (Minister for Industrial Relations) — I am confident that private investors have confidence in Victoria and will have the confidence to invest in the project. In relation to the specific nature of the honourable member's question, I will be pleased to take it into consideration and report back to him on it.

Fishing: abalone

Hon. R. F. SMITH (Chelsea) — Will the Minister for Energy and Resources and for Ports inform the house of the recent successes in protecting valuable fisheries such as abalone?

Hon. C. C. BROAD (Minister for Energy and Resources) — Abalone is Victoria's most valuable fishery resource. Recent estimates put the value of the fishery to the state to be in excess of $45 million annually. As a result the protection of that important and valuable fishery is a big issue. Over the past 12 months the special investigation group of the Department of Natural Resources and Environment has been successful in targeting two illegal multimillion dollar abalone processing and trafficking operations.

In one case that resulted in a person who was described as having close links to those types of illegal trafficking operations being sentenced to six months gaol and fined over $60 000 — and more than $1 million worth of product was captured. More recently, some honourable members may have noticed newspaper reports of a joint operation involving the Department of Natural Resources and Environment and the Tasmanian and Victorian police, which has resulted in charges being laid for abalone poaching offences near the Victorian and Tasmanian borders. That is not a matter I can talk about in detail because it is before the courts; however, it is one that we are most hopeful about.

In response to the honourable member's question, I point out that those results indicate that the task force approach is the most successful one to take. Accordingly, Victoria is continuing to shift its enforcement emphasis towards the task force approach when deciding where it places its resources to stem those major illegal operations.

Heineken golf tournament

Hon. I. J. COVER (Geelong) — I refer the Minister for Sport and Recreation to my question last week regarding the Heineken golf tournament. The minister undertook to 'bring to the house the figures relating to the government's financial incentive offered to the promoters'. Where are those figures?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Those figures will be provided to the house as part of the normal process of departmental reporting through the Department of State and Regional Development.

Disabled Children's Foundation

Hon. T. C. THEOPHANOUS (Jika Jika) — Will the Minister for Consumer Affairs inform the house what action the Office of Fair Trading and Business Affairs has taken to assist in the winding up of the Disabled Children's Foundation?

Hon. M. R. THOMSON (Minister for Consumer Affairs) — Honourable members may be aware that late last year the Disabled Children's Foundation was found to be in breach of the Fundraising Appeals Act. On 3 November 1999, the public officer of the foundation, William Murnane, agreed to — —

Hon. G. R. Craige interjected.

The PRESIDENT — Order! I ask Mr Craige to desist and allow the minister to respond to a non-controversial question.

Hon. M. R. THOMSON — Mr Murnane stated that bad publicity and the pressure on his operation by the Office of Fair Trading and Business Affairs were the reasons for his winding up. Phillips Fox has been appointed as the solicitor to ensure the winding up is properly carried out. The property at Aireys Inlet has now been sold and the Spastic Society of Victoria has been designated the charity to which all the funds will go. Mr Murnane has also agreed to cease fundraising in any capacity for the next five years.

This case brought to note the problems with shonky fundraisers, the disrepute it can bring to the industry as a whole, and the need for a review of fundraising legislation in Victoria and nationally to ensure we are confident that those who are raising funds for charity are doing so in an appropriate way. The terms of reference for the review of the fundraising legislation in Victoria are now being finalised. The government is mindful of the balance needed to ensure shonky operators are kept out and that small fundraising operations that are operating legally are not adversely affected.

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Auditor-General's office

Hon. BILL FORWOOD (Templestowe) presented report on appointment of auditor to conduct financial audit for 1999–2000 of Victorian Auditor-General's Office and final audit of Audit Victoria, together with appendices.

Laid on table.

Ordered to be printed.

PAPERS

Laid on table by Clerk:

Crown Land (Reserves) Act 1978 — Minister's Order of 9 March 2000, giving approval of granting of a lease at the Melbourne Cricket Ground Reserve and over parts of Yarra Park Reserve.

Food Safety Council — Report, 1997–99.

Intellectual Disability Review Panel — Report, 1998–99.

Interpretation of Legislation Act 1984 —

Notice pursuant to section 32(3) in relation to Industrial Waste Management Policy (Waste Acid Sulfate Soils).

Notice pursuant to section 32(3)(iii) in relation to Statutory Rule No. 88/1999.

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

Bayside Planning Scheme — Amendment C3.

Campaspe Planning Scheme — Amendment C4.

Mornington Peninsula Planning Scheme — Amendment C21.

Port Phillip Planning Scheme — Amendment C22.

Stonnington Planning Scheme — Amendment L99.

Warrnambool Planning Scheme — Amendment C2.

Wyndham Planning Scheme — Amendment C5.

South Western Regional Waste Management Group — Minister for Environment and Conservation's report of 14 March 2000 of receipt of the 1998–99 report.

Statutory Rules under the following Acts of Parliament:

Marine Act 1988 — No. 13.

Subordinate Legislation Act 1994 — No. 12.

Subordinate Legislation Act 1994 —

Minister's exception certificate under section 8(4) in respect of Statutory Rule No. 12.

Minister's exemption certificate under section 9(6) in respect of Statutory Rule No. 13

NATIONAL TAXATION REFORM (CONSEQUENTIAL PROVISIONS) BILL

Second reading

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

That this bill be now read a second time.

The purpose of this bill is to implement the state's obligations under the Intergovernmental Agreement on the Reform of Commonwealth–State Relations, which was signed by the commonwealth and all states and territories in late June 1999.

The Bracks government is concerned about the impact of the goods and services tax (GST) in many respects, in particular the impact of the commonwealth's tough stance of expecting the state to achieve embedded tax savings of $100 million per annum. But the GST is a tax that the commonwealth government is determined to introduce and for which legislation has been passed in the commonwealth Parliament. The Victorian government is obliged to honour the previous government's commitments which were made under the intergovernmental agreement (IGA).

The intergovernmental agreement formalised several important changes to commonwealth–state financial arrangements and committed the states and territories to certain changes in their tax arrangements. The measures of the IGA include the following:

all GST revenue will flow to the states and territories;

the commonwealth will cease to apply the wholesale sales tax from 1 July 2000;

the temporary safety net arrangements for the taxation of petroleum, liquor and tobacco which were established by the commonwealth on 6 August 1997, and which have provided an important source of revenue for the states and territories, will cease on 1 July 2000;

the payment of financial assistance grants by the commonwealth to states and territories will cease on 1 July 2000;

the states and territories will cease to apply financial institutions duty and stamp duties on quoted marketable securities from 1 July 2001;

the states and territories will cease to provide support for off-road diesel use, as the commonwealth will be providing a complete rebate of its petroleum excise and customs duty in the case of off-road diesel from 1 July 2000;

the states and territories will adjust their gambling tax arrangements to take account of the impact of the GST on gambling operators;

to offset the impact of the GST on first home buyers, the states and territories will fund a first home owners grant scheme;

the commonwealth will legislate to require the states to withhold from any local government which does not register for GST and make voluntary GST payments, a sum equivalent to the unpaid GST; and

the GST will be applied to government fees and charges which are not declared GST-free by determination by the commonwealth Treasurer.

It is necessary for the Victorian government, like the governments of all other states and territories, to make legislative changes and initiatives that arise directly from the previous government's signing of the intergovernmental agreement and as a consequence of the Victorian government's desire to alleviate some adverse impacts of the GST on some parties which are subject to state taxes.

I now turn to the particulars of the bill.

Part 1 establishes the purposes and commencement dates pertaining to this bill.

Part 2 of the bill serves as a record of the states' intention to comply with and give effect to the intergovernmental agreement, which is attached as a schedule to the bill.

Part 3 establishes the capacity for state entities — including local governments — to pay voluntary GST equivalents and for the Treasurer to direct them to do so.

Part 4 of the bill provides the scope for the Governor in Council, on the recommendation of a minister, to make regulations providing for a fee or charge set by a statutory rule to be increased by an amount up to the amount of the GST. The intergovernmental agreement provides for the commonwealth to make payments to the states in the transitional years of national tax reform when it is estimated that the states' budgets would be worse off without the so-called guarantee payments to be made by the commonwealth.

Among the factors which the intergovernmental agreement provides to be taken into account in calculating the necessary guarantee payments is a clawback, by the commonwealth, of embedded tax savings realised by state entities as a result of abolished wholesale sales tax and reductions in other taxes and excises. The Victorian government has carefully assessed the embedded tax savings which the commonwealth government expects this state to achieve, and believes that they are very difficult to attain while maintaining key government services. Victoria is expected by the commonwealth to save $100 million from state entities through embedded tax savings in 2000–01. The state has been given no choice but to achieve these savings. This provision of the intergovernmental agreement restricts the capacity of the state to pass the embedded tax savings on to consumers of general government goods and services which are subject to GST, and as a result many fees and charges will be likely to increase by the full GST amount of 10 per cent.

Part 5 of the bill provides for the cessation of the application of the financial institutions duty.

Part 6 of the bill is concerned with the impact of the GST on labour services. The GST will apply to the labour services which are provided by contractors and employment agents, but not to the labour services of ordinary employees. The state government is concerned that the application of payroll tax to the labour services of contractors and employment agents would place them at a competitive disadvantage. The government has decided that payroll tax for these parties should apply to their deemed wages exclusive of the GST.

Part 7 of the bill relates to stamp duty amendments, including the cessation of the application of stamp duty on transfers of quoted marketable securities from 1 July 2001. In addition, this part provides for stamp duty on rental agreements and cattle sales to apply to values exclusive of GST. While the commonwealth has amended its GST legislation so that the GST will now apply to insurance premiums that are exclusive of the states' stamp duty, thus avoiding an instance of circular taxation, it has not to date been prepared to do so with respect to taxation of rental business. The state is not able to eliminate stamp duty from some other tax bases on which GST will also apply, as the abolition of the wholesale sales tax means that there could be an overall net loss to state revenue. Because the wholesale sales tax base on motor vehicles is large, after 1 July 2000 the state would experience a substantial fall in its stamp duty on motor vehicle transfers if it were to apply it to GST-exclusive prices, because of the impact of the abolition of wholesale sales tax. There would also be

significant falls in other state stamp duties if the duties were applied to GST-exclusive prices. The overall gain to state revenue from the application of stamp duties to GST-inclusive prices has been calculated by the Department of Treasury and Finance to be very small.

Part 7 also provides for an amendment to the Stamps Act 1958 to transfer the liability for stamp duty from used car dealers to the persons acquiring the vehicles in order to avoid another source of circular taxation.

The government is required by the intergovernmental agreement to adjust its gambling tax arrangements to take into account the impact of the GST on gambling operators. In the case of bookmakers, the level of the turnover tax was already quite low, and reduction of the tax to take exact account of the GST would have left a rate of taxation which collected very little revenue whilst continuing to impose an administration burden. Taken together with the more difficult conditions that bookmakers have experienced in recent years, this consideration has caused the government to decide to abolish the duty on bookmakers' statements, as provided for in part 8 of the bill.

With respect of the various gambling activities conducted by Tattersalls and Tabcorp in Victoria, the government has decided to exactly offset the impact of the GST with an equivalent reduction — 9.09 percentage points — in their tax rates. The arrangements to effect these decisions are provided in part 9 of the bill. In the case of the casino, the government will be providing credits against state taxes for GST paid. This will be provided for in a later bill.

Miscellaneous amendments are effected in part 10 of the bill. The first of the two most important amendments in this part is the cessation of state off-road diesel subsidies from 1 July 2000, as required under the intergovernmental agreement because the commonwealth will be introducing 100 per cent rebates of customs and excise duty. Any continued support by the states would be unnecessary and wasteful. The second important amendment relates to cellar door and mail order sales of wine. The government will continue to offer subsidies equivalent to 15 per cent of the wholesale price to these wine sales. The amendments allow for this continuation under the auspices of the Commissioner of State Revenue who will continue to operate according to guidelines issued by the Treasurer as to eligibility for this support.

I believe that this bill provides for the important measures that must be taken by the government as a consequence of the previous government's signing of the intergovernmental agreement and the inevitability of the GST.

I commend the bill to the house.

Debate adjourned for Hon. R. M. HALLAM (Western) on motion of Hon. Bill Forwood.

Debate adjourned until next day.

DOMESTIC BUILDING CONTRACTS (AMENDMENT) BILL

Second reading

Debate resumed from 15 March; motion of Hon. M. R. THOMSON (Minister for Consumer Affairs).

Hon. BILL FORWOOD (Templestowe) — I have pleasure in making a brief contribution to the Domestic Building Contracts (Amendment) Bill, which the opposition supports. The opposition supports good legislation, especially when it was in the process of preparing that legislation before losing government. The Domestic Building Contracts Act was introduced by the Kennett government specifically to deal with the problem of shonky builders. I am sure most people who have had building work done either have had or know of someone who has had some unfortunate experiences with the building industry.

Hon. W. R. Baxter — Mr Miles used to tell us about that when he was here.

Hon. BILL FORWOOD — I am sure he did. My experience of the building industry is that it comprises sensible people going about their jobs as best they can. However, like many industries there is always an element that tries to rip people off. They often have more detailed knowledge and the capacity to hoodwink people.

The Kennett government put considerable work into developing the principal act to ensure that it regulates contracts for the carrying out of domestic building work, provides for the resolution of domestic building disputes and other matters by the Victorian Civil and Administrative Tribunal (VCAT) and requires builders carrying out domestic building work to be covered by insurance. The former government also amended the House Contracts Guarantee Act.

Contracts were regulated in the hope that they would work properly, but a system was put in place to achieve a sensible resolution of disputes, particularly through the VCAT, if they do not work. If some builders have difficulty and collapse, the act ensures they are covered

by insurance so that house owners, the people for whom the building work is being undertaken, are not the losers.

The principal act is comprehensive and complicated, but it is a good act and works well. It empowers consumers to seek redress when necessary. The act strikes a good balance between the requirements of builders for certainty and the requirements of people employing builders for some certainty of their own, particularly regarding price and quality issues. It enables the resolution of domestic building disputes and provides insurance cover, which I mentioned previously. That is the background of the act.

In its wisdom the federal government introduced the goods and services tax (GST).

Hon. T. C. Theophanous — Which you supported.

Hon. BILL FORWOOD — Yes, which Australia supported. Despite the protestations of honourable members opposite it is part of a long overdue reform of the financial arrangements between the federal and state governments. I know that in his heart of hearts Mr Theophanous understands that some changes need to be made to the financial arrangements between the federal and state governments.

Hon. T. C. Theophanous — Not through the GST.

Hon. BILL FORWOOD — The government is not going to do away with it. Government members are caught in a cleft stick. They know the GST is a growth tax and the benefit flows to the states. It removes the begging bowl mentality that was evident year after year when the premiers went to Canberra. The GST is good for Australia, and the state government knows it. That is why if the federal Labor won government it would not repeal the GST. There may be the odd problem with the tax's implementation but we will see the people's attitudes when the personal income cuts come into operation on 1 July.

The policy position is that the GST should be paid for by the end purchaser. It is a goods and services tax that should be paid at the end of the arrangement. The bill will ensure that costs associated with building contracts entered into before 1 July 2000 under which work will or may be performed after the introduction of GST on that date will be passed on to the end user. One would think that would be easy to do, but I was intrigued to hear at the briefing on the bill how difficult it was. I also discussed it with the Minister for Consumer Affairs. It is understandable that a well-defined, sensible policy objective sometimes needs to go through the odd hoop to achieve its end.

Section 15 of the principal act entitled 'Restrictions concerning cost escalation clauses' states in subsection (1):

> In this section a "cost escalation clause" means a provision in a contract under which the contract price may be increased to reflect increased costs of labour or materials …

The subsection enables cost escalation clauses but with some restrictions. The intention was that additional clauses could be added to building contracts by the Director of Fair Trading if the approved clause is gazetted.

Section 33 entitled 'Contract must contain warning if price likely to vary' deals with price variations. Subsection (1) states:

> This section applies to a major domestic building contract that contains a provision —
>
> (a) that allows for the contract price to change; but
>
> (b) that is not a cost escalation clause as defined in section 15.

Subsection (2) states:

> A builder must not enter into such a major domestic building contract unless there is a warning that the contract price is subject to change and that warning —
>
> (a) is placed next to that price; and
>
> (b) is in a form approved by the Director …

Therefore, according to the act changes could be made only with the approval of the Director of Fair Trading. Parliament must now make changes to building contracts to enable the recovery of GST from the end user for contracts entered into before 1 July in which the building component will be done after 1 July. Firstly, some regulations were gazetted but the side effect of the act of gazettal itself was to change the nature of existing contracts to being cost-plus contracts.

The aim is still to reach the point where the GST applying to those contracts can be passed on afterwards. However, it is becoming more difficult. To overcome the problem, some regulations were made under section 13 to make the contracts so affected allowable under the act. I refer the house to the Domestic Building Contracts and Tribunal (General) (Amendment) Regulations that were made on 30 November 1999.

Hon. T. C. Theophanous — You obviously get better briefings than we do.

Hon. BILL FORWOOD — Thank you, Mr Theophanous. The opposition received a very

comprehensive briefing. As I said, I am grateful to the minister and the department for taking me through it. This matter is complex.

Hon. T. C. Theophanous — Better than we got when you were in government, I can tell you that.

Hon. BILL FORWOOD — When we were in government we would brief anyone who turned up to the briefings!

The purpose of the regulations of 30 November was to make regulations under section 13, which I just mentioned, to prescribe a class of cost-plus contracts as defined under the act as being an allowable class of cost-plus contracts and therefore not illegal and unenforceable under the act. That is very simple when you take it slowly, but it was not easy to come to grips with.

GST recovery clauses were first gazetted on 8 November. The regulations were specific and ran to several pages. I shall not read them all into *Hansard* — they are available if honourable members want to examine them. They contain the warning I mentioned earlier:

> Stamp to be placed next to the contract price pursuant to section 33(2)(a).
>
> Warning to building owner — this contract contains a clause which allows for a change to the contract price under the Domestic Building Contracts Act … This means that the contract price may increase. You should not sign this contract until you have read and understood the notice … which forms part of this warning …

So the protection for the building owner, as he or she ventured into the contracts, was preserved by the gazettal of 8 November, which, as I said, caused the side effect of changing the nature of the contracts.

The bill amends the act to make allowable GST recovery clauses covering, firstly, the period up to 8 November when gazettal took place. Secondly, it covers the period between 8 November and 30 November, when the regulations came into operation — the period known as the black hole — when it was recognised that the very act of the gazettal on 8 November had created a subsequent problem that needed to be resolved on 30 November. The minister has introduced a bill to remedy that situation.

What this very small but simple bill does — and it runs to only three pages — —

Hon. M. R. Thomson — Small but complex.

Hon. BILL FORWOOD — Yes, small but complex. It inserts proposed section 13A, which is worth reading into *Hansard*. Under the heading 'Effect of GST clauses on certain contracts' subsection (1) states:

> Section 13(1) does not apply, and is deemed never to have applied, to a cost plus contract —
>
> (a) that was entered into on or before 8 November …
>
> (b) that provides for the builder to be paid any amount in respect of GST …
>
> (c) that —
>
> (i) does not contain any other provision that makes it a cost plus contract; or
>
> (ii) is a contract referred to in section 13 …

Subsection (2) states:

> Section 13(2) does not apply, and is deemed never to have applied, to a cost plus contract referred to in sub-section (1) …

Proposed section 13A(3) states:

> A cost plus contract —
>
> (a) that was entered into after 8 November 1999 and before 30 November 1999; and
>
> (b) that would have been allowed …
>
> is deemed to be, and to have always been, a cost plus contract of a class allowed by the regulations for the purposes of section 13.

So now we are back where we started, with a policy that says the GST should be paid by the end purchaser of the goods and services. We have gone through the process that allows the Director of Fair Trading to put in place provisions that enable the builder to claw back the amount of GST on building works after 1 July 2000.

I received from the Master Builders Association of Victoria a copy of the *GST Kit for Domestic Builders*, which contains GST clauses for the MBAV HIC4 and HC5 domestic building contracts. It states:

> The Office of Fair Trading and Business Affairs is advising the Victorian building industry that fair trading approved GST will apply to any domestic building contract which crosses into the next financial year.

That is, after 1 July. It goes on in some detail and contains instructions:

> Pursuant to section 15(3) of the Domestic Building Contracts Act 1995.
>
> Increase in contract price due to cost escalation clause.

It is a very useful document.

