PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

1 May 2001

(extract from Book 3)

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By authority of the Victorian Government Printer

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TUESDAY, 1 MAY 2001

Tuesday, 1 May 2001

The PRESIDENT (Hon. B. A. Chamberlain) took the chair at 2.02 p.m. and read the prayer.

ROYAL ASSENT

Message read advising royal assent on 10 April to:

Health Records Act
Land (Further Revocation of Reservations) Act
Parliamentary Precincts Act

WATER (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

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

WHISTLEBLOWERS PROTECTION BILL

Introduction and first reading

Received from Assembly.

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

CITY OF MELBOURNE 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

Commonwealth Games: rowing

Hon. I. J. COVER (Geelong) — Will the Minister for Sport and Recreation indicate whether he fought to keep rowing on the 2006 Commonwealth Games agenda and, if not, why not?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Mr Cover may be aware that the Commonwealth Games organising committee nominated a number of sports for inclusion in the games, and rowing was not one of those nominated. I have been strongly lobbied for the inclusion of a number of sports. I have received significant correspondence from overseas proposing the inclusion of wrestling, for which Australia is not well known, in the 2006 Commonwealth Games, but honourable members will be aware that there are only so many sports and events that can be included in the games. Cricket was one of the sports nominated for inclusion, but the International Cricket Council has chosen not to pursue its place in the games because of its 10-year scheduling, and cricket will not be represented. Basketball is likely to replace cricket, but rowing was not considered.

Better Business Taxes package

Hon. JENNY MIKAKOS (Jika Jika) — Will the Minister for Small Business inform the house how the recently announced Bracks government Better Business Taxes package will affect Victorian small businesses?

Hon. M. R. THOMSON (Minister for Small Business) — It gives me great pleasure to talk about the benefits of the Better Business Taxes package announced recently by the Treasurer, which will provide a better, simpler and fairer taxation system for small business.

As the public have been made aware, $774 million of business tax cuts will be delivered over the next four years. This is a great outcome for small business. Approximately 46 000 current land tax payers will no longer be paying land tax. They will be escaping the loop because the government will raise the tax-free land tax threshold from $85 000 to $125 000 from July 2001. This contrasts with the former Liberal government, which lowered the threshold from $200 000 to $85 000. The Better Business Taxes package will benefit nearly everyone in the community.

The scare campaign the opposition is trying to promote is outrageous at a time when small business has been doing it tough because of the GST. It is an indictment of the real stance of the opposition on small business. It shows a genuine lack of care for small business and the plight it is currently in.

Honourable members interjecting.

Hon. T. C. Theophanous — VECCI does.

Hon. M. R. THOMSON — Let's talk about who does support it. The Victorian Employers Chamber of Commerce and Industry supports it, the Australian Industry Group supports it, CPA Australia supports it and the Master Grocers Association supports it. They all know and understand that this is a real confidence

boost, particularly for small business. It indicates the way the government deals with these issues. The government takes a widely consultative approach to tax issues, which contrasts with the implementation of the GST and the disaster it has been for small business. It reinforces the message that the Victorian government is out there consulting with businesses, which has actually brought about the best results for businesses in Victoria.

Payroll tax will be lowered from 5.75 per cent to 5.45 per cent from 1 July, and from July 2003 it will reduce further to 5.35 per cent. At that time the payroll tax threshold will also be raised from $515 000 to $550 000, and the government will make it simpler and easier to deal with the State Revenue Office and to conduct business with it.

We will also be abolishing three stamp duties. Stamp duty on non-residential leases has already been abolished — it took effect immediately upon announcement. Stamp duty on unquoted marketable securities will be abolished from 1 July 2003, and stamp duty on mortgages will be abolished from 1 July 2004.

This is a package that is good for business, and particularly good for small business, and it really demonstrates that the Bracks government is taking care of small business.

Tammy van Wisse

Hon. P. A. KATSAMBANIS (Monash) — In answer to my question on 21 March the Minister for Sport and Recreation suggested that a state reception would be an inappropriate way of acknowledging the tremendous achievements of Tammy van Wisse. On 4 April the Premier wrote to me thanking me for my suggestion and agreed to hold such a state reception, which I believe has now been scheduled. Does the minister wish to withdraw his previous criticism of this idea?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — While not a unique idea, it is one that was suggested by the Honourable Peter Katsambanis. I qualified my remarks, as honourable members may be aware and appreciate, by saying — and I reiterate it — that, having been a sportsperson, although it is great to mix with people from all backgrounds in a social format over a drink, maybe a glass of champagne, the most important issues for those athletes are backing up sport and participation and also giving athletes the opportunity to become involved with the community.