I commend both the building sector and the Office of Fair Trading and Business Affairs for their work on this complex system. In fact, I commend them for spotting the fact that the making of the regulation of 8 November would lead to an additional problem that would need to be solved later. As I said, the opposition supports the bill and wishes it a speedy passage. I commend the bill to the house.

Hon. T. C. THEOPHANOUS (Jika Jika) — The bill deals with the effects of the introduction of the goods and services tax (GST) on domestic building contracts and in particular those entered into before the introduction of the GST on 1 July 2000. The first point that should be made about the bill is that it would not be necessary if there were no GST and if opposition members of this house had not supported or acquiesced to the federal government in its desire to introduce a GST.

I did not hear any opposition speaker commenting on compliance costs and other costs that have been imposed on builders as a result of the introduction of the GST. Even if builders were able to pass on the costs of the GST to consumers, there are still a whole range of compliance and other costs associated with setting up the structure to deal with the GST in this area.

The introduction of the GST also gives rise to a range of issues for consumers, not the least being possible overcharging, with builders attempting to recover costs while ensuring that they do not charge consumers unnecessarily. My experience in the building industry — —

Hon. Bill Forwood — Tell us about your domestic building.

Hon. T. C. THEOPHANOUS — I will get to that. I make it clear that the legislation introduced by the previous government has many deficiencies. The dispute resolution mechanism is one of the most costly and legalistic processes imaginable. Unlike other low-cost processes that are available to consumers in other areas, such as the Small Claims Tribunal, disputes in the building industry tend to be legalistic and therefore costly.

Since Mr Forwood has invited me to do so, I will comment on my first-hand experience in building the house in which I currently reside. Although it was supposed to be finished within nine months, the final works were done some months ago, about three years after the commencement of the original process.

Hon. Bill Forwood — With the same builder?

Hon. T. C. THEOPHANOUS — It was the same builder. I do not intend to name the builder, because that would not be fair. I am just recounting the experience. Only one option is available to consumers when they are not happy with builders — that is, to go to court. It is, of course, an extremely costly exercise, and in many cases the costs outweigh the amount under dispute. It is not a good system. People who have tried to work their way through it can recount many experiences of their difficulties. They say that ultimately legal mechanisms are used to get an owner-occupier to back off, take a lesser settlement, or just give up and say, 'I'll just forget it. It's cheaper to get another builder to fix up the problem'.

I reject the notion put by Mr Forwood that the building disputes area was fixed up by the previous government. That is not the case; significant problems remain.

The bill deals with a fundamental problem which will arise as a result of the introduction of the GST and which was identified by industry bodies in mid-1999. As has been stated, the problem is that the GST to be paid on a contract entered into before 1 July 2000 but completed after that date could not be estimated; therefore any provision for the payment of the GST by the consumer could result in the contract becoming an unenforceable cost-plus contract and breaching the provisions in the Domestic Building Contracts Act regulating changes to contracts. Consumers faced the risk of disreputable builders misleading them about the GST being paid. Because the calculation of the GST on domestic building contracts is complex, consumers could not be expected to know whether they were being ripped off. It still remains a problem.

To put it in a nutshell, the problem was that any GST-recovery clause, approved or unapproved, would create a cost-plus contract, which is generally prohibited by the act. Therefore the Minister for Consumer Affairs moved to solve the problem with regulations and by introducing the bill.

Other issues arise for consumers. There is no foolproof way by which they can check the correctness of a builder's GST calculation. By way of guidance to consumers, the approved GST-recovery provisions stipulate that the goods and services tax cannot be more than 10 per cent of the value of the work outstanding after 1 July 2000 and that it should be less than that when the builder's input credits are factored in. The clauses are aimed at minimising confusion and dispute. However, I cannot see how disputes will not arise, because the calculation of the GST is not a transparent

process for the builder, and it is certainly not transparent for the consumer trying to find out what he or she is being charged and whether the charge is appropriate. It will not be an easy exercise.

Following the proclamation of the new tax system's price exploitation code, the relevant price exploitation powers have been referred to the Australian Competition and Consumer Commission (ACCC). The Victorian government will therefore refer its powers to enable the ACCC to investigate and prosecute GST price exploitation by unincorporated traders, and consumers will direct their GST complaints to the commission. However, it appears unlikely — and I suggest it is impossible — that the ACCC will be able to involve itself in small individual GST disputes. The commission will probably restrict its role to prosecuting the larger, high-profile disputes. There will therefore be an ongoing role for the Office of Fair Trading and Business Affairs, at least in liaising with the ACCC on appropriate referral and dispute resolution procedures.

I refer again to some of the issues. It is important to put on the record again the fundamental reason for introducing the bill, which is that the federal government, with the support of the former Kennett government, introduced a goods and services tax. The constituents of members opposite ought to know that the former Kennett government of which they were members supported the introduction of the GST. The builders that members opposite represent should also know that they supported the introduction of the GST which will result in an impost on builders, both through compliance costs and because building will be more expensive.

Honourable members opposite have supported the GST and Jeff Kennett's acquiescence in its introduction. Now some of them are trying to distance themselves, if not from the GST at least from Mr Kennett. I am sure Mr Strong's constituents would want to know he supported the GST and Mr Kennett's acquiescence in it, and that that is why the legislation is being debated today. I am sure Mr Katsambanis's constituents — he is not in the house to hear the debate — would also want to know that he supported the GST. Mr Ashman also acquiesced in its introduction, as did Mr Bowden. Some newer members, such as the Honourable Andrea Coote, also supported it. They are among members of this house who during the course of the debate on the GST did not stand up to Mr Kennett's acquiescence in it, and who therefore supported it.

It does not end in this place. Honourable members in the other place also did the same kind of thing. Murray Thompson, the honourable member for Sandringham, was a strong supporter of the GST and of Mr Kennett, as was Ross Smith, the honourable member for Glen Waverley.

Hon. N. B. Lucas — You missed out 80 of us.

Hon. T. C. THEOPHANOUS — I mentioned the honourable members I know were strong supporters of both Mr Kennett and of his acquiescence in the GST. As I have indicated, Mr Katsambanis, Mr Ashman, Mr Brideson, Mr Bowden, Mr Strong and Mrs Andrea Coote in this place, and Murray Thompson and Ross Smith in the other, have all supported the GST and acquiesced not only in Mr Kennett's policies on the GST but in a whole range of policies. The eight members have in common not only their acquiescence with Mr Kennett; they also attended a meeting at the Naval and Military Club, not to discuss the GST and its effect on the building industry but to plot to knock off the Kennett-endorsed leadership of the Liberal Party. All the eight members I have just indicated — —

Hon. Bill Forwood — On a point of order, Mr Deputy President, this is a wide-ranging debate on domestic building contracts. I have participated in the debate on the bill and I am happy for it to take place. However, the bill has no relevance to the internal affairs of the Liberal Party. I ask you to bring the honourable member back to the bill immediately.

Hon. T. C. THEOPHANOUS — On the point of order, Mr Deputy President, it is relevant that members of this house who supported the policies of the previous Kennett government be brought to account, especially since some of them, including those I have named, are now seeking to distance themselves from the policies and leadership of the — —

Hon. C. A. Strong interjected.

Hon. T. C. THEOPHANOUS — You were one of them, Mr Strong. You were at the meeting at the Naval and Military Club, so you would know what it was all about.

In view of what I have said it is appropriate for me to enter into debate about the support the Kennett government gave to the introduction of the GST and to indicate which members I think supported not only the GST but also the leadership that led to its support.

Hon. Bill Forwood — Further on the point of order, Mr Deputy President, that is a spurious argument. The bill deals with specific clauses in the Domestic Building Contracts Act and the capacity for the GST to be passed on and be paid for by end users. It has absolutely nothing to do with the total introduction of the GST,

with the Kennett government or with individual members of the Liberal Party. I ask you to bring the honourable member back to the bill.

Hon. T. C. THEOPHANOUS — Further on the point of order, Mr Deputy President, to take up the point made by Mr Forwood, the bill has everything to do with the GST. The bill and the current debate would not be necessary but for the introduction of the GST. The bill is full of references to the GST, so to argue that we cannot debate the GST and its effect on the building industry is absolute nonsense.

Hon. K. M. Smith — On the point of order, Mr Deputy President, Mr Theophanous got very much off the point of what the bill is about. This is not a wide-ranging debate; it is a specific debate on the GST and its effect on building contracts. Mr Theophanous has gone far away from the subject of the debate. He should be brought to account. He should be brought back to and made to debate the bill. If he has finished he should be made to sit down.

The DEPUTY PRESIDENT — Order! As honourable members have said in speaking on the point of order, the bill is quite narrow. I have read the purpose of the bill carefully and have allowed Mr Theophanous to build his case. He has now built his case and I direct him to come back to the purpose of the bill, which is quite narrow.

Hon. T. C. THEOPHANOUS — Mr Deputy President, the bill is about trying to resolve a significant problem brought about by the introduction of the GST. Confidence within the building industry will either be undermined or not affected, depending on how the bill is dealt with.

I am aware that the legislation seeks to fix up a problem created by the introduction of the GST. It is important for honourable members to understand that a significant number of other problems for consumers could emerge from its introduction. Just imagine how many disputes are possible. If a builder says, 'I am charging you the maximum 10 per cent on top of the price I originally asked for, which is what I am charging for the GST', how in heaven's name could a consumer find out the real cost to the builder as a result of the GST, or in other words, what discounts the builder will receive in relation to inputs on the building? One thing is certain: the full additional cost of a particular building will not be 10 per cent. It is not a simple equation and a matter of saying that because the GST will be 10 per cent, consumers should be charged 10 per cent more. Issues of that kind are coming to the fore precisely because the goods and services tax is already creating mayhem in the building industry.

Just as honourable members opposite supported the introduction of the GST, presumably they will endorse the resulting mayhem that will occur in the building industry. The opposition has not said, 'Some building disputes might arise that we will need to resolve'. I get frustrated when people support an issue and then change their stance, suggesting that their former position had nothing to do with the situation they find themselves in.

Honourable members opposite failed to stand up to be counted back in the days of the Kennett regime — and they were not the only ones. Many prominent people, some of whom have stood up to be counted in the past, were not prepared to do so in opposition to the costs that a GST will impose on builders in their electorates. They include members in another place such as Victor Perton, the honourable member for Doncaster; Robert Doyle, the honourable member for Malvern; Robert Clark, the honourable member for Box Hill; and Inga Peulich, the honourable member for Bentleigh — four members who, you may be interested to know, Mr Deputy President, were invited to the meeting at the Naval and Military Club but who did not — —

The DEPUTY PRESIDENT — Order! Mr Theophanous will come back to the point.

Hon. T. C. THEOPHANOUS — My point is that all those honourable members could have opposed Mr Kennett and supported Labor's opposition to the GST because of its effect on the building industry. Instead, they seek to do so now through the back door via secret meetings.

Hon. Bill Forwood — On a point of order, Mr Deputy President, the honourable member is flouting your previous ruling. It is time he stopped.

The DEPUTY PRESIDENT — Order! I have allowed the Honourable Theo Theophanous considerable latitude in his contribution. He should now stick strictly to comments on the bill. He has wandered off the track a number of times, and he has had one warning. I now issue another warning and ask him to come back to the bill.

Hon. T. C. THEOPHANOUS — Thank you, Mr Deputy President. I am happy to talk on the bill. I did not realise that honourable members opposite were so sensitive about meetings they might have attended.

The bill is designed to do the best the government can for consumers and builders in the face of the impending introduction of the goods and services tax. I congratulate the Minister for Consumer Affairs on her understanding of the issues. I am sure she is aware that a wide range of disputes could conceivably emerge in the building industry as a result of the introduction of the GST, and I urge the minister to maintain an overseeing role.

The last thing Victoria wants is builders charging 10 per cent extra on all building contracts when they are not entitled to do so. If they charge significantly more than that they will have to be brought rigorously to account. They are entitled to pass on the cost of the GST and no more: they are not entitled to simply charge 10 per cent across the board, as some might be tempted to do.

I sympathise to some extent with the builders who will have to deal with the problems caused by the introduction of the GST. Many of them will face difficulties given the sudden increase in the cost of construction that will occur as a result. That will have a major effect on the industry, as people who may have been thinking about having homes built might decide to defer their construction when faced with the additional cost.

We do not know what impact the GST will have on the building industry. However, after talking to builders I can tell the house that they are worried that the GST may result in a significant increase in the cost of construction and therefore a significant reduction in investment in the building industry. Although the bill is about domestic building, the cost of the GST will be felt by all builders, large and small, not only those in the domestic industry. The effect of the GST on the economy in general and the building industry in particular, and the resultant effect on investment in the state, is yet to be calculated.

I congratulate the government on introducing the bill in an attempt to bring some rationality to the issue. I am sure the Minister for Consumer Affairs will do her best to ensure that consumers are not ripped off by unscrupulous builders as a result of the introduction of the goods and services tax.

Hon. N. B. LUCAS (Eumemmerring) — I am pleased to support the bill. It is not my intention to go through the bill in detail, as it was extremely well covered by the Deputy Leader of the Opposition, the Honourable Bill Forwood. As he said, the bill runs to only three pages. Instead, I will refer to a small number of issues relating to domestic building, and in doing so I will comment on the remarks made by the previous speaker.

The bill was introduced in response to the imminent introduction of the goods and services tax. I am proud and happy to say that when the opposition was in government I supported a GST for Australia. I am also proud and happy to say that the federal government went to the last election promising to introduce a new goods and services tax — and it won, Mr Theophanous!

The DEPUTY PRESIDENT — Order! Mr Lucas is now getting off the track.

Hon. N. B. LUCAS — The federal government won the election, having put to the Australian people the question of whether the country's taxation system needed reforming. The people of Australia said 'Yes, it needs to be reformed'. The Democrats then came on board, and now Australia is to have a GST. Mr Theophanous and his colleagues on the other side will just have to get used to it.

Through you, Mr Deputy President, I say to Mr Theophanous that I cannot see the Labor Party backing away from the GST in any way, shape or form, because years ago it really wanted it! Back in the 1980s Mr Keating said it was a good idea. He said Australia needed a value-added tax, or a GST, or whatever it would have been called. Now Australia will have it. As Mr Forwood rightly said, as we move towards the end of June we need to ensure that nobody gets caught by section 13 of the principal act, which relates to builders not entering into cost-plus contracts. The bill gets around that problem.

I refer Mr Theophanous to what John Brumby, the Minister for State and Regional Development in another place, is doing. He is creeping around the Parliament doing the numbers and trying to overthrow the Premier. Have honourable members seen him trying to perform in the other house? Mr Brumby has not gone away yet. He will try to come back and will cause many problems before the end of this parliamentary session. The Premier had better watch out. All the government's union cronies are doing the numbers for Brumby. Half of them want him; half do not. It is a conundrum whether the leadership of the government will change.

The DEPUTY PRESIDENT — Order! Mr Lucas should come back to the bill.

Hon. N. B. LUCAS — The government has leadership problems. I referred to wishy-washy Steve Bracks during the last session when I made a speech about the type of fellow he was. A book by Al

'Chainsaw' Dunlap referred to wishy-washy leaders and how long they lasted. I predict this fellow Bracks will not last. He will go down and Brumby will get his way.

The Domestic Building Contracts (Amendment) Bill deals with the effects of the introduction of the goods and services tax and ensures that people building houses do not have a problem with the contracts into which they enter. I support the bill.

I was intrigued by two extraordinary remarks made by Mr Theophanous during his contribution to the debate. It should be recorded in *Hansard* that the minister turned around and glared at him when he said that from his point of view it was possible that the confidence of the building industry could be undermined by the legislation. That was an extraordinary statement, coming from the government. I wonder why Mr Theophanous would make such a statement.

A significant amount of work has been put into the bill. It was raised during the time of the former government and is the result of much professional work to try to tie up a loophole. Mr Theophanous also indicated there would be a problem in the future in resolving building disputes. I have news for Mr Theophanous. Although he sits in the back row of this chamber and has no influence, he is now in government and is meant to be supporting what the government is doing. He should not be saying that it is possible in the future there will be problems in resolving building disputes. I direct what is happening on the government back bench to the leader's attention. Minister, I agree that you should be glaring at that man. I am happy to glare at him too!

The heartland of domestic building activity is in the centre of my electorate — Berwick, Narre Warren, Narre Warren South, through to Beaconsfield and Pakenham. That is the south-eastern growth corridor and will be home to more than half a million people over the next 10 to 20 years. Over the past 30 years governments of all persuasions have said that the bulk of Melbourne's growth should be accommodated in the south-eastern growth area. I have observed that occurring since 1967. Interestingly, as the area has grown state governments and local councils have been under enormous pressure to provide the facilities and services that young families need as they move into those areas.

I refer the house to projections made by the Department of Infrastructure under the heading 'Domestic buildings'. The figures for predicted growth of domestic buildings are used by cabinet subcommittees in their budget preparations and as support for proposals for new infrastructure items. I am concerned — and I have noted it over the years — that those estimates of growth are less than what happens on the ground. Before I refer to the statistics, I wonder if governments of the day are getting the best information possible? If the provision of funding for new infrastructure is based on lesser figures than actually occur on the ground, the provision of facilities and services infrastructure will be less than it should be.

As an example I refer to figures from the Department of Infrastructure for domestic buildings in the City of Casey. The 1996 census figures show that the population of Casey was 148 957. The department forecast a figure of 163 096 for 1999. That was based on 53 891 households, which had increased from 48 326. With the benefit of hindsight it can be seen that rather than there being 53 891 households in 1999, the actual figure was 55 544. In a growth area, one could probably multiply that by 3.2, because with new families there are usually young children. That is a significant variation. When that is extrapolated into the future, it is feasible that the figures on which budgets might be framed could well be fewer than what is actually happening on the ground.

In the Shire of Cardinia, the number of houses in 1996 was 14 516, and the figure forecast by the department was up to 15 184. The actual figure was 16 554 domestic dwellings. That is of concern. I recently discussed that issue with Cr Max Papley, the former mayor of Cardinia, and Don Welsh, the chief executive officer. The Cardinia Shire Council has expressed concern about that issue. Firstly, it is concerned that the government is basing its budget preparation on figures that are less than what is on the ground. Secondly, it is difficult to factor into projections what will happen when significant growth is just about to occur.

Close to Pakenham a large project is being undertaken by Delfin, a big home developer that does a lot of work — I have seen a bit of it in the Adelaide area. It is an excellent developer producing a quality product and urban landscape. I believe the figure is around 2000 housing allotments. That is another 6000-plus people, probably 6500, and that could happen quickly. Close to the Delfin location are a number of other housing developments that will be pursued in the next couple of years. Those developments put tremendous pressure on townships such as Pakenham. Each day 30 000 vehicles travel on the Princes Highway east through the heart of the Pakenham township, which creates pressure on movements across that road. That is why I have recently raised the issue of the Pakenham bypass.

Domestic building is therefore a significant issue in the growth corridor I am proud to represent. During the next 20 years a significant proportion of Melbourne's outward growth will occur in those areas, and the GST will apply to all related construction that occurs after 1 July next. The bill relates specifically to contracts entered into prior to 1 July that will continue after that date and ensures that the GST is appropriately dealt with when those contracts are pursued.

I support the bill, and note the detailed and excellent description of it given by the Honourable Bill Forwood. Anyone seeking a detailed knowledge of the legislation should read his speech in *Hansard*. I need say nothing more other than to reiterate my support for the bill.

Hon. KAYE DARVENIZA (Melbourne West) — I am pleased to speak on the Domestic Building Contracts (Amendment) Bill. As honourable members said, the bill has bipartisan support, and I acknowledge the work done by the previous government.

Although small, the bill is important and, as has been pointed out, is complex in nature. Because the previous speakers, particularly the Honourables Bill Forwood and Theo Theophanous, gave detailed explanations I will not do so. However, I will comment on the effects the bill will have on the building industry.

The bill deserves the support of the house. Its purpose is to address some of the problems created by the introduction of the goods and services tax (GST) and the impact it will have on the domestic building industry. Its effects will be many and far reaching.

Building a home is probably the largest single financial outlay of any family and it goes very much to the heart of the Australian dream. Melbourne's west, which is the province I have the privilege to represent, is a growth corridor. Over recent years a tremendous amount of building has taken place there and a great deal more is predicted for the future.