While I did not condemn the idea, my criticism of the member's suggestion was that he was focused on the drinks alone and not necessarily on the good work that sportspeople can do in their communities.

Industrial relations: commonwealth act amendments

Hon. R. F. SMITH (Chelsea) — I direct my question to the Minister for Industrial Relations. The minister has previously advised the house of the federal government's inadequate proposal to amend the Victorian-specific parts of the federal Workplace Relations Act. Can the minister advise the house of what the federal government has done since then in respect of these amendments?

Hon. M. M. GOULD (Minister for Industrial Relations) — I thank the honourable member for his question; I know he is truly interested in the issues surrounding Victorian workers who suffer under schedule 1A to the federal Workplace Relations Act.

As honourable members would be aware, a few weeks ago the federal minister, Tony Abbott, announced inadequate changes by a press release and in doing so he breached an intergovernmental agreement with the Victorian government by not providing the notice he was required to give.

The amendments show that the federal minister has acknowledged that there is a problem in Victoria with those covered under schedule 1A and that the federal government has acknowledged that there is an issue there. However, it does not resolve the problems of the 250 000 Victorian workers covered by the schedule who have minimum conditions. It increases the unique disadvantage of those Victorians by enshrining a situation where Victorian workers are covered by 20 allowable matters under the federal awards compared with workers being covered by a handful of provisions under schedule 1A. Having only those minimum conditions apply means that those Victorian workers are disadvantaged. They do not look after those workers and they do not look after outworkers. Nevertheless, Mr Abbott has indicated his intention to press ahead with these amendments.

I wrote to Mr Abbott nearly a month ago, and to date he has not made any attempt to address the issues he identified in his press release. He has not had any discussions with the Victorian government. He has not produced any legislation to be introduced into Parliament. He has not released it publicly. Obviously he is not intending to proceed with this. It was just a stunt to get the Liberal opposition off the hook with respect to looking after these low-paid workers.

The government will continue to work with the federal government to ensure there are proper changes so that a true uniform system applies in Victoria, not one that is discriminatory and continually puts Victorian low-paid workers into the working poor, which occurs at the moment. We will continue to work with them.
Mr Abbott made these announcements over a month ago. I have written to him; he has not responded. He has not come up with or introduced any legislation into Parliament.

The government is committed to looking after these people — unlike the opposition, the National Party, and, obviously, the federal government. They ought to put their money where their mouth is. If the federal minister is prepared to put this legislation through he ought to put it through in such a way that it is fair and equitable, so that all Victorians are equal and share the same amount of protection through federal awards.

Petrol: prices

Hon. R. A. BEST (North Western) — Given that the Premier was last week quoted as calling on the Australian Competition and Consumer Commission to investigate the dramatic rise in the price of petrol, which climbed to over $1.03 per litre in the Melbourne area, will the Minister for Consumer Affairs advise the house whether the government is now prepared to forgo some of its revenue derived from fuel taxes to provide relief from high petrol prices throughout Victoria?

Hon. M. R. THOMSON (Minister for Consumer Affairs) — I have answered questions about the new tax arrangements and said that the government no longer receives a return on fuel excise from the federal government. In fact, under the GST it will be 2007–08 before Victoria breaks even, and honourable members opposite know and understand that.

Honourable members interjecting.

Hon. M. R. THOMSON — That is not true. The Prime Minister called on the Australian Competition and Consumer Commission to intervene and that call was reiterated by the Premier. Officers of my department and my office have met with the ACCC to look at ways we can cooperate with it in any inquiry it may undertake on fuel prices. It has been requested that liquefied petroleum gas prices be included in any inquiries the commission may make. These requests for an inquiry have been made since I became a minister, and we will continue to make them. We will work cooperatively with the ACCC on outcomes. I reiterate: under the new tax arrangements Victoria will not break even until 2007–08.

Youth: Island program

Hon. T. C. THEOPHANOUS (Jika Jika) — Given the commitment of the Bracks Labor government to promoting innovative approaches to youth issues, will the Minister for Youth Affairs inform the house of any examples of innovation about which he is aware?