A Department of Infrastructure study entitled *Victoria in Future*, which was released several months ago, predicts an enormous growth in the number of houses expected to be built in the period 1999 to 2021 in the municipalities that make up Melbourne's west — Maribyrnong, Hobsons Bay, Brimbank and Wyndham. The number of households in the municipality of Maribyrnong is expected to rise by more than 7000 — an approximate increase of almost 29 per cent. In Hobsons Bay the number is expected to increase by 5500, an increase of more than 17 per cent. In Brimbank it is predicted there will be more than 10 000 houses, an increase of more than 19 per cent and in Wyndham, which is the biggest expected area of growth, 24 500 houses are expected to be built, an increase of a staggering 93.2 per cent. That makes a total of more than 47 000 new houses — an average increase of almost 40 per cent and a considerable amount of building activity.

My constituents have a real interest in what is happening to the Domestic Building Contracts (Amendment) Bill. As has been made obvious by previous speakers, many disputes are likely to erupt because of confusion about costs and contracts. The impact of the GST is and will continue to be considerable, and honourable members need to find ways to ensure that problems are dealt with properly and quickly.

The GST gives disreputable people opportunities to take advantage of those who are most vulnerable. We learn from newspapers, radio and television of examples of disreputable people who target elderly citizens in particular and the more vulnerable members of society. They convince them to have their roofs retiled or resealed and their houses restumped — all sorts of shonky activities that are not done properly and do not follow regulations. They charge the elderly and the vulnerable prices that are way outside the normal rates that would be expected to be paid for those sorts of services.

Without doubt, the GST brings with it a great deal of confusion. People do not know what it will mean and how it will impact on their lives. Many of my constituents who are involved in the planning and building of new houses are worried and anxious.

The tax is a huge impost on builders. They are concerned about how they will manage it, the effects it will have on their businesses and how they will ensure that they comply with the regulations and requirements of consumers. They have every right to feel anxious and confused because the federal government is unable to give reasonable details about what will happen, what it will mean to have a GST and how it will impact on every aspect of daily life, including that very large outlay — the biggest outlay families make — which is building their own homes. The federal government simply cannot get it right. As previous speakers from the government side have pointed out, the opposition supports the GST. It has been on the agenda since Hewson's time.

Hon. Bill Forwood — Since Keating's time: 1985!

Hon. KAYE DARVENIZA — Four years in Canberra — —

Hon. Bill Forwood interjected.

The DEPUTY PRESIDENT — Order! I ask the honourable member to come back to the bill.

Hon. KAYE DARVENIZA — The Howard government has had four years to get the goods and services tax right and explain it to the people of Australia, but Victorians who are building homes now, or those who will be doing so over the next year, do not understand it. The federal government cannot say how much many individual items will cost. It does not know how GST will affect domestic building contracts. Honourable members have indicated the short time span to 1 July, yet the building industry is unable to forecast the effects the GST will have on its business.

Building activity is occurring at a rapid rate in my electorate and will do so for some years. Consumers and members of the building industry are concerned at the tax. Domestic builders are small business people. They do not have large companies or the advantages of sending contracts to lawyers or taxation specialists. They are concerned and worried about the impact of the GST. Many of my constituents, particularly builders, have expressed concern about the introduction of the GST and the effect it will have on the cost of building new homes. They are hardworking small business people doing their best to earn a living — and the GST is a headache. Even now the federal taxation department cannot keep up with the registration of companies, so what hope have small business people in the building industry got!

It is important to remember that the Domestic Building Contracts Act was designed to protect builders and consumers by establishing fixed-cost contracts unless otherwise approved by the Director of Fair Trading. Contracts must clearly set out how much the consumer will pay. The builder cannot vary the contract so that the consumer will pay more than otherwise agreed upon. The builder is not able to insert a clause that has indeterminate costs — for example, a builder cannot say that material that cost so much at the time of the contract may increase in cost and ask the consumer to pay the increased price of that material. Contracts which include a cost-escalation clause are unenforceable unless approved by the Director of Fair Trading. The builder may also be liable to prosecution. Under the existing discretion the Director of Fair Trading has to approve clauses and notices to allow for the recovery of the GST in domestic building contracts. Regulations that came into force on 1 November last year provided for the use of approved clauses and notices ensuring that contracts are not unenforceable as cost-plus contracts.

The measures set out in the bill deal with the effects of the introduction of the GST on domestic building contracts and aim to protect people in a number of ways. Firstly, they protect the consumer by ensuring that builders use the approved GST recovery clauses and warning notices. The notices were discussed previously by Mr Forwood in some detail. They inform consumers of their rights and the possible effects a GST recovery clause may have on the contract price of a building contract. This process is available to consumers and will be made known to them before they enter into contracts. Secondly, the bill protects domestic builders by enabling them to recover GST without jeopardising a contract. Many domestic builders are small business people and are not able to absorb the GST.

In conclusion, the bill is about fixing identified problems caused by the introduction of the GST. It has bipartisan support and I commend it to the house.

Hon. C. A. STRONG (Higinbotham) — I support the Domestic Building Contracts (Amendment) Bill. The purpose of the bill is to amend the Domestic Building Contracts Act to make provision for goods and services tax (GST) clauses inserted in building contracts.

Government members have waxed lyrical about the introduction of the GST. Mr Theophanous tried to make the case that the way to solve the problem with building contracts was not to have a GST. I should rebut some of his comments. The GST is a major reform of the Australian economy. Taxation is a significant impost on national and state economies. If it is not correctly focused and crafted it will have the effect of distorting economic activity to the disadvantage of the national economy.

The GST is a much overdue change and an improvement to the Australian taxation system. It will have an enormously beneficial effect on the Australian economy. Although government members may deny it, there is some bipartisan support, given that the reforms were first initiated by a former Treasurer, Paul Keating, and have been supported by governments of both persuasions since then, even though there has been some cynicism on both sides in stepping back from the implementation of the GST for political purposes.

The GST is extremely important. The Australian economy has output in two particular areas — goods and services. Under the existing taxation system, tax has fallen very much on the goods side of the economy. In the new international scene of global trade, global companies and globalisation, such goods are traded

across national and international boundaries and must therefore be competitively priced. If a small nation like Australia is to advance it must be in a position to export its goods into the competitive market and ensure the goods it produces are available at prices competitive with imports. It makes no sense to put all the tax imposts on the traded goods that are exposed to the full rigours of international competition and, therefore, carry a significant disadvantage in the traded goods sector — which is a major part of the economy — and none on services, which are not traded. Essentially, the services can be carried out only at a local level. They are not taxed under the existing regime, and they do not face the same competitive pressures that goods do. So it makes absolutely no sense to tax the outputs, which have to survive in the competitive marketplace, and to not tax the services, which do not have to survive in the same marketplace.

The change to a goods and services tax will be enormously positive for the Australian economy. I have no doubt about it, and for the past 10 or 15 years governments of Australia have been in no doubt about it. The federal coalition government shows its enormous courage in implementing what other individuals and governments have been playing with for years.

Mr Theophanous mentioned that people on this side of the house — I think he mentioned my name — were trying to distance themselves from the GST and the many reforms of the former Kennett government. I place on record that I am in no way trying to distance myself from the GST — I am a very enthusiastic supporter of it. Nor am I trying to distance myself from any of the many significant reforms the Kennett government introduced which established the Victorian economy as a vibrant and competitive economy for the future.

That having been said, the impact of any change like the GST must be significant. A major change is being made to the taxation system which has basically been in place for generations and which in many ways, because people have grown up with it, has been generally understood. It has evolved in all sorts of ways, but basically the principles have been the same and everyone has understood the system.

Inevitably there will be very significant one-off impacts of the change to a new tax system. It is not possible to make such a change without significant one-off impacts. I remind members opposite who argue about GST that just because such impacts will occur is no reason not to make an improvement. Any major change that is an improvement will — because it is a major change — have such enormous impacts. It could well be argued that we should have stayed with stone axes simply because the change to metal axes would have put people out of work, closed down stone quarries and caused major disruption to the whole prehistoric economy; or perhaps that the change should not have been made from horses and carts to motor vehicles because that obviously caused major disruption to the world economy. But they are certainly not reasons not to make a change.

If the change is good, there is no logical reason to stand in the way of an improvement just because there is one-off disruption as a result. The fatuous argument coming from the most fatuous person in this house, Mr Theophanous, that just because there is a one-off problem with this change it should not go ahead, could be extrapolated to anything. Perhaps he would like everything to remain the same, frozen in time, back to the type of socialist era that he would probably have liked to live in.

The bill is about allowing the one-off changes to be factored into the way domestic building contracts are managed. The Domestic Building Contracts Act was introduced to try to afford a degree of security and safety for domestic buildings. There is no doubt that domestic building is a major area of Australia's economy. It is certainly a major driver of the economy, a major employer and a very important part of the economy that must work properly. If it does not work properly and people are afraid to enter into domestic building contracts because they are uncertain and feel they are going to be ripped off by unscrupulous builders and left with projects that have not been completed properly or are not up to scratch in various ways, that very important part of the economy will be impaired and inhibited.

It is very important, to the extent that it is possible, for governments to ensure that people have the confidence to enter into domestic building contracts. That is a particular problem because in truth, as distinct from many other contracts, the parties to these sorts of contracts are not equal. Most builders are building for many clients, so depending on the builders' size, they may have 10, 20 or 30 contracts going; some larger builders may have hundreds of contracts in place. Obviously they have significant experience and knowledge in the contracting business. But the client, the domestic owner, would build perhaps one or two houses in his or her lifetime. Therefore, it is not necessarily a contract between equals, because the builders are generally very experienced and knowledgeable whereas the clients are not.

It is important that the maximum protection possible be given to the owners of the properties who initiate the contracts. In a sense that is what the 1995 act did: it tried to maximise the security for the clients who wanted a domestic property built. In many ways it did that by tightening up on contract conditions to ensure that the housing guarantee arrangements which were in place before the act came into operation and which worked to various degrees of success were improved by an insurance regime to try to make everything much more accountable and predictable.

As part of the process of improving matters, one must consider how a contract works. It is all about trying to provide certainty to both parties. A contract provides certainty for the builder, because it specifies what is to be built and how much the client will pay for it. It provides certainty for the client, because it specifies what it is to be built and what will be paid. In trying to give the maximum protection to the home owner in a situation of relatively unbalanced equity, the provisions regulating domestic contracts seek to limit flexibility as much as possible to maximise certainty.

Following the introduction of the GST, a one-off change that was not envisaged in the drafting of the 1995 bill, two things could have happened. Firstly, the certainty could have remained and the builder would have had to pick up the cost of the GST, but that would have been inequitable. The extra cost of the GST was something builders would not have known about, so it would have resulted in uncertainty and would have created an unfair circumstance. Honourable members will know that the principle underlying the federal GST legislation is that because it is a one-off change it must be dealt with equitably and the cost must be picked up by the appropriate parties.

To provide certainty it is necessary to change all the domestic building contracts to allow the one-off unenvisaged cost of the GST to be passed on to clients. That must be done so that the client does not feel he or she is being ripped off or that the change is being manipulated in such a way as to allow an unscrupulous builder to charge more than should be charged. At the same time the builder must be provided with the certainty that he or she does not have to absorb the one-off cost but can pass the real impact of the GST on to the client.

Other speakers have explained the provisions in excruciating detail, so it is not necessary to go through them again. Existing contracts do not allow for one-off costs to be passed on. The bill will allow contracts to be modified to allow the GST to be passed on in a way that is fair to both contracting parties. I am pleased to enthusiastically support this timely and appropriate measure because it is fair and equitable and conforms with the major principle underlying any contract, which is to ensure certainty. It does so uniquely in an environment that will change dramatically as a result of the introduction of the GST, which will provide great benefit to the Australian economy.

Hon. D. McL. DAVIS (East Yarra) — I support the Domestic Building Contracts (Amendment) Bill with great pleasure. Already a number of contributors have fleshed out and discussed many of the key parts of the bill.

The bill establishes the principle that the goods and services tax (GST) should be paid by the end purchaser. It addresses an anomaly that will result from the introduction of the GST on 1 July 2000. The GST component of any domestic building work done after the GST is introduced will be taxed as is set out in the federal legislation. The anomaly relates to work undertaken on contracts entered into before 1 July 2000. Because those contracts may not have addressed the situation adequately, they will become cost-plus contracts under the act. A side effect of that will be that the builder will have to wear the additional cost or that, in fairness, the consumer will bear only a reasonable share of the costs legitimately incurred after 1 July on contracts entered into before that date.

The Honourable Chris Strong made a number of important points about the GST legislation. A goods and services tax has in general had bipartisan support over a lengthy period, going back to the committees of inquiry in the 1970s and the introduction in the 1980s by the then Prime Minister Paul Keating of option C, designed to extend the taxation regime to include services and other aspects of the economy. There is widespread recognition, both internationally and nationally, that a taxation regime must tax most aspects of an economy even-handedly rather than picking or favouring only certain aspects of it. As the Honourable Chris Strong pointed out, the current system puts most of the taxation burden on products that are traded internationally. One cannot expect the Australian economy to be efficient internationally if that continues.

I will pick up a number of the comments made by the Honourable Theo Theophanous, who talked in particular about the problems involved in resolving building disputes. Some of his comments were off the beam. It is interesting that he chose to comment on building disputes when so much of the domestic building industry in Victoria is in a state of crisis as unions run rampant with a series of claims. Any impact

the GST will have on the economy will be overwhelmed by the unfortunate effects of that industrial action. It is also important to place on the record that the damage done by a 36-hour week would have a far greater impact on the building industry, and in particular the domestic building industry, than the introduction of the GST and the other taxation changes — even though, as the Honourable Chris Strong pointed out, the transitional arrangements will have some effect.

It is surprising Mr Theophanous should choose to raise industrial disputes in this debate given the poor record of the Labor Party in that area. It is crucial to realise that the failure to handle the industrial relations situation is very much the making of the Premier and the Minister for Industrial Relations. There is little doubt in my mind, in the minds of most in the building industry and in the minds of most Victorians that the industrial situation is doing a great deal of damage to Victoria.

When reflecting on the disputes and the industrial situation referred to by Mr Theophanous earlier it is interesting to also reflect on a series of articles on the current state of unionism that appeared in the *Australian Financial Review* over the past few days. The articles still have a way to go in providing some understanding of where unionism is at the moment and the impact the campaigns that are currently under way in Victoria might have on the state's economy and its relative competitive position when compared to other states and internationally. Those sorts of things should not be misunderstood. While the bill today is essentially — —

Hon. M. R. Thomson — Back onto the GST component of the bill.

Hon. D. McL. DAVIS — I am picking up a point raised by Mr Theophanous earlier today in his introduction of this aspect of industrial disputation.

Hon. C. A. Furletti — He is a master of diversion.

Hon. D. McL. DAVIS — Indeed, he is a master of diversion, and of heading off in a bizarre direction. Because that matter has already been canvassed in the debate today it needs to be looked at and dealt with carefully. There is no doubt that Victoria's relative position is beginning to suffer.

Hon. M. R. Thomson — On a point of order, Madam Acting President, can the honourable member get back onto the topic — that is, the bill in relation to the building contracts component of the GST? The government has allowed some leeway for the honourable member to stray around the world, but please bring him back to the point.

Hon. D. McL. DAVIS — On the point of order, Madam Acting President, I am responding directly to comments about disputation made earlier in the debate by Mr Theophanous.

The ACTING PRESIDENT (Hon. Kaye Darveniza) — Order! On the point of order, I ask the Honourable David Davis to bring his remarks back to the bill before the house.

Hon. D. McL. DAVIS — Thank you, Madam Acting President. This important bill deals with transitional arrangements involving the GST. There is little doubt that the new tax system will benefit Australia greatly and will provide an enormous benefit for Australian consumers over the longer haul, because they will have more money in their pockets. The building industry in particular, including the domestic building industry, will be advantaged by the fact that people will have greater disposable incomes. As many honourable members would be aware, other transitional arrangements interlock with this bill to ensure that first home buyers are well catered for and looked after.

It is not my intention to make a long contribution. I simply want to place on record my support for the bill and make it clear that it handles fairly transitional arrangements concerning contracts within the context of the wider changes being undertaken. I think most Victorians would be prepared to welcome the changes, which I think will see the building industry move forward smoothly. However, I place on record that other aspects of the building industry and industrial situations in Victoria will not advantage the state and cause me great concern.

Hon. K. M. SMITH (South Eastern) — The Domestic Building Contracts (Amendment) Bill may be only small in size but it is important because it will regulate those areas of the industry that will be caught betwixt the pre-goods and services tax (GST) and post-goods and services tax environments. The building industry is renowned for its wheeler-dealers — that is, people who unfortunately take advantage of situations. I see Ms Hadden over there; you have obviously appeared for a lot of people in building disputes cases.

Hon. D. G. Hadden — No.

Hon. K. M. SMITH — You should have because sometimes builders take advantage of opportunities offered to them by loopholes created by governments. Unfortunately, unless the loopholes are closed great opportunities are opened up for unscrupulous builders

to take advantage of their clients and subcontractors. Governments must always be aware of that possibility.

As a number of honourable members have said, a state of flux may occur with the GST. A house may be started before 30 June 2000 but not be completed until after that date. Such a situation will provide an opportunity for people to be hoodwinked and taken advantage of in calculations on whether GST should be charged on some items installed and labour incurred on or after 1 July 2000. Having been in the industry for almost 30 years, during which time I have worked for a lot of builders and been stitched up by a few, I know that such opportunities exist.

To give an example, materials delivered to building sites often sit there for days or possibly even weeks. Materials for roofing systems are delivered up to four weeks beforehand and lie on the site. If such materials were not installed until after 1 July would GST be charged on the installed product or only on the installation? Often builders or plumbers bring insulation materials onto job sites. If an installation was being done on 1 July the tradesman could bring the materials with him on that day or have them delivered on site beforehand. Difficulties will arise between clients and builders in determining whether GST will be payable in those situations.

A sewer drain may be dug out by a plumber — plumbing is the industry I was involved in — on 28, 29 and 30 June, but the test may not be done on it until on or after 1 July. It would not have been approved until then so a charge should not be made on it. Will such a charge carry a GST? From my reading of the bill and the second-reading speech I am not sure that such calculations will be able to be done properly. As I said at the outset, I am concerned that opportunities will exist for unscrupulous people to do such calculations unfairly.

A builder may buy new domestic products such as electric stoves, hot water services, heating appliances, airconditioning units, roof tiles and so on before the end of the financial year and have them sitting in a storeroom somewhere waiting to be brought on site. Those products may be installed in the new financial year, when the goods and services tax applies. Who is to say whether the GST will be payable on those items? Will the client have to pay? What right will he or she have to know the real cost of those materials? Often they will be calculated as prime cost items. For example, if a client is quoted $500 for a new sink or toilet suite and suddenly another $50 is added to the price, how will he or she know whether the builder, carpenter or plumber has paid GST on the item? The builder or plumber will not have to produce the invoice for the item if it has been quoted as a prime cost item.

Loopholes will emerge during the changeover period. It would be difficult, but perhaps an audit should be done on all buildings under construction on 30 June, including houses and the appliances installed in them. When people are asked to make progress payments on the various stages of construction of their homes, should GST be added if the payments are made on or before 30 June or on or after 1 July? If a builder buys an appliance on 28 or 29 June but does not pay for it until July, August or September, depending on whether the supplier's credit terms are 30, 60 or 90 days, should a goods and services tax be paid on the appliance? Will suppliers of building and plumbing materials — for example, stores such as Mitre 10 — get caught up in the GST?

I am very much in favour of the GST, and I do not have a problem with the fact that it will be transparent. However, I would like to know that the proposed legislation will take account of the practices of unscrupulous builders. Not all builders are unscrupulous, although my attitude to builders is possibly biased. I dealt with some real dogs in the building industry, a number of whom took me to the cleaners, which I did not appreciate. The bill presents me with a great opportunity to stand up in Parliament and bag some of the unscrupulous ones.

Hon. C. A. Furletti — Name them.

Hon. K. M. SMITH — Lindsay Sinclair is one builder. I could go through all the unscrupulous builders I have had dealings with, but I will not. We have all known a couple.

The DEPUTY PRESIDENT — Order! The honourable member will come back to the bill.

Hon. K. M. SMITH — It is all to do with the bill — one always has to be mindful of that, Mr Deputy President.

Despite having raised a number of concerns, I am aware of the importance of having bills of this type to protect consumers. I am pleased to see that the Master Builders Association — that wonderful organisation currently taking a stand against the building unions — is prepared to support its members by sending them a number of interesting notices to attach to their contracts notifying their clients that if construction runs past 30 June they will be paying GST on the work yet to be done.

The goods and services tax will be offset to some extent given the number of building industry products that are subject to wholesale sales tax in excess of 10 per cent. Massive savings will be made on some white goods — for example, dishwashers, on which consumers are currently paying around 33 per cent sales tax, and television sets, on which they are paying 22 per cent, because there has already been a 10 per cent reduction.

Hon. M. M. Gould — How often do you buy a dishwasher?

Hon. K. M. SMITH — How often do you buy a television set? However, to consumers a saving is a saving. People may not normally buy jewellery when they are building new homes, but someone may purchase a necklace to celebrate moving in — and pay 30 per cent sales tax on it!

The DEPUTY PRESIDENT — Order! I am sure Mr Smith is enjoying himself. However, I ask him to come back to the bill.

Hon. K. M. SMITH — I am just priming myself for more GST debates.

Clause 2 defines the day on which the bill will come into operation. I will move on to proposed section 13A, which refers to the effect the GST clauses will have on certain contracts. I am sorry the Leader of the Government was not in the house before. If she had been she would have heard some words of wisdom about the opportunities that exist for unscrupulous builders to misuse the proposed legislation.

Hon. M. M. Gould — I was listening.

Hon. K. M. SMITH — You were? I am pleased about that.

Hon. M. M. Gould — Unfortunately, unscrupulous builders do exist.

Hon. K. M. SMITH — As Mr Forwood said, much of the legislation to which the bill relates was introduced by the former Kennett government. As has occurred on a number of occasions, the government has tried to claim as its own good legislation which was put together by the Kennett government and which the opposition continues to support. I was interested to read in today's newspapers the Bracks government's claims about the number of police it has put on the streets, when it was the work done by — —

The DEPUTY PRESIDENT — Order! Mr Smith will come back to the bill.

Hon. K. M. SMITH — As I said previously, this may only be a three-page bill, but it is important to close the loopholes to provide the protection needed not only by consumers but also by builders, because there are a few unscrupulous consumers out there as well.

I support this important bill — that has nearly made the Leader of the Government choke, but it nearly makes me choke to support bills introduced by the Labor Party — because it will protect builders by enabling them to recover the goods and services tax they will have to pay without jeopardising their contracts. Many builders, who also are small business people, will not be able to absorb any of the GST, whereas some of the larger builders may be able to do so, particularly on some of their small jobs. I commend the bill to the house and give it my support.

Hon. G. B. ASHMAN (Koonung) — I shall speak on the Domestic Building Contracts (Amendment) Bill at the end of what has been a long and wide-ranging debate. I appreciate the opportunity to make this contribution, and note that if the notice paper listed a few more bills the house might not have such a long debate on this bill. Nevertheless, it is gratifying to have an opportunity to contribute to and be part of a debate where many issues that have an impact on builders and consumers have been canvassed.

The bill was substantially drafted by the previous Attorney-General, Jan Wade, and has been adopted by the current Attorney-General. It addresses a number of significant issues that arise as a result of the introduction of the goods and services tax (GST). As has already been outlined, there was the potential for confusion to arise with contracts that were pre-November 1999 and post-November 1999, and for an intervening period in November. The bill sets out clearly how the GST will be applied to building contracts that came into existence in November 1999.

The Domestic Building Contracts Act does not allow cost-plus contracts. The GST is an additional cost to the contract. That situation needs to be dealt with and is clarified by the bill.

The original legislation was enacted in 1995. It followed from the Housing Guarantee Fund Act which had been in operation for a number of years. The new act was introduced to provide fairness to all, both consumers and builders. It addressed a number of significant problems that had developed under the former Housing Guarantee Fund scheme where the cost of disputation was becoming significant. In many instances it was being used skilfully by consumers and

builders to avoid their obligations under their building contracts.

The new scheme that replaced the Housing Guarantee Fund provided for a low-cost resolution of disputation. It was funded by an insurance-type scheme. The contracts introduced were of a standard type and much more consumer and builder friendly. However, there are still some problems with the act. There are still exceptions where building disputes fall through the net and cannot be dealt with under the legislation.

I am disappointed that the minister, in amending the Domestic Building Contracts Act, did not take the opportunity to attempt to close some of the loopholes that remain. I refer to one that relates to constituents of mine, Mark Westaway and his wife, who have commissioned an extension to their home. The original contract price was $65 000, so it was a substantial renovation. In September 1996 they engaged a company known as Sunpower Design, which drew up the plan and recommended a building contractor, Anthony Bird Constructions. Construction commenced in January 1997. Part way through the construction the builder approached the Westaways with a revised construction figure of $71 000, an increase of $6000. That was agreed to and is not in dispute.

Without going into the details, the project went sour some time later and the parties ended in disputation. They sought mediation through the Office of Fair Trading and Business Affairs, which is an appropriate course of action. The builder claimed he was working as a subcontractor to Sunpower and, therefore, was not responsible; he was a subcontractor and Sunpower Design was the builder. That was disputed and the case went before the Building Control Commission, which was not able to consider the matter because it believed it was probably outside the jurisdiction of the act. The matter then went to the Ringwood Magistrates Court where the builder pleaded guilty to five charges brought under the Building Control Act. Subsequently, the matter went to the County Court where the builder pleaded not guilty and that plea was upheld by the County Court.

The matter is complex, but the fact that it ended up at the County Court suggests to me there is a problem with the act. The act is supposed to offer quick and just resolution of such disputes.

The family have been living in half a house for the past three and a half years and face the prospect of living in a house that has been partly renovated for a number of years. In its current condition the house is uninsurable and the family are there only because of the generosity of the municipality which has not condemned the building. The amendment should have addressed bringing some fringe contracts back under the Domestic Building Contracts Act.

The bill makes it clear that the GST should be paid by the end purchaser. That should not be interpreted by any builders as an opportunity to increase costs beyond the GST. There are provisions to ensure a fair application of the GST for the consumer and the builder. In the event there are disputes, clearly the first port of call for the consumer needs to be the Office of Fair Trading and Business Affairs, and from there to the Australian Competition and Consumer Commission. I am sure Professor Alan Fels would show the appropriate level of interest in any problems.

For contracts entered into before 1 July the bill ensures that the component of domestic building work done after the GST commences is passed on from the contractors to the purchasers. Most major builders will put mechanisms in place that will allow consumers to clearly identify the GST components in their contracts. The existing Domestic Building Contracts Act contains a clause on price escalations, which allows a price variation to the existing contract but only after the Director of Fair Trading has gazetted an approved clause. It was thought that had occurred on 8 November but because of some anomalies in subsequent clauses within the act it is not entirely clear whether that clause will cover all situations. Hence the Domestic Building Contracts (Amendment) Bill is before the house today.

Many people have criticised the GST in this wide-ranging debate. However, at the end of the day the states will be major beneficiaries of the GST. It provides them with a guaranteed source of revenue and a growth tax in a form not provided in the past. During the past couple of months I have noted with some interest the leader of the federal opposition, Kim Beazley, quietly moving to a position of acceptance of the GST. He has gone from opposing it to saying, ‘Well, we might just change a few things at the edges now’. He recognises the tax to be far more equitable than the whole range of taxes it replaces.

Australia’s tax system evolved during the past 70 to 80 years. Any practitioner in the tax field will acknowledge that it is a mishmash of anything and everything. It is not well understood. It includes federal taxes, a range of excise taxes, income taxes and wholesale sales taxes. The taxes at state levels are wide ranging, costly to administer and frequently confusing to those in business and to consumers. The GST is a much fairer tax and one that will capture the black economy.

The bill occurs as a direct result of the GST. It is fair and responsible. It provides an opportunity for builders to recover the GST component and makes owners' obligations clear. The Domestic Building Contracts Act allows disputes to go to the Building Control Commissioner or through to the office of consumer affairs. It makes it clear that the builder cannot add a flat 10 per cent and say it is the GST component; it will have to be justified. If the builder does not get it right, significant mechanisms are in place to allow the consumer to gain redress.

The bill is small and complex. It deals sensibly and expeditiously with the issues so that all builders and consumers can proceed with confidence in the certainty there will be no opportunity for disputation during the introduction of the tax.

Hon. R. H. BOWDEN (South Eastern) — As some honourable members have said, the Domestic Building Contracts (Amendment) Bill is not large but it is important and complex. Despite its complexity it is desirable because it brings to many tens of thousands of people right now and in the future an element of necessary certainty at a time when they are building their houses.

The introduction of the GST is an important milestone in the economic development of the nation and the economic performance of the state in particular. As honourable members will agree, the building industry is an extremely valuable, widespread and important component of the states' economies and the nation's economic activity.

The bill places much weight upon the giving of a dimension of certainty to domestic building contracts. Most honourable members would have built or been involved in building houses. Apart from the difficulties associated with design and interaction with builders and tradespeople it is a time of great stress because building one's house is a very important matter. The bill does not deal with just the physical design, the architectural appearance or other aspects of the construction but with an aspect that affects everything — that is, the financing of that most important acquisition. With that in mind, I suggest that the clauses that clear up the ambiguities surrounding that important event in the state's economic development are extremely important.

Clause 3 on page 2 of the explanatory memorandum that accompanies the bill goes into significant detail on that. It is worth quoting a small portion because it will help those following the debate to understand some of the bill's core benefits. The last paragraph states:

> … provides for 'cost plus contracts' entered into after 8 November 1999 and before 30 November 1999 with approved GST-recovery clauses and notices to be deemed to be included in the allowable class of 'cost plus contracts' under the regulations made pursuant to section 13 of that act.

That is a valuable part of the literature that accompanies the bill because it makes plain its intention. Inevitably domestic building contracts will be entered into in which there will be a time lag between the signing of the contract and the completion of the building to the satisfaction of all parties. Delays occur for valid reasons but the completion of the construction of the building may not take place until on or after 1 July, when the goods and services tax (GST) will apply. The bill provides a service to people involved in the domestic building industry by setting out rules relating to the GST. After 1 July the GST will be recoverable by builders. The introduction of the GST has engendered passion and political comment, but over the past 15 years both sides of politics have agreed with its introduction. This machinery bill will ensure fair treatment for builders and consumers — home purchasers who will be involved in one of the major decisions of their lives, the construction of their house — in the transition period from 1 July.

It is worth noting that the GST is set at 10 per cent and will involve both cost increases and significant savings, especially following the abolition of sales tax and other charges. It is not just an impost. Savings will be made as a result of the GST package.

In supporting the bill my main concern is that its provisions will benefit the community, especially those who are involved in domestic building contracts and may be suffering significant financial stress. It is difficult to build a home at any time, but if the rules are changed midway through the process there is an added level of stress. The bill addresses those problems and provides certainty for consumers and builders. It would be helpful if building and consumer organisations were made more aware of the intent of the bill, because a number of people may need prompt assistance and advice. The bill clearly sets out the intention of Parliament, and I hope professional and industry organisations that have a direct interest in the industry will provide prompt, accurate and easy-to-understand advice to people involved in the construction of their own homes.

The bill amends the Domestic Building Contracts Act and from both legal and operational points of view will clear up unreasonable arguments or help avoid the imposition of costs on building owners. Having been involved in building a number of houses over a period it has been my experience that the overwhelming

number of builders and tradespeople are honest and caring and are interested in maintaining their reputations as credible and honest suppliers of building services. Unfortunately, as in most other industries, there is a small number who do not serve their colleagues well. It is therefore necessary for the bill to address the issue of disputes involving the small minority of people who will try to profit from the confusion over the introduction of the GST.

The building industry is a good indicator of the state of the economy. It is said it is the first to either recover from a recession or show signs of a downturn in the economy. When the building industry is growing the economy is strong, and a strong economy maintains standards of living.

One of the best features of the bill is that it enables the continuation of the orderly progression of contracts so that consumers contemplating entering into a domestic building arrangement with a builder will know they can do so with some confidence. From time to time families make key decisions involving the acquisition of a home, a vehicle or a major appliance and often the major ingredient behind those decisions is confidence. If we wish to assist young people, families and the community in general through constructive legislation we must ensure there is continuing confidence in the economy. The bill will ensure continuing confidence by providing a proper, fair and legal process for the recovery of the GST.

As we all know, confidence is a fragile flower that we must protect. I would imagine that many first home buyers would be covered under this bill, and many of them would be young families that are enthusiastic about building their lives and building and acquiring their first home. We in the legislature have the responsibility to protect and encourage their enthusiasm. Although it is not in the bill as such, a very constructive element of the proposed legislation is that it helps young families and provides them with assurance. I imagine there could be nothing worse than, having acquired a significant mortgage at a tender time in one's life, to have all the added uncertainty about what the goods and services tax (GST) means.

The bill provides certainty and fair rules, and I am particularly pleased to see those characteristics in the legislation. The domestic building industry is extremely competitive, but it is also characterised by people who provide varying degrees of quality in goods and services. The bill not only provides a way for the GST to be recovered but also protects the interests of consumers through the earlier sections of the Domestic Building Contracts Act. No aspect of this bill, with its GST relevance, takes away any of the pre-existing rights and protection of the consumer. That is very important.

The primary interest of the bill is to provide the details, on an easily and readily understood basis, by which the GST can be applied to domestic contracts, particularly when 1 July arrives. I am only too pleased to have made this contribution to the debate. I believe the bill will provide many people with a degree of confidence and an assurance that the legislature has taken their interests into account. That brings great credit to Parliament as an institution. I am pleased to support the bill.

Motion agreed to.

Read second time.

Third reading

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

That this bill be now read a third time.

I thank the contributors to the debate today, the Honourables Bill Forwood, Theo Theophanous, Neil Lucas, Kaye Darveniza, Chris Strong, David Davis, Ken Smith, Gerald Ashman and Ron Bowden.

I am pleased to note a couple of matters arising from the debate. The drafting of the proposed legislation commenced on 4 November 1999 and the regulations were placed in the knowledge that there would be a delay before the legislation could be introduced. It was always known that legislation would be required for the goods and services tax component. Honourable members should be under no misapprehension that it was a case of making regulations and then finding the need to legislate. The government was aware from the beginning that it would have to legislate.

The consumer issue was raised by a number of speakers. It was my grave concern all along — not just in relation to the transitional period, which will cause problems such as those the Honourable Ken Smith relayed, but also after the implementation period — to deal with the question of whether a consumer has the capacity to evaluate what is and what is not fair. That will be covered by the price exploitation measures, which means the Australian Competition and Consumer Commission should be covering those aspects. We certainly expect the Office of Fair Trading and Business Affairs will have an increased number of complaints and inquiries. It will deal with those and

assess whether further action needs to be taken in the Victorian jurisdiction and, complementarily, nationally. A watch will be kept on that. Once again I thank those who contributed to the debate.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

AUDITOR-GENERAL'S OFFICE

Financial audit

Message received from Assembly seeking concurrence with resolution.

Assembly's resolution:

That, pursuant to section 17 of the Audit Act 1994:

1. Mr Douglas N. Bartley of KPMG be appointed to conduct the financial audit of the Auditor-General's office for the 1999–2000 financial year in accordance with the conditions of appointment and remuneration contained in the report of the Public Accounts and Estimates Committee on the appointment of an independent auditor to conduct a financial audit of the Victorian Auditor-General's Office (Parliamentary Paper No. 14, Session 1999–2000); and

2. The level of remuneration for this financial audit be $15 000.

Resolution agreed to on motion of Hon. M. M. GOULD (Minister for Industrial Relations).

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.

COURTS AND TRIBUNALS LEGISLATION (AMENDMENT) BILL

Second reading

Debate resumed from 15 March; motion of Hon. M. R. THOMSON (Minister for Small Business).

Hon. C. A. FURLETTI (Templestowe) — The opposition does not oppose the bill, which is a relatively short measure. At the outset I place on record that it is another bill introduced in this house — one of many as it turns out — which was effectively drafted and prepared by the previous government and which, after a little tinkering at the edges in most cases — and in this case some substantial tinkering — the government has introduced as its own legislation.

The bill contains four substantive parts, which I shall address as they appear. Part 2 deals with employment-related expenses of judges, masters and magistrates. Part 3 relates to the remuneration of acting magistrates, and part 5 relates to the internal promotion of Victorian Civil and Administrative Tribunal (VCAT) members. Apart from a minor addition to proposed section 16A, they are substantially provisions that were drafted by the previous government. Part 4 is an addition by this government, and I shall address that subsequently.

The opposition has no complaint with and strongly supports parts 2 and 3 and the general effect of part 5 because they underscore the independence of the judiciary from government. It is a long-held constitutional convention — going back to 1701, I am told, following the passage of the English Act of Settlement — that the salaries and pensions of Victorian judges and magistrates are paid from the consolidated fund, as they should be.

If terms such as 'fringe benefits', 'Workcover insurance', 'payroll tax' and 'superannuation' had been used 300 years ago, our forebears would not have understood what was being said. Over that time, the employment-related expenses of judges, masters and magistrates have been paid by the former Attorney-General's Department, now the Department of Justice, and therefore have been subject to politicisation. The bill provides for those expenses of Supreme Court and County Court judges and masters and magistrates to be paid from consolidated revenue.

The bill also provides for the superannuation benefits of magistrates to be paid from that fund. That is necessary because the superannuation circumstances of magistrates are different from those of judges and masters. The former are part of the public sector

superannuation fund, while judges and masters receive non-contributory pensions. That generally explains the bill's provisions.

The colonisation of Australia by the English brought with it two significant foundations of the country's development. The British brought with them two significant institutions when they colonised the world: the Westminster system of government, and the English judicial system, which incorporates that significant and essential element of the separation of powers. The judiciary jealously guards the doctrine of the separation of powers. That significant element provides institutional independence by keeping apart the operations of the judiciary, the legislature and the executive. If there is a nexus between the remuneration of judges and the law-makers or the department, as was the case with the employment-related expenses, it could lead to a blurring of the division between the two arms of government to which I referred. In providing for the detachment of the judicial arm from the executive, the bill ensures that the core principle of judicial independence is not only maintained but also more clearly defined.

The bill is also important for tribunals. Victoria has the established hierarchy of courts, but in July 1998 the previous government established the Victorian Civil and Administrative Tribunal. Lawyers have different views on the role of tribunals in the judicial system. Senior judges have been heard to say that they preside over the courts and are therefore the administrators of justice and that tribunals are something less than that. However, we need to recognise that the judicial system would become clogged and would not function without the effective work done by the VCAT and before its establishment by the series of tribunals that had developed and from which the community has profited enormously.

Although the tribunal may not strictly fall within the hierarchy of courts and is not perceived to be part of the judicial system, it is certainly part of the dispute resolution system and performs a wide range of functions. The schedule to the Victorian Civil and Administrative Tribunal Act lists 20 or more areas in which the tribunal has jurisdiction to hear disputes. From memory, seven tribunals that had developed almost ad hoc over many years were incorporated into the VCAT. The range of matters heard before the VCAT is extensive.

I remind the house that guardianship and administration hearings, residential tenancy disputes, retail tenancies disputes, liquor control matters, evaluation of Land Act matters, income tax tribunal matters and small claims have all been gathered under the VCAT umbrella. The previous government deserves congratulations for its efforts in establishing a new system for determining what are in most cases minor disputes and in the process taking them out of the court system. As we all know, in almost all those cases there were lengthy delays; and court hearings were far costlier exercises than they are under the VCAT, in part because of the other issues that were involved, including the loser-pays principle that applied to decisions of the court.

Before returning to the provisions governing the appointment of VCAT members, I will address the aspect of the bill that relates to the remuneration of acting magistrates.

Currently the Judicial Remuneration Tribunal has jurisdiction to inquire into and to report to the Attorney-General on the question of whether any adjustments should be made to the salary or allowances of judges, masters and magistrates. For some reason acting magistrates are not included and their remuneration is fixed by the Governor in Council. That is an anomaly that requires examination.

I have tried to determine when the position of acting magistrate was created. In my early days in practice there was no such position. I expect that acting magistrates have been appointed only during the past 5 or 10 years or so, although I may stand to be corrected, because time does fly. However, I recall that when the position was created and the first acting magistrates were appointed some members of the profession were incensed because they believed there could be a strong perception that acting magistrates sitting on the bench one day and being back in practice or doing something else the next was not really appropriate. Nevertheless they, too, serve their purpose, and I suspect they assist the courts in ensuring that justice is delivered as expeditiously as possible. One of the most common complaints of the judicial system is the delay people experience in the court system, so the more personnel on hand to assist in the rapid flow of the delivery of justice the better off the community is.