Hon. J. M. MADDEN (Minister for Youth Affairs) — Last week I was privileged to be invited to the Island, a work education and training facility in North Fitzroy operated by Collingwood College. It is a tremendous program catering for disadvantaged young people, particularly those who have left school early or have demonstrated significant difficulty in adapting to traditional or mainstream school settings. About 45 participants at any one time attend from across the Melbourne metropolitan region, plus a few from regional areas such as Kyneton and Broadford.

The participants are initially offered a four-day trial process of different workshops, including cooking, motor mechanics, woodwork and art metalwork. Upon acceptance into the program, which is done after counselling to see whether the young people are happy that the program suits their needs, they then enter into agreements and settle in for, one hopes, a six-month period. It has been found, and the Island reports, that the success rate is extremely high and after their initial period young people access the job market. Absenteeism is negligible.

I spoke with students from the centre and was impressed by their conviction and enthusiasm, particularly those who had come from difficult circumstances. They spoke about their confidence and the gains they had made following their involvement with the Island.

I congratulate the committed and compassionate staff and the students who were my hosts at the Island. I refer particularly to the senior coordinator, Ann Broadridge, and instructor, Bernie Donaghue, who showed me through the centre. It is a great example of the types of programs across different communities that potentially could be considered for young people who do not fit into the mainstream and require opportunities that are not available in traditional school settings to prepare them for work settings. I congratulate Collingwood College on the program and wish those young people well with their futures. I also wish the Island well with its future.

Waverley Park

Hon. N. B. LUCAS (Eumemmerring) — On a number of occasions the Minister for Sport and Recreation has advised this house that he is seeking to encourage creative solutions for Waverley Park. At a meeting with representatives of Save Waverley on 26 April the minister was advised of a $300 million-plus development proposal for a sports theme park at Waverley. What has the minister done to encourage this development?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I recently met with a number of people involved with the Save Waverley group. The Honourable Bob Smith attended that meeting and advocated some of the issues on behalf of that group. The Honourable Neil Lucas was also present. But while Mr Smith was quite vocal, Mr Lucas was silent. One would have suspected that Mr Lucas would have been as vocal at that meeting as he had been in the house and in his party's caucus room in previous years.

Waverley Park is obviously a recurring theme, but I would like to draw the attention of the house to a document which I am prepared to table. This document bears the date 'Round 1 March 27–31 1997'. This is a photocopy of a page in the *Football Record* for that weekend and it explains the Docklands proposal. I have highlighted a number of passages in the document. It talks about the process by which the former government entered into an arrangement with the Australian Football League (AFL) about the Docklands proposal. I am surprised that at no stage has the opposition recognised that in making decisions on Docklands the former government failed to articulate to the public its intentions for Waverley Park.

Opposition members interjecting.

Hon. J. M. MADDEN — It is interesting. I can understand why members opposite do not like it.

Honourable members interjecting.

The PRESIDENT — Order! I ask the house to settle down. A specific question has been asked about the minister's activities and I think the minister is getting around to answering that question.

Hon. J. M. MADDEN — Thank you very much, Mr President. I can understand why the opposition does not want to listen to me; members opposite do not want to hear an answer that they have heard a number of times before. I repeat: the former government was remiss in the sense that when it made a strategic decision — —

Hon. K. M. Smith — On a point of order, Mr President, you have drawn the minister's attention to the fact that he was drifting off the issue raised with him. Could you now draw him back again to the question?

The PRESIDENT — Order! The honourable member knows the rules about answers to questions: the answer must be responsive to the question. The answer is certainly referring to Waverley Park. The question is perhaps not being answered in the terms that it was asked but the minister has not finished yet and I will give him the opportunity to do so.

Hon. J. M. MADDEN — Thank you very much for your ruling, Mr President. Members opposite can go on and on about Waverley Park, but at a time when a strategic decision was made — —

Opposition members interjecting.

Hon. J. M. MADDEN — Members opposite do not like the answer and I can understand why. As far back as 1997 when members opposite were in government and the strategic decisions were being made as to where to locate the next AFL venue and I have highlighted here — —

Hon. M. A. Birrell — On a point of order, Mr President, the minister has been asked a specific question about a proposal for Waverley Park which has been put to him. The question was what is his response and what action is he taking on that. The minister has not in any way referred to the proposal that he has been asked to comment on in his capacity as sports minister and what he is doing to implement a part of his policy on expanding the uses of Waverley Park.