The bill provides for the remuneration of acting magistrates to fall into the mainstream method of fixing remuneration for all other judicial officers. That is a desirable outcome, and the opposition supports that amendment. However, the opposition does not support the proposed amendments to the Victorian Civil and Administrative Tribunal, particularly those provided for in clause 10, which will insert into the Victorian Civil and Administrative Tribunal Act proposed section 16A, which relates to the internal promotion of VCAT members. The provisions of proposed section 16A(1)

and (2)(a) are identical to the provisions the previous government had prepared and had intended to introduce — they have been incorporated verbatim. They provide that on the recommendation of the minister the Governor in Council may appoint a senior member of the tribunal as a deputy president or an ordinary member of the tribunal as a senior member for the remainder of the member's term of office, and that the minister may recommend the appointment of a member under subsections (1) and 2(a) only if the member is eligible for appointment to the promoted position.

The purpose of the proposed section is to remove an anomaly that exists in the act. Currently the act provides for appointments to be for a fixed term and contains no provision for existing members to be promoted without their current employment being effectively terminated and their being reappointed for a fixed term. That is what was provided in the previous government's legislation, which was prepared by the previous Attorney-General, Jan Wade, in consultation with the president of the VCAT. It is good legislation and the opposition supports it. I reiterate that that part of the bill is a verbatim copy of that legislation; it was not prepared by this government but by the Kennett government.

To the bill drafted by the previous government this government has added proposed section 16A(2)(b), which extends the basis for the minister's recommendation for the promotion of a member if the member is eligible for appointment by adding not an 'or' or an 'if' but an 'and'. It therefore creates a condition precedent to any promotion of a VCAT member that the president has recommended the appointment to the minister. The opposition finds that an interesting precondition, or condition precedent, to the promotion of a member of the judiciary, or in this case the quasi-judiciary. It refers to the promotion to the position of a deputy president, which is a very senior position in the VCAT, and to the elevation of an ordinary member of the tribunal to a senior member. Nowhere else in my inquiries have I been able to find a provision in which the president — or chief justice or chief judge, if the roles were transposed — has the power to give effect to a promotion, yet that is in effect what the amendment introduced by the government provides.

The opposition strongly supports the proposal for the establishment and re-enforcement of the independence of the judiciary and the other elements of the bill. It has no difficulty with that because it distances the executive from the judiciary. However, I suggest it is cynical for the government in the same bill to muddy the waters so dramatically by saying that it will allow the president of the tribunal to nominate — recommend or nominate; it is the same thing because it cannot happen without his recommendation — a member of the tribunal for promotion. That is out of the ordinary to say the least, and I was surprised when I read it.

I refer honourable members to the debate in the other place, when in their contributions the shadow Attorney-General and the honourable member for Kew both raised that precise question. They asked, 'Does the government really intend to do this? Is the inclusion relating to the president recommending the promotion of a member of the tribunal to the minister intentional?'. To make it perfectly clear, without that recommendation the minister cannot promote a member of the tribunal, which to me appears to create an unnecessary impediment. The president's contribution is not a veto; it is a condition precedent to any promotion.

I direct the attention of the house to the existing provisions relating to the appointment of members. The president must, as a condition precedent, be a judge of the Supreme Court who is recommended for appointment by the minister after consultation with the Chief Justice. As many vice-presidents as necessary are to be appointed, and they must also, as a condition precedent, be judges of the County Court who are recommended for appointment by the minister after consultation with the Chief Judge. Senior members are to be appointed as required for fixed terms. My point is that in each case there is consultation with the most senior members of the court, yet the bill provides for no such consultation, only a condition precedent that the president must make the recommendation.

It is a pity the Minister for Small Business, who represents the Attorney-General in the other place, is not in the house. I hope that in her summing up she will give the house an explanation for the outcome referred to by opposition members. The Attorney-General did not provide an explanation in the other place, even though the outcome was raised with him by two members of the opposition. It is an unusual outcome, which I hope is not intended because it could set a nasty precedent.

I record my thanks to Justice Kellam, the President of the Victorian Civil and Administrative Tribunal, for the enormous amount of work he has done in establishing the tribunal, including successfully organising its structure. I hear he has recently been ill, so I wish him a rapid recovery.

My comments are in no way intended to be adverse to him, because the matter is one of principle rather than personalities.

However, I repeat that we begin to lose the fundamental core of our system of justice, our rule of law and the independence of our judiciary when chief judges, chief justices or, as in this case, presidents of tribunals are effectively the persons in whose hands the promotion of members of their courts or tribunals lies. That responsibility represents a pressure that chief justices, chief judges and presidents can do without. They face sufficient pressure in administering their courts or tribunals without having to cope with an additional element that could have adverse effects.

I therefore ask the government, as opposition members did in the other place, whether the outcome is intentional, and, if not, whether it can be addressed as quickly as possible.

Clause 8 amends section 18 of the Sentencing Act by repealing subsections (1A) and (1B). Contrary to the dates stated in the second-reading speech, those subsections were introduced in 1999. I will read subsection (1A) because it is the most relevant and because it is around the subsection that I anticipate the government's argument about appeals revolves. The subsection reads as follows:

> The Court of Appeal, on dismissing an application for leave to appeal against sentence brought under Part VI of the Crimes Act 1958, may, if it considers that the application is frivolous or vexatious or brought without there being any reasonably arguable grounds for it, direct that the whole or any part of the period of time during which the appellant was held in custody between giving notice of the application for leave to appeal and the determination of the application is not to be reckoned as a period of imprisonment or detention already served under the sentence.

Subsection (1B) states that a maximum of three months is the period in custody not to be reckoned as a period of imprisonment. In summary, it is the provision that the government famously interprets as, 'If you appeal, you get an extra three months jail'.

I will quote from a couple of the contributions made during the 1999 debate that demonstrate the present government's position. A perusal of the debate on the bill in the other place suggests that the government still has no idea of what section 18(1A) is about. The 1999 amendment to the act was introduced because some members of the Court of Appeal had complained about the system being clogged up by frivolous and unmeritorious appeals. At that time the Honourable Don Nardella, as he then was — I suppose he is still honourable — said that the bill contained:

> … the threat of a three-month penalty for lodging an appeal.
>
> …
>
> The bill will discourage meritorious appeals.

He went on to say — and I am sure I am pre-empting some of the support for the bill to come from the other side — that because people have appealed:

> … up to three months of their period of imprisonment may not be taken into account as a period of imprisonment or detention already served under the sentence.

The reality is that the amendment did not prevent appeals being made: anybody can still appeal. The legislation was intended to stop those convicts or criminals who, having been found guilty and been sentenced to jail — —

Hon. D. G. Hadden — Offenders.

Hon. C. A. FURLETTI — Offenders, thank you. The legislation was intended to stop appeals by offenders who have been found guilty and sentenced to jail and who have nothing at all to lose from appealing, irrespective of whether they have grounds for appeal. The comment about meritorious applications being quashed is nonsense. I have had an opportunity to discuss the legislation with some of my former colleagues who practice at the criminal bar. I have also had an opportunity to inquire about whether the introduction of the legislation has caused any concerns.

The answer is simple. The answer to the second question is that the Court of Appeal has never used section 18(1A) of the act. The answer to the first question is if anyone was to present a frivolous appeal, the court would undoubtedly chastise him or her for the presentation of such an appeal. The act currently states that anybody who brings a frivolous or vexatious appeal, or an appeal on grounds with no reasonably arguable grounds for that appeal — —

Hon. D. G. Hadden interjected.

Hon. C. A. FURLETTI — I am happy to correct it, any reasonable grounds, that is exactly right.

Hon. D. G. Hadden — You said 'no'; it is 'any'.

Hon. C. A. FURLETTI — I am more than happy to say:

> … without there being any reasonably arguable grounds for it — —

Hon. S. M. Nguyen — The honourable member is listening to you.

Hon. C. A. FURLETTI — I wish you would, you might learn something! One must have an appeal which has basically no hope of success.

Hon. D. G. Hadden — It is subjective.

Hon. C. A. FURLETTI — The honourable member says it is subjective. Three Court of Appeal judges listen to the appeal. The Court of Appeal is the highest court in the state, and the honourable member says it is subjective. I am more than happy to put my faith in their hands. The legislation states that an application for appeal based on any reasonable ground will be allowed. That is what it says, Ms Hadden; is that right? It is, is it not? A reasonably arguable ground will be given leave to appeal. Without that the appeal will be knocked out and the court will consider the reasons for the appeal and whether it is frivolous.

I referred to a different dictionary for the meanings of frivolous and vexatious because when I debated the amending bill last year the Honourable Bill Baxter picked me up on my use of the word 'trumpery'.

Hon. W. R. Baxter — I am sorry.

Hon. C. A. FURLETTI — I will not forget it. I refer to the *New Shorter Oxford English* dictionary, thumb index edition, to clarify the terms on which appeals will not be given leave. Firstly, frivolous is shown as meaning:

> Of little or no value or importance …

In legalese it states:

> Lacking seriousness or sense …

On that basis an application for leave to appeal will not be granted. Vexatious is defined as:

> Of an action: instituted without sufficient grounds for winning purely to cause trouble or annoyance to the defendant.

Any application for leave to appeal that is frivolous or vexatious or brought without there being any reasonably arguable grounds for it deserves to be knocked out to save the court time and resources and to give somebody else a chance, perhaps somebody with legal aid, which all honourable members would strongly applaud.

The interpretation and spin put on the bill by the government is totally unfounded. The purpose for repealing subsections 18(1A) and (1B) is based purely and simply on ideology and is a chest-beating exercise.

In summary, this is another piece of legislation of which we have seen a lot over the past two parliamentary sessional periods. The intent of the legislation as drafted by the previous Kennett government was well founded. Obviously the Labor government supports it. However, it has messed up the legislation with ill-conceived and badly thought through amendments and additions which force the opposition to not support certain provisions, although it does not oppose the bill.

I look forward to receiving a response from the minister in this house who represents the Attorney-General to the query I raised about the promotion of VCAT members, because that is fundamental to the whole of the promotion system. I see no reason other than ideology for the repeal of subsections 18(1A) and (1B) of the Sentencing Act.

Hon. D. G. HADDEN (Ballarat) — I support the Courts and Tribunals Legislation (Amendment) Bill. In summary, the purpose of the bill is, firstly, to amend existing legislation dealing with employment-related expenses of judges, masters of the Supreme Court and magistrates; secondly, to amend existing legislation to give the Judicial Remuneration Tribunal jurisdiction over the remuneration of acting magistrates; and thirdly, to amend existing legislation to provide for the internal promotion of Victorian Civil and Administrative Tribunal members.

Clause 2 of the bill provides that part 2 of the act, with respect to the employment-related expenses of the judiciary and magistrates, is to come into operation on 1 July this year, although the balance of the act is to commence the day after the act receives royal assent.

Probably the most important purpose of the bill relates to part 4. Clause 8 repeals section 18(1A) and (1B) of the Sentencing Act, which was inserted in 1999, as stated by the Honourable Carlo Furletti. Those parts of the Sentencing Act remove the discretion of the Court of Appeal to direct that time spent in custody pending an appeal is not to be reckoned as time already served in prison or detention.

Sections 18(1A), (1B) and (2)(ca) of the Sentencing Act have serious implications for access to justice in Victoria. Subsection (1A) states:

> The Court of Appeal, on dismissing an application for leave to appeal against sentence brought under Part VI of the Crimes Act 1958, may, if it considers that the application is frivolous or vexatious or brought without there being any reasonably arguable grounds for it, direct that the whole or any part of the period of time during which the appellant was held in custody between giving notice of the application for leave to appeal and the determination of the application is not to be reckoned as a period of imprisonment or detention already served under the sentence.

Subsection (1B) states:

> The Court of Appeal cannot direct under sub-section (1A) that more than 3 months of a period of custody is not to be reckoned as a period of imprisonment or detention already served under the sentence.

Subsection 2 states that subsection (1) does not apply to a period of custody that is the subject of a direction given by the Court of Appeal under subsection (1A).

Those subsections were clearly unfair. They operated as a punitive measure to anyone who dared to lodge an appeal. They discriminated against offenders not able to afford legal advice or legal representation. They severely restricted an offender's fundamental right under the legal system to appeal against a decision, a right that exists under the Westminster system of criminal justice.

Subsections (1A) and (1B) discriminated against offenders who were totally reliant on Victoria Legal Aid to fund an appeal, but firstly to fund advice with respect to the appeal. The net result was that Victoria Legal Aid funding was generally not extended to appeals. That effectively gagged the offender from obtaining legal advice about an appeal that was the basis for legal aid funding.

Hon. W. R. Baxter — How? Prove it.

Hon. D. G. HADDEN — Victoria Legal Aid funding was the subject of some written advice from a solicitor to an offender about the likely success of an appeal. The lawyer had to assure Victoria Legal Aid that the appeal would be successful.

An honourable member interjected.

Hon. D. G. HADDEN — It was fairly impossible to say that it would be successful.

Honourable members interjecting.

Hon. D. G. HADDEN — That is good. That is the first time. The lawyer would have to prove that the appeal would be successful.

Honourable members interjecting.

Hon. D. G. HADDEN — He would have to prove that the appeal would not be vexatious or frivolous and that it would not be brought without reasonably arguable grounds for appeal. That is an impossible hurdle. It is impossible to guarantee that an appeal would be successful.

Hon. C. A. Furletti — What nonsense!

Hon. D. G. HADDEN — If an appeal were dismissed it would reasonably follow, Mr Furletti, that there were no reasonably arguable grounds for it.

Hon. W. R. Baxter — I do not know where you got your law degree!

Hon. D. G. HADDEN — It was not where Mrs Wade got hers!

Hon. Bill Forwood — I suspect you wrote it yourself!

Hon. D. G. HADDEN — We are not allowed to debate with members on the other side of the house.

Clause 9 substitutes a new section 121 in the Sentencing Act as a transitional provision for appeals from the Magistrates Court for which notice of application to appeal has been given on or after 1 July 1999. It is therefore brought under the effect of clause 8.

In conclusion, I point out that clauses 3, 4 and 5 in part 2 amend the Constitution Act and provide that the employment-related expenses of payroll tax, fringe benefits tax and Workcover of judges, including reserve judges and magistrates, are to be paid from consolidated revenue, as are their salaries, instead of from the department's recurrent budget. The convention of paying judges' salaries from the consolidated fund has been observed since the Act of Settlement in 1701, and the new section will reinforce the independence of the judiciary and magistracy and so the impartial administration of justice in the state.

The departmental budget will be adjusted to meet the estimated cost of some $4 million. I commend the bill to the house.

Hon. P. A. KATSAMBANIS (Monash) — Having listened to Ms Hadden's contribution I speak on the bill with a fair amount of incredulity. I am still trying to equate the points she made with the provisions she referred to in the Sentencing Act. However, I do not want to take up the time of the house musing upon that and trying to work out her references. In my contribution I shall try to decipher what has just been put on the record in an attempt to clear up any misconception about the existing provisions.

As the Honourable Carlo Furletti rightly pointed out, the bill touches on four hardly related issues. Because he succinctly outlined the bill's operation I do not intend to go through its provisions at great length. Part 2 is clear and reasonable in providing for the treatment of the employment-related expenses of

judges, masters and magistrates. It gives effect to a long-held rule of law in a democratic society that there must not only be impartiality of the judicial arm of government but a clear separation of powers between the judicial arm of government and the other two tiers — the executive and the legislature. It is important to note that things have changed during the 300 or 400 years during which that rule of law has applied to the legal system, and the payments made to judges, magistrates and masters no longer relate solely to the salary of those people but to the payment of other expenses related to their employment.

To satisfy any doubt about whether those employment-related expenses can be met from the consolidated revenue it is important to clarify the matter legislatively to give effect to a full separation of powers so there is no cross over. The provision does that. The opposition fully supports the operation of that provision.

Acting magistrates are required to act as impartially as any other judicial officer and it is important that their salaries be determined independently. The Judicial Remuneration Tribunal is accepted as the appropriate tribunal to determine the remuneration of judicial officers. It is reasonable therefore that the remuneration of acting magistrates be brought under the head of power and be determined by that tribunal.

Part 5 provides for the internal promotion of members of the Victorian Civil and Administrative Tribunal (VCAT). In his learned contribution Mr Furletti pointed out the departure from accepted forms that this part introduces into the legal system, giving the president of a tribunal the power and flexibility to promote eligible senior members. I trust the provision will be used carefully and in a way that enhances the operation of the VCAT and does not in any way jeopardise the high reputation the tribunal has earned in its short period of existence. I have great faith that the president of the VCAT and other members of the tribunal will ensure its impartiality and independence is maintained at all times, and also that it is seen to be maintained in the eyes of the legal profession, and most importantly in the eyes of the public of Victoria, who are the people the tribunal has been established to serve. I will watch the operation of the provision with great interest, as I am sure will other members of the opposition. I reiterate the alarm bells raised by Mr Furletti in his contribution regarding the operation of the provision.

Part 4 amends the Sentencing Act. Clause 8 repeals subsections (1A) and (1B) and subsection (2)(ca) of section 18 of the act. Section 18 was amended in 1998 to give the Court of Appeal of the Supreme Court of Victoria a discretion to order that up to three months of time spent in custody pending the determination of an unsuccessful application for leave to appeal against a sentence not be reckoned as time served. In order to exercise that power the court has to be satisfied that the application for leave to appeal was frivolous, vexatious or brought without there being any reasonably arguable grounds. I was dumbfounded and expressed incredulity on hearing the contribution of Ms Hadden, because it was clear from her contribution that she, like the government, has not come to grips with the recent amendment to the Sentencing Act.

All honourable members know that the court process is clogged and that people complain about access to justice. In particular they complain about the time it takes for cases to be heard in superior courts and about the ability to access legal aid. The 1998 amendment was introduced to address both those concerns and not to attack anyone's fundamental right to appeal against conviction. It is intended to ensure that before people use, or in some cases abuse, legal processes they consider fully whether or not their appeal is frivolous, vexatious or being brought without any reasonably arguable grounds. That is a challenge to appellants and something they have to determine.

The people who make the final determination as to whether or not the provision which is now being discussed and which the government intends to repeal should be utilised are senior judicial officers of the Court of Appeal, the highest court in this state. They are the same people whom honourable members on both sides of the house in relation to the other amendments in this bill and in other bills say are independent and above reproach and should not have their independence compromised in any way. Honourable members have referred to the impartiality, fairness and strong legal minds of the individuals who comprise the Court of Appeal. The discretion was put in the hands of those senior judicial officers, the most senior in the state. Not only are they learned legal scholars and great legal practitioners, but as are the individuals who comprise the judiciary in the Supreme and County courts and the magistracy, they are people who hold the law and the operation of the rule of the law to be above interference, political or otherwise.

I challenge any government member to question the statement that the members of the Court of Appeal are individuals who are above reproach in their legal reasoning and determinations on the bench. I challenge Ms Hadden or any other government member to question what is a fundamental characteristic of the legal system — that is, that senior judicial officers who are charged with the exercise of judicial discretion are

above reproach. The opposition believes that to be a fundamental maxim. At all times discretion should be vested in those officers of the court because the opposition knows it will be exercised with the utmost diligence and understanding.

The discretion was given to the Court of Appeal to ensure that all appeals are heard fairly and that all Victorians who seek leave to appeal to the Court of Appeal have the right to have their applications heard. However, if an appeal was seen to be frivolous or vexatious — not by me, Mr Furletti or the Attorney-General but by three of the most senior judicial officers of this state — three senior justices of the Court of Appeal were given a discretion to apply an order that up to three months of time spent in custody pending the determination of that unsuccessful application not be reckoned as time served for the sentence.

Think of the steps. Firstly, it is a discretion placed in the hands of senior judicial officers. Secondly, those judicial officers have to knock out the appeal; they have to determine that the appeal has no standing. Thirdly, after determining that the appeal has no standing, they need to make another quantum leap — determine not only that the appeal has no standing but that it is frivolous or vexatious. That is a very strong test. Anyone who has had any involvement in the court processes knows that in exercising those sorts of judicial tests the judiciary takes a very conservative view.

Hon. W. R. Baxter — And don't I know it!

Hon. P. A. KATSAMBANIS — As Mr Baxter points out, don't we all know it!

When this provision was debated in 1998, Mr Furletti and I made the point that if those sorts of discretions were to be given, the only people we could entrust to exercise them were our senior judicial officers, people I would hope all of us regard as being above reproach. If there is a suggestion from the government that our judicial officers who comprise the Court of Appeal are not above reproach, it brings the whole criminal justice system into question. I trust no-one on the other side of the house is making that allegation.

It is interesting that although the government seeks to repeal this provision it does not highlight any instance where the provision has been either used or abused, because there has been no abuse of the provision. The government has made up its mind, and I can only guess why it wants to remove the provision. I seek from the government an assurance that at a time when people are crying out for ready access to the Victorian legal system the government will introduce some other step that will curtail frivolous or vexatious appeals.

As Mr Furletti rightly pointed out, we are dealing only with people who are already in custody. They have literally nothing to lose by using the process and, in some instances, abusing it simply to stretch out the time and for no other reason. The judges of the Court of Appeal can smell such attempts a mile away. They are the best people to use the sort of discretion they were given. It is a pity that the government, which often espouses the independence of the judiciary and the fact that the judiciary is above reproach, in a backhanded way questions the impartiality and integrity of our senior law officers by seeking to repeal such provisions. I agree it is not a discretion to be exercised lightly and it needs to be handled with kid gloves and due care.

Hon. Jenny Mikakos interjected.

Hon. P. A. KATSAMBANIS — It is not for me to question why the Court of Appeal judges choose to exercise or not exercise that discretion. I do not want to bring the Court of Appeal into any disrepute by using this place to question in any way the motives of the judges that form that court. If you seek to do that, I leave that up to you, but I will never use this place or any other forum to question the decision-making process of our Court of Appeal judges. As I said, to do so would bring our entire legal system into disrepute.

I question the government's motives on this matter. I seek some reassurance from the Minister for Small Business, who has the responsibility for the bill in this house, about the actions the government will take to ensure the court process is not used for vexatious or frivolous appeals now that this provision is to be repealed.

I further seek some sort of assurance that precious legal aid funding, about which the government made a lot of noise when it was in opposition, will not be squandered on frivolous and vexatious appeals; that it will not be used by convicted criminals who are seeking, in some instances, to abuse the court process. I seek an assurance that people like that will not have access to legal aid funding at the expense of people who truly deserve to have their court cases brought before the courts and heard. People who deserve to have their cases heard should have access to the legal aid system over and above those who are bringing frivolous and vexatious appeals.

I seek from the minister and other government members an indication of the sorts of provisions they

intend to implement as a government, now that it is their turn to make the system work rather than talk the system down. On that note, I commend the contribution to the debate on this bill of my learned colleague Mr Furletti. I question the government's motives, particularly those behind the application of part 4, which amends the Sentencing Act. Again I stress that the opposition does not oppose the bill.

Sitting suspended 6.28 p.m. until 8.03 p.m.

Hon. JENNY MIKAKOS (Jika Jika) — I support the Courts and Tribunals Legislation (Amendment) Bill, which makes a number of amendments to both the various acts that administer the courts and tribunals of this state and the Sentencing Act.

The government has supported the notion that the judiciary should be independent of and at arm's length from the government. The proposed amendments relating to the expenses of judges, masters and magistrates will further entrench the doctrine of the separation of powers and strengthen the independence of the judiciary.

Part 2 of the bill provides for the employment-related expenses of judges, masters and magistrates to be paid out of the consolidated fund. It makes a number of amendments to the Constitution Act to preserve judicial independence. It does so by amending section 80A of the act, which relates to reserve judges, by including a number of allowances providing Workcover, payroll tax and fringe benefits tax among the amounts to be paid out of the consolidated fund.

For more than 150 years it has been a well-established tradition that the salaries and allowances of the members of our judiciary and tribunals are paid out of the consolidated fund. The amendments to the Constitution Act will extend that process to those payments to which I previously referred. In effect the amendment to section 80A by clause 3(1) will apply to reserve judges the process that under the current provisions of the Constitution Act apply to permanent judges.

The provisions of the Constitution Act relating to reserve judges allow judges who are about to retire to be retained for a period of six months until such time as the Attorney-General is able to make new appointments to the Supreme Court. Victoria can retain the benefit, skills and knowledge of the judges of the Supreme Court for a period of six months on the same salary and under the same conditions of employment as applied to those judges prior to their appointment as reserve judges.

The proposed alteration by clause 3(2) to section 82 of the Constitution Act, which relates to the salaries of permanent judges, seeks to make the same inclusion for Workcover payments, payroll tax and fringe benefits tax that I have referred to in respect of reserve judges. The proposed alteration to section 83A seeks to make the same alteration for masters of the Supreme Court.

Clause 4 makes a number of amendments to sections 10, 13A and 17AA of the County Court Act. The provisions relate to the salaries and allowances of the Chief Justice, other judges, reserve judges and masters of the County Court. The effect will be to make the same changes as are proposed for Supreme Court judges. As I said, the bill provides that workers compensation payments, payroll tax and fringe benefits tax will be paid out of the consolidated fund to members of the County Court judiciary by the same process as that for Supreme Court judges.

Clause 5 seeks to make similar alterations in respect of magistrates and acting magistrates by amending clauses 10 and 12 of schedule 1 of the Magistrates' Court Act.

The amendments proposed by clauses 3, 4 and 5 will be budget neutral, as the budget of the Department of Justice will be adjusted to meet the cost to the consolidated fund.

As I said, the importance of the proposed amendments is to maintain the doctrine of the separation of powers and to include among the money paid from the consolidated fund payments that were not envisaged by those who drafted the constitution more than 150 years ago. I support these important clauses because of the long-held view of the Labor Party in opposition and in government that members of the judiciary should be protected from and be independent of the arm of government.

It was with great interest that I noted the comments of opposition members on certain provisions of the bill and their purported support for the independence of the judiciary, particularly in light of the various steps taken by the previous government, such as the sacking of members of the Accident Compensation Tribunal.

Clauses 6 and 7 of the bill relate to the remuneration of acting magistrates. Their effect will be that the Judicial Remuneration Tribunal will be given the role of recommending adjustments to the salaries and allowances of acting magistrates, in the same way as the tribunal currently makes recommendations in relation to other members of the judiciary, including permanent magistrates. The clauses alter neither the

salaries of acting magistrates nor the process whereby the Judicial Remuneration Tribunal makes recommendations to the Attorney-General and the Attorney-General certifies that adjustments should proceed. At present acting magistrates are paid their salaries by an order of the Governor in Council and there is no reason why acting magistrates should not be treated in the same way as permanent magistrates.

Part 5 of the bill relates to the internal promotion of members of the Victorian Civil and Administrative Tribunal. Currently there is no flexibility for members of the VCAT to be promoted during their terms. Proposed section 16A of the Victorian Civil and Administrative Tribunal Act, which is inserted by clause 10, will on recommendation by the president of the VCAT to the Attorney-General effectively allow the Governor in Council to promote a senior member of the VCAT as a deputy president, or an ordinary member as a senior member, for the remainder of the member's term, instead of the member's being required to be appointed for another five-year term, as currently occurs. That gives the president some flexibility in ensuring that the tribunal has an adequate number of members to conduct its business and allows for the superior performance of VCAT members to be recognised.

Hon. C. A. Furletti interjected.

Hon. JENNY MIKAKOS — For Mr Furletti, an example of the way the tribunal's flexibility could be enhanced would be in a situation where a tribunal member was due for retirement and did not want to be appointed for another five-year term.

Hon. C. A. Furletti — Read the bill; you are allowed to be reappointed.

Hon. JENNY MIKAKOS — Mr Furletti, if you would care to listen for a moment you would hear that I am saying that if a member of the tribunal — —

The PRESIDENT — Order! The honourable member will address her remarks through the Chair, please.

Hon. JENNY MIKAKOS — I am sorry, Mr President. A member of the tribunal who is due for retirement but does not wish to be reappointed for another five years should not be precluded from being promoted for the duration of his or her term.

Hon. C. A. Furletti interjected.

Hon. JENNY MIKAKOS — As a way of recognising the member's superior contribution to the tribunal. Why should those members be precluded from promotion?

Part 4 of the bill deals with amendments to the Sentencing Act, particularly the repeal of section 18. The current provisions of section 18, which were introduced last year by the previous government, allow offenders convicted of criminal offences to be effectively penalised if they lodge or seek to proceed with applications for leave to appeal against their sentences before the Court of Appeal. The current provisions effectively require the Court of Appeal to ignore a period of up to three months imprisonment an offender may have served if the court then proceeds to dismiss the offender's application for leave to appeal and it regards the matter as having been frivolous, vexatious or brought without reasonable grounds. I note that until now the Court of Appeal has not sought to exercise its role under those provisions. I leave honourable members to draw their own inferences from that fact.

The current provisions of section 18(1A) and (1B) of the Sentencing Act are deplorable and cannot be supported by the government because they disadvantage offenders who may not be legally represented and who may not understand that they will be penalised by lodging appeals against their sentences. It also discriminates against offenders who have been sentenced to custodial as opposed to non-custodial sentences. A provision that enables offenders to be punished merely for appealing against their sentences is inherently unfair.

Hon. C. A. Furletti interjected.

Hon. JENNY MIKAKOS — Through you, Mr President, I advise Mr Furletti that the judiciary currently has a discretion to increase an offender's sentence if it were to allow a matter to proceed by way of appeal. Mr Furletti needs to appreciate that the mechanism already exists. The discretion is already given to the judiciary under the current provisions, which relate to the prosecution of criminal offenders without the need for this provision, which is inherently unfair and unjust. For those reasons I wholeheartedly support part 4 of the bill, which seeks to repeal that provision and to insert a transitional provision. The repeal proposed by clause 8 will apply to applications for leave to appeal that are currently pending and will ensure that any person with a pending appeal is not disadvantaged by the change.

In conclusion I support the bill because it seeks to make a number of alterations to the administration of the justice system which will further enforce and enhance

the separation of powers doctrine and the independence of the judiciary and which will seek to restore basic rights to offenders to appeal against their sentences. I commend the bill to the house.

Hon. D. McL. DAVIS (East Yarra) — In commenting on the bill I note that the opposition does not oppose it. The house has heard careful and reasoned contributions from the Honourables Carlo Furletti and Peter Katsambanis. Rather than traversing all the territory they have already covered, I will summarise a number of points.

The bill seeks to do a number of things, including providing that employment-related expenses of judges, magistrates and masters are to be paid out of consolidated revenue, thereby reinforcing a long-established historical precedent and re-emphasising the all-important separation of powers. The opposition has no quibble with that. The bill also gives the Judicial Remuneration Tribunal jurisdiction over the remuneration of acting magistrates; and as has already been discussed at length, it establishes a promotions process within the Victorian Civil and Administrative Tribunal (VCAT) that empowers the head of that body to make recommendations on those promotions. The coalition parties have no quibble with that, either.

However, I will make some points about a number of other aspects of the bill, some of which have been effectively made by the Honourables Carlo Furletti and Peter Katsambanis. It is important to note — and I quote the Honourable Dianne Hadden — that the main purpose of the bill it to repeal subsections (1A) and (1B) of section 18 of the Sentencing Act, which were inserted in 1999 by the previous government. I recall the debate on the insertion of those controversial sections. I confess I was not in the house at the time but heard the issues raised on the audio speakers.

I am not sure that it improves the administration of justice in Victoria to suggest that senior judicial officers of the Court of Appeal are unable to make the decisions required of them by the Sentencing Act. It is not clear to me why the government cannot trust judges of the Court of Appeal to make those sorts of decisions in a fair, conservative and reasonable way.

There is no evidence that the bill will improve the administration of justice; in fact, the opposite may well be true. The government is sending a signal to the community that it does not have faith in the most senior judges in the state. The removal of the discretion of the Court of Appeal to recognise whether reasonable appeals have been made is of concern to the opposition.

It is not my intention to revisit the fine semantic details that the Honourables Peter Katsambanis and Carlo Furletti have canvassed. However, I note the concerns already expressed about the retrospective aspects of the bill. This is not the first bill introduced by the government to contain retrospectivity clauses. The Gambling Legislation (Responsible Gambling) Bill contained such clauses, as did the Prostitution Control (Planning) Bill.

Although it is not opposed to the bill, the opposition wants to place on the record some of the wider questions that are emerging about the government's legislative program, of which the bill is part. The opposition is concerned about the use of section 85 statements. When it was in opposition the government was strong in its criticism of the previous government's use of section 85 statements.

Hon. T. C. Theophanous — How many times did you use it?

Hon. D. McL. DAVIS — I take up the interjection by the Honourable Theo Theophanous. When in opposition the Bracks government was very critical of the previous Kennett government's use of section 85 statements.

Hon. Jenny Mikakos interjected.

Hon. D. McL. DAVIS — I am highlighting my concerns and those of many of my opposition colleagues about the bills introduced by the Bracks government. It is interesting to note that in the previous parliamentary session 37.5 per cent of the bills introduced by the government contained section 85 statements — in other words, almost 40 per cent of the bills that were passed — —

Hon. T. C. Theophanous interjected.

Hon. D. McL. DAVIS — No, in your last session! That is the sort of cant — —

Hon. T. C. Theophanous interjected.

Hon. D. McL. DAVIS — In taking up the interjection by the Honourable Theo Theophanous I will quote Premier Steve Bracks, who was reported in the September 1999 edition of the *Law Institute Journal* as saying that a future Labor government would scrap more than 200 pieces of legislation that stopped Victorians from appealing to the Supreme Court against decisions made by government.

That is what he said in opposition. What happened when he got into government? A large percentage —

nearly 40 per cent — of the bills he and his ministers introduced in the 1999 spring session contained section 85 statements. We are yet to see how many bills containing section 85 statements the government will request the house to pass in this sessional period — which of course is far from over.

There are appropriate uses of section 85 statements.

Hon. T. C. Theophanous interjected.

Hon. D. McL. DAVIS — Again I take up the interjection made by Mr Theophanous. Section 85 statements are appropriate in certain cases, but they need to be used sparingly and appropriately.

Hon. T. C. Theophanous interjected.

The PRESIDENT — Order! I ask the honourable Mr Theophanous to desist. If he has any comments to make, I will put him on the list.

Hon. D. McL. DAVIS — There are other aspects of the bill about which I could talk at length, but other opposition members will take them up. However, picking up the interjection by the Honourable Theo Theophanous, I make the point that the opposition has concerns not only about the bill but more generally about the government's legislative program. The government is applying a different standard from the one it applied in opposition.

Hon. D. G. Hadden interjected.

Hon. D. McL. DAVIS — Absolutely. A very different standard is being applied, and it is not better than the one you applied in opposition.

Hon. T. C. Theophanous interjected.

Hon. D. McL. DAVIS — No, it is not: it is a standard based on cant and a lack of principle. Aspects of the bill give rise to similar concerns, which I want to put on the record.

Hon. T. C. Theophanous — Name one!

Hon. D. McL. DAVIS — The retrospectivity aspect, which I have already referred to and which drew your initial interjection, Mr Theophanous. However, on that point I am happy to refer the house to the broader arguments made by Mr Furletti and Mr Katsambanis. As I said, although the opposition does not oppose the bill it expresses concern about aspects of it and of the government's wider legislative program.

Hon. B. W. BISHOP (North Western) — It is with pleasure that I make some brief comments on the Courts and Tribunals Legislation (Amendment) Bill. I will certainly not go into the technical issues it entails, which have been covered by those learned colleagues of mine who have spoken before me. Instead I will concentrate on a couple of other issues that I want to bring to the attention of the house.

Firstly, after listening to the comments made in the debate both here and in the other place I applaud both houses for their total support of the independence of our judiciary. I have been fortunate enough to travel internationally both in a past job and as a member of Parliament, and I realise how lucky we are in this country to have an independent judiciary and to support the doctrine of the separation of powers.

Australia is fortunate to have a particularly good court system. I am not stretching the truth too much by saying it is probably one of the best court systems in the world. Members of the judiciary have total independence and our tribunals take care of our civil rights. From a layman's point of view, this helps to make our justice system more accessible. Administratively, the costs are kept down in the traditional criminal and civil courts.

From the perspective of regional and rural Victoria, which is the best way for me to focus on such issues, I suggest that the legal system should be as accessible as possible — it needs to be fair, cost effective and efficient, and the waiting lists need to be kept low. It is important that communities have confidence in the legal system. I refer the house to court access and capacity in rural Victoria. The province I represent with my colleague the Honourable Ron Best, which covers the electorate of the honourable member for Swan Hill in the other house, Barry Steggall, has courts in Mildura — and I will refer to Mildura later — Ouyen, Horsham, Swan Hill and Bendigo.

It is disappointing that after all the Labor Party rhetoric during the state election campaign about looking after rural and regional Victoria, one of the first things the government did on its election to office was to remove the County Court sitting in Kerang. Together with many people in that region, I look forward to its return. The removal of that sitting has reduced the opportunity for my constituents to have ready access to justice. Honourable members recognise that those areas of Victoria are sparse and the distance people need to travel to attend courts is substantial. Those two sessions in Kerang are now gone and I look forward to the day when the Labor Party's view of paying attention to regional and rural Victoria will come to fruition and the County Court sittings at Kerang are returned.

I cannot help but commend the house's decision to have an all-party committee examine the future needs of court services, facilities and legal services in regional and rural Victoria. I commend that excellent reference to the Parliament and the Victorian community. It also refers to the need for the inquiry to be undertaken as quickly as possible.

I also refer the house to access to clerks of courts. As I said, the courts in my electorate are in Mildura, Ouyen, Horsham, Swan Hill and Bendigo, which are sparsely spotted throughout regional Victoria. If I remember rightly, a number of the smaller courts in rural and regional Victoria were closed in the 1980s. I believe that is the about the right time scale. It is important that access to clerks of courts is available to people living across the stretches of rural Victoria. Clerks of courts do a wonderful job in providing court services to our communities. They have been tremendously helpful to my office and to the rural and regional community. Clerks of courts are mines of information and can tell people their rights and the processes involved in the judicial system, which is sometimes confusing to many Victorians. They are of significant help to those of us who serve in rural and regional Victoria. A positive move by the government would be to bring back the County Court in Kerang, which would not only help us but also make a clerk of courts available, even if only on a visitation basis to rural communities.

I refer the house to a visit made by the Honourable Ron Best and me, just before the election, to the old courthouse at Newbridge, which has been turned into an historical museum. The community has done a fantastic job with the old courthouse. The community has some superb records, and it is important that those records are kept and the buildings are utilised. We went there to provide a grant for some further research and work to facilitate that record keeping. The old courthouses in Birchip and Boort have also been retained as museums for their communities.

I conclude my brief contribution to the debate with some comments on the courthouse in Mildura, which has been the subject of media discussion for some time. The Attorney-General, Rob Hulls, visited the Mildura courthouse on Thursday, 25 February. The local media quoted him as saying that something needed to be done quickly and he was going in very hard to argue for the courthouse. It was during this impassioned visit to Mildura that the Attorney-General accused me of being invisible and having done nothing to further the cause of the courthouse. It is right and proper that I take this opportunity to put on the public record how wrong he was.

I set out to correct that by writing a letter to the local newspaper setting out in chronological order exactly what I had done over the years to get a guarantee that a new courthouse would be built. I dealt directly with ministers who would make the new courthouse a reality on no fewer than five occasions. In a visit to Mildura in May 1997, the then shadow Attorney-General, Rob Hulls, described the courthouse conditions as Third World and said he would raise the issue with the then Attorney-General, Jan Wade. At the time the honourable member for Mildura in another place, Mr Savage, was in receipt of a letter from Jan Wade that stated the courts at Mildura were high on the government's priority list for major capital works.

In June 1997 I issued a media release stating the courthouse's deteriorated condition was creating a difficult situation for the legal system in Mildura. I called on the former Attorney-General and former Premier, Jeff Kennett, to attend to the matter immediately. In June 1997 the local government minister at the time, the Honourable Rob Maclellan, also the then Acting Attorney-General, visited Mildura to open the first stage of the Alfred Deakin centre. He toured the courthouse with a couple of the councillors and could see the urgency of the situation for himself. He reported back to the Attorney-General. Later in that year, in September, a visit by the Attorney-General revealed Mildura might have to wait a couple of years before funding for a new courthouse would be forthcoming, but also said Mildura was high on the list for upgrading.

In May 1998 I wrote to Jeff Kennett calling for at least some urgent works to be undertaken to the courthouse until the electorate projects allocation came through for the new courthouse. In March last year the then Minister for Youth and Community Services, Dr Denis Napthine, toured the courthouse complex. Again on my urging he indicated he would raise the issue with Jan Wade.

I have hardly been silent on the issue. I have enjoyed working with dedicated people who continue to work towards the building of a new courthouse in Mildura. We now welcome the announcement by the Attorney-General that a courthouse will be built in Mildura at a cost of $8.9 million.

I am sure the Warrnambool courthouse will also soon be built. The past and present governments have given it a high priority. The Attorney-General's announcement was a fitting reward for those who worked long and hard to see the fulfilment of the project. The North West Law Association has been a consistent and practical advocate of the Mildura

courthouse. It is one of the best placed groups to understand the demands of a court situated in a badly run-down building that has reached the end of its operational life.

As a member for North Western Province I have made many representations to ministers of both the former and current governments. Now that the proposal for the courthouse has been announced the next task is to undertake a community consultative process to determine its location. Members of the community have expressed a number of opinions about where that should be. It would be excellent for the community to be involved in that decision.

In conclusion, $8.9 million is a great deal of money to be put into a building of the type envisaged. A consultative approach involving the legal fraternity, the community and all those who may use the courthouse is important so that it can be used to its full capacity. I do not oppose the bill, which tidies up a number of outstanding matters. I thank the house for its indulgence in listening to my comments about the Mildura courthouse.

Hon. W. R. BAXTER (North Eastern) — I will make a brief contribution for a couple of reasons. The first is that it is important to record on every possible occasion how fortunate Australians are to have a clear separation of powers between the judiciary and the executive arm of government. I find it extraordinary that that separation has existed for more than 300 years and that such a strongly held belief could have been sustained and maintained so strenuously for three centuries. All Australians can be proud of that.

I therefore support the provisions in the bill. They strengthen the separation of powers concept by using modern-day terminology to provide direct funding from the consolidated fund rather than via the departmental vote. The initiative is worthy, and I support it. It was brought forward by the present government as a result of its having worked on material prepared by the former government just before it went out of office.

It must be noted that members of the judiciary have a responsibility and indeed a duty to maintain their role in all of this. They have done so extremely well and conscientiously through generations of members of the various benches. However, I am a little concerned and regretful that in the past decade or so, and more particularly in the past two or three years, a propensity appears to be creeping into the judiciary to comment on political issues of the day. A couple of recent examples have occurred in Sydney in the past month or so. Perhaps parliamentarians should remind judges that it is a two-way bargain. If there is to be a strict separation — I believe there ought to be — it is incumbent on the judges to maintain their side of the bargain.

Hon. D. McL. Davis interjected.

Hon. W. R. BAXTER — Restraint is the word I am looking for, Mr Davis. I would find it distressing indeed if what I have detected in recent years became a fashion, a habit or commonplace. Although I appreciate that judges and former judges are a part of the community and need to go about their daily lives and have personal contact with other citizens, whether in recreational pursuits, social functions or whatever — I do not want them to be locked away and totally isolated — they have a responsibility to maintain a degree of reserve in their comments. I extend that comment to former judges. I get particularly distressed when former judges interfere excessively in the political process. Former High Court judge Sir Roland Wilson disappoints me exceedingly because of the political statements he makes. He often bases them on his judicial status and experience. I suggest to him that he might desist because I do not think he is doing the society in which we live any good at all.

Might I also add that I am very proud of Victoria's forebears who built such magnificent court buildings. I refer to the Supreme Court buildings in William Street, which I visited again only a fortnight or so ago, as well as to the courts in country Victoria, many of which I regret to say, as did Mr Bishop, are no longer operational. Nevertheless they are extraordinary examples of Victorian architecture and illustrate the strengths of purpose and status.

That does not apply only in Victoria. Country towns in New South Wales, especially in the Riverina, have some extraordinary edifices. I refer to courthouses in towns such as Deniliquin, Hay and Goulburn. Those buildings demonstrate the strong feelings our forebears held about the role of courts in society and the necessity to make the court process pivotal to communities; and its reputation and strength was assisted, if not brought about, by the substantial buildings in which the court business was conducted.

I pay particular tribute to the previous Kennett government for the way it set about refurbishing many run-down public buildings, particularly in the court system. The Kennett government restored the majesty of the Supreme Court when compared with its existence under the Cain and Kirner governments, when it fell into a dilapidated condition. Apart from the need to have that building in good and efficient order

for its daily work as a court, such a majestic building should be maintained as one of Victoria's great historic buildings. I commend the former government for the way it set about doing that and for adding Supreme Court facilities at 436 Lonsdale Street. They are, again, modern buildings in the current idiom, but very well done.

All honourable members will remember the decrepit building that was the old Magistrates Court in Russell Street. The new Magistrates Court is a magnificent building at the western end of the central business district. It is a tribute to the vision and commitment of the former government in maintaining and renewing the fabric of society. I would not want that to go unrecognised.

I also commend, as did Mr Bishop, the work of the former Attorney-General in rebuilding courts in country localities. In Wodonga, for example, building is about to commence on a new court. The original court was built more than 30 years ago when Wodonga was nothing more than a country town of fewer than 7000 people. It is now a regional city of more than 30 000 people. Such growth needs court facilities commensurate with it.

The former government recognised that and committed $10 million to the process. Mr Bishop mentioned the Mildura courthouse, the work on which has not started but is on the cusp, and the Warrnambool and other courthouses were also mentioned. Those initiatives are a tribute to the former government's attitude to capital projects. I join with Mr Bishop in congratulating the Attorney-General for acknowledging that Mildura needs a new courthouse and that he will continue the work of his predecessor.

I intervened in the debate because of my incredulity when listening to Ms Hadden and Ms Mikakos. I cannot decide on what basis they were making their remarks. I understand they both have legal training. Perhaps despite that legal training they are unable to read or understand acts of Parliament. I find that difficult to believe. I should have thought they would comprehend acts of Parliament, particularly as many of us who do not have legal training make a reasonable fist of it. The only other reason I can come up with is that they are prepared to deliberately misconstrue the intent of the principal act so that they can run a line in the community that somehow the former government was taking away or denying the rights of ordinary people. I notice that members of the Labor Party backbench have a propensity to take that line. Ms Darveniza is becoming a past master at running a line which obscures the facts but which might make a good story in West Melbourne.

The bill does not in any sense, in any way or by any means take away the rights of a convicted person to run an appeal, yet that is the line run by Ms Hadden and Ms Mikakos — that is, that somehow convicted persons were being denied the right of appeal. Nowhere does the principal act provide that. I understand people run an appeal when they are incarcerated, knowing it costs nothing and it is a bit of entertainment to present oneself in court, but the 1998 amendment gave discretion to the Court of Appeal so that if it deemed an appeal to be frivolous or vexatious it could make a finding that the time spent in custody would not be counted as part of the sentence. It was a disincentive to run an appeal, but it was not a prohibition.

What is the sense of having that disincentive? Firstly, the court system is clogged with work, as honourable members know from constituents who complain how long they have to wait to get their cases on. Secondly, most of the appeals are run with the assistance of legal aid. Again all honourable members know the pressure the legal aid budget is under. The consequences of frivolous and vexatious appeals being conducted with the assistance of legal aid are that scarce funds will be denied to other litigants, offenders, convicted persons and accused. People who may benefit from the assistance of legal aid will be denied that assistance because of the pressure on the legal aid budget.

I suggest to Ms Hadden that if she were running an appeal pro bono and formed the view that the case had no chance of success — that it was frivolous and vexatious — she would recommend to her client that it not be run. The same logic applies if a case is being run under legal aid. Why should the court system be clogged up so the taxpayer can pay for someone to have an excursion to the Court of Appeal in a hopeless case? I ask Ms Hadden to reflect on that. Would she run a hopeless appeal pro bono? I am sure the answer would be no. I ask her to extend that logic to the case advanced here tonight.

The Kennett government did the right thing for the system, appellants, convicted persons, taxpayers and the legal aid budget. Whatever way one looks at it the former government did the right thing. As honourable members know the right thing can often be characterised by those who are clever with words or those who want to run a scare campaign in the community as something that somehow denies people's rights. The 1998 amendment was not intended to and did no such thing. It was intended to do the opposite —

that is, to protect the legal aid budget from being sapped and dissipated by appeals that had no merit.

The government is doing itself a disservice by allowing the line which it was able to run and which sounded good when it was in opposition to be carried over in government. I believe it will live to rue the day it allowed that to happen.

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

Bells rung.

Members having assembled in chamber:

The PRESIDENT — Order! so that I may be satisfied that an absolute majority exists, I ask honourable members supporting the motion to rise in their places.

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 Mr Furletti, Ms Hadden, Mr Katsambanis, Mr David Davis, Ms Mikakos, Mr Bishop and Mr Baxter.

The PRESIDENT — Order! I ask honourable members supporting the motion to rise in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Remaining stages

Passed remaining stages.

ADJOURNMENT

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

That the house do now adjourn.

Fishing: abalone

Hon. R. H. BOWDEN (South Eastern) — I direct to the attention of the Minister for Energy and Resources correspondence from and a request by the Victorian Abalone Divers Association, many members of which live and work in South Eastern Province. My constituents have approached me because of their growing concern over aspects of the Environment Conservation Council's draft report, in particular aspects of it that contain the potential for no-take zones.

The abalone industry is also concerned about the draft report in that if the recommendations were to be implemented along the lines presently being suggested up to 30 per cent of the central zone fishery would be locked away and lost to production. By coincidence, today the minister advised the house of successful moves in policing this valuable commercial industry. I suggest to the minister that it is the most valuable commercial fishery operation in the state. It is an important industry that provides much work in and revenue for both the state and the nation.

I therefore ask the minister whether she will give an assurance that the state government will not unnecessarily penalise Victoria's most valuable commercial fishery when in due course it considers the Environment Conservation Council's report.

Bellarine Highway–Banks Road intersection: upgrade

Hon. E. C. CARBINES (Geelong) — I direct to the attention of the Minister for Energy and Resources, as the representative of the Minister for Transport in the other place, a dangerous intersection in my electorate. The intersection of the Bellarine Highway and Banks Road on the Bellarine Peninsula has been the site of a number of fatalities in recent years — in fact, four in the past five years.

The most recent fatal accident occurred two years ago when three young men lost their lives in a very tragic accident. I note that last year the coroner who inquired into their deaths recommended that works be undertaken at the intersection to stagger or offset it. I understand from discussions with Vicroads that work is about to start on that intersection to make it a staggered T-intersection. However, I am very concerned that currently Vicroads plans to retain the speed limit of 100 kilometres per hour on the approaches to that intersection. I have asked the regional manager of Vicroads, Mr John Wilson, to seriously consider implementing a speed reduction device on the approaches.

I ask the Minister for Transport to support my call for a speed reduction and to assist in its implementation.

Geelong: community television

Hon. I. J. COVER (Geelong) — I raise with the Minister for Small Business the support for business in Geelong, particularly small business, through the establishment of a television station in the city. Some interesting developments have occurred in recent times.

I shall backtrack briefly to the policy of the Australian Labor Party during the last election campaign. It states:

> One of the key disadvantages that businesses in Geelong face is not having access to a television station solely dedicated to Geelong. This denies Geelong businesses access to a cheaper source of advertising to promote their product to the people of Geelong.
>
> Geelong businesses continue to lose out to businesses in Melbourne because of this competitive disadvantage.

It also states that estimates indicate:

> … that of the $1.4 billion spent by Geelong shoppers each year, more than $260 million leaves the local economy.

One of the ALP's proposals during the election campaign last September was directed towards establishing a television station in Geelong to do precisely what that policy was outlining. No doubt things were going on behind the scenes, particularly with people who produce the program *This Week in Geelong*, which has been seen on Channel 31, a community station in Melbourne. They had high hopes, along with many other people in the Geelong community, that a Geelong community television station would be established.

However, in recent times things seem to have gone off the rails. In fact the picture seems to have become very fuzzy and static. On 1 March, under the headline 'Bracks to discuss local TV bid', the *Geelong Advertiser* reported at page 3:

> Geelong is one step closer to scoring its own television station, with a meeting scheduled next week between the Premier's department and producers of Channel 31 program *This Week in Geelong*.
>
> A spokeswoman for *This Week in Geelong*, Jinny Sharp, yesterday said the issue of a community television station for Geelong had recently been raised with Premier Steve Bracks, and assurance had been given Mr Bracks was willing to discuss the matter.
>
> Ms Sharp said it was encouraging to know there was finally movement on the Geelong television station front.

Ms Sharp also said she felt they were making good progress, and that:

> 'With the support of the city … and local members Ian Trezise and Elaine Carbines, we'll have a formidable team backing the community television initiative.'

I will tell the house how formidable it was. On 16 March, just 15 days after that article appeared, the people from *This Week in Geelong* issued a press release saying that the producers see a lack of effective support from the state government for a television station in Geelong, which will mean the experiment of community television broadcasting is doomed to failure. The press release also states:

> Despite the producers of *This Week in Geelong* appealing to the state government to fulfil their election promise to the people of Geelong, the intent of which was to provide the city with access to its own TV station, we feel that the Bracks government has no intention of actively fulfilling its promise.
>
> …
>
> Another chapter has closed in the struggle for bringing to life the reality of Geelong having its own television station.

Among other things Ms Sharp talked about being greatly saddened and disappointed by this, and said:

> … it seems our new Premier, who champions the regional cause, has no plan. No strategies are in place and to date nobody has been identified as being responsible for this issue.

She described the ALP's promise as 'a hollow promise'.

I ask the Minister for Small Business, firstly, to apologise to the business community in Geelong, particularly small business people, whose hopes were raised by the promise, and secondly, to explain to Geelong business and people behind the television bid just what efforts she might make on their behalf.

State Netball and Hockey Centre

Hon. G. D. ROMANES (Melbourne) — I refer the Minister for Sport and Recreation to concerns a number of netball players in my electorate have raised about the new charges Netball Victoria has imposed at the Royal Park netball centre, even before it is in operation. I have received correspondence from one young person who plays mixed netball who outlined for me a range of charges with which the average netball team is now faced. They are $75 for team registration, $650 for seasonal charges and $30 per player for registration of individuals with Netball Victoria.

With the prospect of the opening of the new netball centre in sight players have been told that an entrance fee of $3 per night will be imposed for those over 17, with a fee of $1.70 for those under 17. That $3 fee must be compared with the $1 per night fee for netball players at the Coburg basketball stadium.

In correspondence she received from Netball Victoria that young player was told it is a government requirement that the State Sports Centres Trust charge entry fees to the state netball centre to maintain the centre's facilities, and that that is reasonable and consistent with user-pays principles.

New facilities are usually built to enhance and increase participation in a sport, not to hinder the involvement of particular groups, especially young people. However, the fee levels will produce that effect. Most young people have limited incomes. Although playing sport is something they like to do, that can be difficult if they face such a range of fees.

Will the Minister for Sport and Recreation, and the Minister for Women's Affairs in the other place, undertake to monitor the effect of raising the Royal Park facilities to Commonwealth Games standard on the participation of young people in netball?

AFL: fixtures

Hon. P. A. KATSAMBANIS (Monash) — The matter I raise for the attention of the Minister for Sport and Recreation relates specifically to the scheduling of Australian Football League matches. I am fully aware that the AFL is not directly under the control of the government. However, the minister and the government have made it clear that they are interested in the scheduling of AFL football matches at Waverley Park and that, although they have not demonstrated it as yet, they are able to influence that scheduling. The minister may be able to use his good offices to influence the scheduling of AFL matches generally.

In the few weeks since the commencement of the new AFL season I have had a number of inquiries from football fans, particularly parents of younger children, relating to the scheduling of AFL matches at night, in particular on nights before school days. Already this year the AFL has scheduled football matches on a Wednesday, Thursday and Sunday night. I have been made aware that later in the season matches are scheduled to be played on Monday nights!

As a former footballer, the minister would be aware that the future of both attendance at and participation in sports such as football depends on young people's ability to access those sports at times convenient to them. A number of parents have made the point that the AFL's scheduling of matches on Wednesday, Thursday, Sunday and Monday nights makes it impossible for them to attend the matches with their children, therefore denying both parents and children the opportunity of watching games.

If members have followed the recent media reports on the subject, they will realise that the scheduling of matches on those evenings has led to a significant decline in attendances at AFL matches. The minister is a parent of young children, as I am. In the past two weeks my children have been pleased to have had the opportunity to watch our football team, Collingwood, play during the day.

Honourable members interjecting.

The PRESIDENT — Order! What is the honourable member's question?

Hon. P. A. KATSAMBANIS — I ask the minister to use his good offices to influence the AFL to schedule more matches during the day, particularly on Saturdays and Sundays, to enable parents and their children to attend those matches at hours that are convenient for the children.

Drugs: Ballarat

Hon. D. G. HADDEN (Ballarat) — I direct to the attention of the Minister for Industrial Relations, who represents the Minister for Health in the other place, a serious incident that occurred last Friday afternoon on the south side of Armstrong Street, Ballarat, outside the Myer shopping complex, directly opposite the Ballarat town hall and beside the entrance to the Central Square shopping centre. A man and his five-year-old daughter, who were walking along the footpath with other shoppers, witnessed a young man inject himself in the street, pull the needle from his arm, throw it to the footpath, hop into a taxi and then drive off. The incident caused such distress to the father and his daughter that he had to take her home, and now she does not wish to go shopping with her father.

I ask the minister to raise the matter with the minister in the other place to see what measures can be put in place to dissuade young people from injecting themselves in shopping centres and streets, especially in the City of Ballarat.

Waverley Park

Hon. N. B. LUCAS (Eumemmerring) — I raise a matter for the attention of the Minister for Sport and Recreation. Prior to the last state election the Labor Party issued a document headed 'Building Victoria's sporting life', which stated that an ALP government would:

> Fight to keep and improve Waverley as an AFL venue.

It also said it would:

> … demand that the ground be kept open.

In the *Herald Sun* of 12 September last year Mr Bracks was quoted as saying:

> The first call I'll make as Premier is to (AFL chief executive) Wayne Jackson to say you can have improved bus lanes to Waverley and we'll give you revenue from our footy tipping competition.

The Minister for Major Projects and Tourism is reported in the *Times* of 27 October as follows:

> 'We will use the full authority of government — there are all sorts of ways in which the government can put pressure on the AFL'. Mr Pandazopoulos said that the Land Acquisition and Compensation Act, which allows the government to forcibly buy privately owned land, is just one of the mechanisms that could be used.

An article on page 20 of the *Herald Sun* of 13 October reported Mr Bracks in the following terms:

> 'I'm not going to give up', Mr Bracks said yesterday.
>
> …
>
> 'It's an important facility for Victoria', Mr Bracks said.
>
> 'I want to persuade them to keep it'.

In the *Herald Sun* of 1 November the Minister for Sport and Recreation was reported as having said:

> Labor would … retain Waverley Park as a football venue, even if it was used for the VFL competition.

Then there was a wonderful statement in the house on 10 November by Mr Jennings, who said in effect that promises made in opposition cannot be satisfied when in government.

Hon. T. C. Theophanous — On a point of order, Mr President, I listened to the honourable member asking his question about Waverley Park.

Hon. G. R. Craige — He hasn't asked it yet.

Hon. T. C. Theophanous — He has been talking for quite a long time. I want to know the tenor of what the honourable member is on about. Mr President, a substantive debate on Waverley has already occurred and many questions have already been asked of the minister during both adjournment debates and question time. Given the standing orders I ask — —

The PRESIDENT — Order! Which standing order?

Hon. T. C. Theophanous — The standing order in relation to raising — —

Honourable members interjecting.

Hon. T. C. Theophanous — I thank my colleague Ms Mikakos for her assistance. Mr President, under a ruling — —

Honourable members interjecting.

The PRESIDENT — Order! I ask the house to settle down. The honourable member is raising a point of order, and I want to hear it.

Hon. T. C. Theophanous — Under your guidelines, Mr President, you advised that matters should not be raised if they have previously been discussed. I also refer you to a ruling made during an adjournment debate in 1994 by Deputy President Evans. He said that a member cannot raise an issue that another member has already raised. It must be a different question or a slightly different angle on the same issue.

There are plenty of precedents that suggest the same question should not be asked continually in the house. The question about the Labor Party's policy on Waverley has been asked on a number of occasions. Mr President, I ask that on the basis of both your guidelines and precedent that you rule the matter out of order.

The PRESIDENT — Order! I do not uphold the point of order. If the honourable member is to rely on such a point of order, the very least he should do is quote the question that has been asked previously in the house.

Hon. T. C. Theophanous interjected.

The PRESIDENT — Order! Mr Theophanous is saying the issue has been raised before. Certainly the house has heard a lot of questions about Waverley Park.

Hon. T. C. Theophanous interjected.

The PRESIDENT — Order! However, it has not heard this one. Mr Theophanous should watch himself. He knows the rules of the house. He has not established that the issue being raised — the honourable member concerned has not finished raising it — has been raised before. That is the essence of it. The same question rule certainly exists, but that arises when the house has had a substantive debate and concluded an issue. In that case a member cannot raise the matter again in the same instance. That is not the case in this instance. Therefore, I do not uphold the point of order. When the point of order was raised Mr Lucas had been speaking for 2 minutes. I ask him to come to his question.

Hon. N. B. LUCAS — A number of my constituents have asked what the government is doing

about the issue. They are concerned and wonder whether the government is fair dinkum and will do something or whether it is asleep at the wheel.

Given that it is now four months since the minister said, 'Trust me, the issue is under control' and given that no Australian Football League games are scheduled for Waverley Park this season, will the minister provide the house with an explanation for the lack of an announcement regarding its future and admit that the government has failed in its policy commitment to keep AFL football at Waverley Park?

Hon. M. M. Gould — On a point of order, Mr President, the honourable member knows from your ruling on the adjournment debate that only one question can be asked. He asked three. I ask you to rule that he ask only one question in line with the guidelines you distributed last week.

The PRESIDENT — Order! Certainly the last comment the member was part-way through would constitute a different question. I think the first two could be wrapped into one answer. It is the same issue, so there is no point of order.

Housing Week

Hon. S. M. NGUYEN (Melbourne West) — I ask the Minister for Small Business to direct a matter to the attention of the Minister for Housing in another place. Housing Week has been successful for the past two years in recognising the contribution of public and community-managed housing. Strengthening the link between the stakeholders and building effective relationships has been fundamental to the process. In 1999 tenant groups, community organisations and local councils staged 160 events in 88 suburbs and towns in Victoria.

I understand that so far this year 200 such events have been notified to the Office of Housing. This year Housing Week will be held during the school holiday period. That will present a great opportunity for those in the western suburbs of Melbourne to participate. In light of that will the minister provide advice on the events organised for the western suburbs of Melbourne?

Community Support Fund: administration

Hon. R. M. HALLAM (Western) — Firstly I acknowledge that although the issue I raise is the same as one I have raised before, the question is quite different. The question I raise for the Minister for Industrial Relations, who represents the Premier in this chamber, concerns the administration of the Community Support Fund (CSF).

On 14 December 1999 I referred the minister to the gambling policy launch of 6 September last, and more particularly to the comment attributed to the Premier in respect of the administration of the Community Support Fund that, 'We'll make sure a proportion of that goes back into the area from which it was derived'. I asked the minister to inquire of the Premier how that area is to be defined and what proportion of funds derived from a particular area, however defined, can be returned to that area.

I received a letter from the Premier by way of response within 10 days. I thank him for that. He advised that the government was currently undertaking a comprehensive review of the administrative aspects of the CSF and said:

> As part of this review, the issues of distribution of funds from the CSF to those areas that derive the CSF's revenue will be examined in detail.

Will the minister inquire of the Premier what happens when an area has no electronic gaming machines, and when the outcome of the comprehensive review quoted in the Premier's letter can be expected?

Industrial relations: 36-hour week

Hon. KAYE DARVENIZA (Melbourne West) — I refer the Minister for Industrial Relations to the recent dispute in the building industry, the failure of the federal workplace relations minister, Peter Reith, to appear in the dispute and the opposition's support for the 36-hour week. In light of the issues will the minister inform the house of the government's assessment of the matters in the Australian Industrial Relations Commission?

Minister for Industrial Relations: offices

Hon. D. McL. DAVIS (East Yarra) — Will the Minister for Industrial Relations confirm to the house that the office she occupied at 35 Spring Street between October 1999 and January this year remains empty? Will she advise the house of the rental amount and how much community money was wasted during that period? Has it resulted in any loss?

The PRESIDENT — Order! I think that is another question.

Retail tenancies: leases

Hon. BILL FORWOOD (Templestowe) — I refer the Minister for Small Business to an issue raised with

me by a constituent concerning the Retail Tenancies Act. The issue is faced every day by hundreds of tenants and landlords who are considering options for the renewal of leases for retail business premises.

A decision in the Supreme Court in March 1999 in the case of *Apriaden v. Seacrest* noted an apparent anomaly in section 14 of the Retail Tenancies Act relating to the necessity for landlords to serve notices on tenants, which raises a number of issues. The decision, which is currently on appeal on a technical point of law, was referred to in May last year by the then shadow Minister for Small Business, André Haermeyer.

The constituent is currently caught up in the appeal before the Court of Appeal. My strong view is that the government ought to assist in the resolution of the judicial point. The representative — —

Hon. T. C. Theophanous interjected.

Hon. BILL FORWOOD — It is a point of law; it is not an issue between landlord and tenant. It is a test case. I point out to the minister that my constituent sought an appointment with her to discuss not the matter itself but the principle of the test case. I encourage the minister to reconsider her decision not to see him.

Industrial relations: 36-hour week

Hon. W. I. SMITH (Silvan) — I refer the Minister for Small Business to the Access Economics forecast of a sharp downturn in the construction activity from $7.5 billion to $4.9 billion and ask what work the minister has initiated to assess the financial impact on small businesses in the construction industry of a 36-hour week, pay increases, and increases in Workcover premiums.

Youth: vehicle insurance

Hon. B. N. ATKINSON (Koonung) — I noted that recently the Minister for Consumer Affairs announced the *Get a Life* magazine, which is a continuation of a number of information programs for young people on their consumer rights. In that context, I raise with the minister a concern I have about the ability of young drivers to obtain affordable motor vehicle insurance. I am aware of one young person who applied for motor vehicle insurance on a $6000 car being told that the premium for a comprehensive policy for one year would be $3500. In another case, the insurance quote for a car valued at $3100 was $2000.

The minister will agree that the taking out of car insurance is a good habit to encourage among the young to increase their awareness of their responsibility to themselves and to protect the financial interests of other motorists on the road. Apparently the insurance industry believes its experience with young driver insurance claims justifies its setting of premiums that are prohibitive by any measure. However, in an attempt to achieve better outcomes for the community and for young people, is the minister prepared to investigate the problem with a view to achieving lower premiums for young drivers?

Schools: Dingee and East Loddon

Hon. R. A. BEST (North Western) — I ask the Minister for Sport and Recreation to refer to the Minister for Education in the other place an issue involving preschool services at Dingee and prep-to-year-12 (P–12) school services at East Loddon.

The Shire of Loddon wants to consolidate the preschool and the P–12 school to establish a kindergarten-to-VCE college (K–12) at the East Loddon site. One of the main issues driving the proposal is that the Dingee preschool currently operates from the supper room of the Dingee hall. The Shire of Loddon will have to spend $60 000 to bring that facility up to a standard that complies with the new regulations and addresses the urgent need for an upgrade of the East Loddon P–12 school.

The shire's plan is to contribute the land abutting the site of the East Loddon senior college of the P–12 school to enable the programs to be better coordinated. Preschool services for three-year-olds to four-year-olds, after-school care and play groups could be provided on the site, and transport services could be coordinated in a way that minimises travel commitments for families.

One of the issues for those of us who are trying to bring the plan to fruition is that the school is in urgent need of repairs and maintenance. The project has the support of the community and the preschool committee, which has already raised some $20 000 and, as I said, the shire is prepared to contribute the block of land abutting the P–12 school. However, we need a commitment from the government to ensure that the project comes together.

As I said, the proposal is a sensible resolution to a difficult issue. The council needs to upgrade its facility at the community hall to comply with the preschool requirements and regulations. The opportunity exists for the services provided at the school, including the library, the bus services, administration facilities and the sports oval, to be maximised for community use.

I urge the Minister for Sport and Recreation to refer the matter to the Minister for Education in the other place to ensure that the project to create an education precinct in which the whole community can become involved can proceed.

Lysterfield Primary School

Hon. G. B. ASHMAN (Koonung) — I raise a matter for the attention of the Minister for Sport and Recreation, who represents the Minister for Education in the other place. The Department of Education, Employment and Training has a program that provides airconditioning for all portable school buildings across Victoria. Less than two months ago the Lysterfield Primary School council fitted airconditioners to its four portable classrooms. The school has spent in excess of $7000 of the funds raised by parents to aircondition those portables. The school has approached the department and sought reimbursement for its investment, but the department has said it is not prepared to reimburse the cost.

As I understand it, the department is prepared to remove the airconditioners installed by the school and reinstall airconditioners provided by the department. It strikes me that to go down that path is plain bureaucratic stupidity. I ask the minister to intervene to ensure that the parents have their investment reimbursed so they may redirect that $7000 to the education of their children.

Deakin irrigation project

Hon. B. W. BISHOP (North Western) — I raise with the Minister for Energy and Resources, who is the representative in this house of the Minister for Environment and Conservation, the Deakin project in Mildura. I am sure the minister and honourable members are aware of the project.

Unfortunately some confusion has been generated by those who do not understand the project, and its suspension has been called for. It would be irresponsible to suspend this worthwhile project because it will ensure a coordinated approach in continuing irrigation development in the Mildura area. The project is not about suddenly putting 30 000 hectares of new irrigation in place; it is about ensuring the ongoing expansion is properly planned and monitored.

Mr President, with your indulgence I shall read the short terms of reference, which are straightforward and give credence to the project. They state:

> Financial and economic impacts for the community and industry, private sector investment potential and financial appraisal of development options identified in the pre-feasibility study;
>
> environment and social issues that may impact on the region, and any legislative and regulatory constraints for the project;
>
> ensuring the project will not result in environmental damage;
>
> providing services (for example, water supply, electricity, irrigation drainage, stormwater drainage, effluent, sewerage, telecommunications, natural gas, main roads and local roads) under local and state planning schemes;
>
> identifying preferred service corridors to preserve high conservation values and determine to what extent they should also identify environmental protocols for the placement and construction of services within those corridors;
>
> planning integration of residential and agricultural pursuits for the project.

The Deakin Irrigation Development Committee has provided Minister Garbutt — I think on 31 December last — with a recommendation of those terms of reference to fully consider the issues and put forward a preferred consultant from resources supplied by the previous government. The final study must be put into place immediately as irrigation development is continuing to occur and we run a real risk of not managing this expansion in the best possible way.

Will the minister contact the Minister for Environment and Conservation and advise the house when she will sign off on the final study to ensure this development proceeds in a planned manner for the future?

Member for Frankston East: electorate office

Hon. B. C. BOARDMAN (Chelsea) — I raise with the Leader of the Government a matter for the attention of the Minister for Finance in another place. Honourable members would be aware that the Minister for Finance is responsible for managing the leases on government premises, including electorate offices. They would also be aware that members of Parliament can use their electorate office only in line with duties of a parliamentary nature.

I bring to the minister's attention an issue raised by a constituent who with some confusion and anxiety approached me on Saturday night because of activity at the electorate office of the honourable member for Frankston East in another place, Mr Viney. So concerned was the constituent — —

Honourable members interjecting.

Hon. B. C. BOARDMAN — They are all a bit worried now, aren't they? The constituent was so

concerned about the unusual and bizarre activity on a Saturday night in a member of Parliament's office that the constituent considered calling the police. It was only by coincidence that local government elections were held in the City of Frankston on Saturday. Mr Viney was the coordinator for a number of candidates for the Frankston City Council elections, including the Honourable Bob Smith's electorate officer, Cr Conroy. At the polling booth on Saturday a person handing out how-to-vote cards for Australian Labor Party candidates was heard to say, 'At the end of the day just ring the results through to Matt's office'.

Hon. P. A. Katsambanis — Whose office?

Hon. B. C. BOARDMAN — To Matt Viney's office, a member of Parliament. I ask the minister to ensure that Mr Viney's electorate office was being used on Saturday night for official parliamentary purposes and not as a tally room to ring the results through for ALP-supported council candidates, which clearly have nothing to do with a member of Parliament.

Snowy River

Hon. E. G. STONEY (Central Highlands) — I refer the Minister for Energy and Resources to her promise to restore a 28 per cent environmental flow to the Snowy River. The minister has advised the house that water savings to achieve the 28 per cent flow will cost a lot of dollars. The minister has also said that federal dollars are not needed to find the savings. Why can't the minister immediately start to spend the money to achieve the savings so she can keep her promise as soon as possible?

Ballarat: Camp Street project

Hon. M. A. BIRRELL (East Yarra) — I raise a matter with the Minister assisting the Minister for Planning in his capacity as the minister responsible for the redevelopment of Camp Street in Ballarat. The Camp Street project was initiated by the previous government and is of enormous historical and civic importance for the people of Ballarat. Given the minister is now responsible for this project, I welcome his outlining to the house what funding will be made available to the project in the coming business year and the timetable for the works over the next 12 months.

Responses

Hon. M. M. GOULD (Minister for Industrial Relations) — The Honourable Dianne Hadden raised a matter to be referred to the Minister for Health concerning drug use in the streets of Ballarat. I will refer the matter to the minister and have him respond to the honourable member in the normal manner.

The Honourable Roger Hallam raised a matter to be referred to the Premier about the distribution of Community Support Fund moneys specifically in areas where non-electronic revenue is collected. I will ask the Premier to respond in the usual manner, and I hope he will do so as quickly and efficiently as he has done in the past.

The Honourable Kaye Darveniza raised the building industry matter now before the Australian Industrial Relations Commission. The government has carefully monitored those proceedings in the commission. On the basis of that monitoring the government made an assessment that seeking leave to intervene in the matter would not have assisted the resolution of the dispute between the parties. The government does not support gratuitously picking sides and acting in a partisan manner before the commission. It supports a fair settlement to disputes. Negotiations are still occurring between the employers and unions, and there are strong public indications that a pending settlement with at least some groups will be made. In those circumstances the government's intervention would prove counterproductive. It is also worth noting that Peter Reith, the federal minister responsible for industrial relations, failed to use his automatic right under the Workplace Relations Act to appear before the commission in the matter.

The Honourable David Davis raised a matter he has raised on a number of occasions about my office location. I have told him where it is. I was advised that the lease was due to expire at the end of this financial year and based on advice from my department it was deemed appropriate to relocate to other premises.

The Honourable Cameron Boardman raised a matter for the Minister for Finance about electorate offices. I will ask the minister to respond in the usual manner.

Hon. C. C. BROAD (Minister for Energy and Resources) — The Honourable Ron Bowden raised with me correspondence he has received from the Abalone Divers Association concerning the draft Environment Conservation Council report and its recommendations on no-take zones. His correspondence would be part of the great body of correspondence on this matter, if mine is anything to go by.

The honourable member seeks an assurance that the final report of the Environment Conservation Council will not unnecessarily penalise the industry in deciding

which recommendation to adopt. The government will certainly make that its objective when it weighs up all the submissions on that important matter.

The Honourable Elaine Carbines asked the Minister for Transport to improve the intersection of the Bellarine Highway and Banks Road. She referred to discussions she has had with Vicroads about the speed sign in the lead-up to the intersection and sought support from the Minister for Transport in reducing the speed limit on the approach. I will refer the matter to the Minister for Transport.

The Honourable Barry Bishop referred the attention of the Minister for Environment and Conservation to a project to develop irrigation in the Mildura area. He advised the house of the proposed terms of reference for the continuation of the project and asked me to request the minister to advise the house when she will approve the final stage of the project. I will pass the request on to the minister.

I received a question from the Honourable Graeme Stoney on the important issue of the government's commitment to restoring environmental flows in the Snowy River. Mr Stoney asked why the Victorian government cannot commence spending to meet its commitments, notwithstanding the other commitments that may or may not be made by the commonwealth and other parties. I direct the attention of the honourable member to an announcement made on Friday concerning the government's commitment to commence river works in the current financial year with initial expenditure of more than $400 000 and further expenditure of around $1.3 million. That is an indication of the Victorian government's intention to honour its election commitment to restore flows in the Snowy River.

Hon. M. R. THOMSON (Minister for Small Business) — The Honourable Ian Cover asked about television in Geelong via the community station, Channel 31. Government policy on that matter is specific. The Bracks Labor government will liaise with the federal government to allow a Geelong-based community television station to broadcast directly into Geelong. I am more than happy to ask the Premier to inform honourable members of developments arising from the discussions held with the federal government.

The Honourable Sang Nguyen mentioned Housing Week and sought advice about the activities being undertaken in the western metropolitan area. I will raise that matter with the minister concerned.

The Honourable Bill Forwood asked about retail tenancies and referred to the correspondence of a constituent who, having been caught in a point of law, wanted to speak to me about it. I was advised not to speak to him on the basis that the matter was currently before the court. I am happy to go back to my department and raise it again.

The Honourable Wendy Smith asked about the projected decline in building and construction forecast by Access Economics and the financial impact of a 36-hour week and Workcover premiums on small business. The 36-hour week campaign was a template set on Federation Square by the former Premier, Jeff Kennett. Perhaps next year — —

Honourable members interjecting.

The PRESIDENT — Order! There is no need for the minister to keep talking when there is such a racket going on. I am trying to get a bit of peace and quiet. I ask the minister to go back a sentence or two and keep going.

Hon. M. R. THOMSON — Perhaps the former Premier should have considered that when he set the 36-hour week at Federation Square. I have said before that the government is concerned to keep the impact of Workcover premiums on small business to a minimum. There may or may not be a rise in Workcover premiums. No decision has been made.

The Honourable Bruce Atkinson referred to the *Get a Life* magazine and the cost of motor vehicle insurance for young people. He said a car might cost a young person $3100 and the insurance might cost $2000. He asked me to examine lowering premiums for young people. Honourable members know that premiums for young people are high because of the number of accidents in which they are involved. A driver education program that potentially carries an insurance discount could be one way of assisting. I will be happy to discuss with my department the suitability of talking to insurance companies about providing some mechanism for responsible young drivers to have lower insurance rates.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I thank the Honourable Glenyys Romanes for her question about the netball charges at the Royal Park netball site, which will eventually be the new State Netball and Hockey Centre. The site will be significantly changed and there will be benefits. It will be an all-weather facility instead of an outdoor one.

The government is therefore looking for an increased return on the facility. It also wants to ensure that female

participation does not decline. I have mentioned on a number of occasions that the Bracks Labor government is committed to increasing the sporting participation of young females, in particular because of the drop-out rate in that demographic. I will monitor the new charges to ensure that female participation in sports does not decline, particularly in netball, and that the charges do not have a detrimental effect on that demographic.

The Honourable Peter Katsambanis asked about the scheduling of Australian Football League (AFL) games. Honourable members are not unlike the rest of the Melbourne community in expecting the traditional Saturday afternoon game. The scheduling of games on Wednesday, Thursday, Sunday and Monday nights is of particular concern to families and those who wish to take their children to the football.

Honourable members may not be aware that the Victorian Football League (VFL) has been reconstituted this year in a new format and has played mainly on afternoons over the weekends. There is potential for that competition to flourish based on the traditional Saturday afternoon format.

It may be an opportunity for some of the regional and rural football leagues that have struggled in recent years to enhance their following because of the patronage of AFL football on weeknights. A number of issues relating to the staging of those games must be carefully monitored, and I will discuss those with the AFL while at the same time monitoring the interests of country football and the Victorian Football League.

The Honourable Neil Lucas raised the issue of Waverley Park. Over recent months I have had significant discussions with Australian Football League representatives. My understanding from those discussions is that the AFL is determined to derive the best commercial return from the land and the facility. I understand the AFL will be seeking expressions of commercial interest for the Waverley Park site in the very near future. When those expressions are known the government will seek to have discussions with the league to ascertain how Waverley Park can best be used for football either at the AFL or VFL level.

I will relay the matter raised by the Honourable Ron Best about the East Loddon preschool and the matter raised by the Honourable Gerald Ashman about airconditioning at the Lysterfield Primary School to the Minister for Education in the other place.

The Honourable Mark Birrell raised with me the Camp Street revitalisation project in Ballarat. I have been assisting the Minister for Planning with that project, and in February I provided grant moneys of $950 000 to the University of Ballarat to facilitate its involvement in the project. The Camp Street revitalisation project will involve the redevelopment of redundant government buildings in the Camp Street precinct. It will be of significant benefit to Ballarat as part of its regional focus, particularly as it is in the heart of Ballarat.

The government is contributing $12 million over three years as well as land to facilitate the project. The Ballarat City Council will commit $1.83 million, with $300 000 of community funds and $2 million coming from the commonwealth. Central elements of the project include the extension of the Ballarat Fine Art Gallery, where conceptual plans are well advanced, the relocation of the Ballarat university visual and performing arts faculty into the precinct, and the creation of a central open area for public use to be known as Alfred Deakin Place.

Motion agreed to.

House adjourned 10.03 p.m.