I ask you, Sir, to request the minister, consistent with the pledge that he and his party made to the Independents to be responsive to questions and to answer them directly, to now start to directly answer the question on what is he doing about the $300 million-plus proposal for Waverley Park, given that he is the minister and he is responsible for it.

Hon. T. C. Theophanous — On the point of order, Mr President, you would be aware that during question time the minister can respond to any portion of the question put to him, including the preamble. In responding to the question of the proposals that may be before the public at the moment, the minister is also certainly within his rights to contrast proposals that may have been put to the previous government and the way in which that government dealt with them in answering how he intends to deal with the proposals currently before the government or other bodies. On the general

question, clearly the minister has a wide ambit to answer both the substance of the questions and the preamble used by the honourable member.

Hon. N. B. Lucas — Further on the point of order, Mr President, I would put to you that in the whole of his answer the minister has dealt with the past. I draw to your attention that my question stated, firstly, that the minister on a number of occasions has advised this house that he is seeking to encourage creative solutions for Waverley Park, which is a future thing. The second point I made was that at a meeting he was advised of a development proposal of $300 million-plus for a sports theme park — again a future aspect. The third and last point I asked him was what he had done to encourage this development. My question was, 'What, if anything, is the minister doing to encourage something to happen in the future?'.

If you, Sir, have ruled — naturally I accept your ruling — that the minister is giving background information by describing past proposals, I put to you that he should come to the nub of the question in response to the three points I made about the future of the park and what he is doing about the future.

The PRESIDENT — Order! On the point of order, the minister is entitled to provide background and history on the developments or activities that affect Waverley Park. The bottom line is that the question was very specific in relation to a particular proposal raised at a community meeting. So far the minister has not responded to that. It was responsive in the sense that if he is going to give us an answer to it, that is the way he has given it to us; but if he walks away from the question he has clearly not adhered to the spirit of question time, let alone any promises that might have been given to any other group in Parliament. I therefore uphold the point of order that so far the minister has not responded to the question put by Mr Lucas.

Hon. J. M. MADDEN — I will get to the point, but I want to give a bit of background to the circumstances under which the situation at Waverley has arisen. I refer to some paragraphs in an article in the *Football Record* headed 'The pathway to the decision', which I am happy to table. It states on page 14:

> Mr Samuel, as chairman of the Melbourne and Olympic Parks Trust, had been appointed to an honorary position by the Victorian government to facilitate an agreement between the AFL and the Melbourne Docklands Authority for use of Victoria Stadium.

Further the article states:

> The Premier, Mr Kennett, and other senior Victorian government ministers, were briefed by Mr Samuel and after a few days indicated to Mr Samuel that the government was prepared to enter into an agreement which would ultimately give the AFL ownership of Victoria Stadium.

So at a time when the Victorian government is prepared to offload the land to the AFL over a long period, of course it is going to sell Waverley Park. Of course it would want to do that.

Honourable members interjecting.

Hon. J. M. MADDEN — I am getting to the point.

Hon. M. A. Birrell — On a point of order, Mr President, I am happy for the minister to show up his weakness through this answer, but I would rather the house hear an answer to the question that was asked. I ask, Mr President, that you direct the minister to the point and advise him that he must be responsive to the question that was asked of him.

The PRESIDENT — Order! The minister has already given an undertaking to the house that he will be responsive directly to the question, in accordance with my ruling. The minister has given us enough background now; there is no need to repeat that background. I suggest that the minister get to the question.

Hon. J. M. MADDEN — If the message has not got across to the opposition, it is that in a sense they were involved in what has happened to Waverley Park to this time.

Honourable members interjecting.

The PRESIDENT — Order! The minister is starting to flout the ruling of the Chair. He has given the background, as he is entitled to do — I have not tried to circumscribe that. A moment ago the minister said he was coming to the nub of the question, and I ask him to do so.

Hon. J. M. MADDEN — I have officers from my department reviewing the report that was tabled at that meeting, and I will seek advice on that report. While I am open to suggestions about any solutions for Waverley Park, I can also say that I suspect that that report was discounted very early on by the AFL and any other potential developers, because if it were the pot of gold at the end of the rainbow commercial enterprise would have taken it up a long time ago, as the AFL may well have wanted to, but to this time it has not been taken up.

As I said, I have officers of my department reviewing that report, and I will look very closely at the recommendations from the department.

Devprayag salvage

Hon. G. D. ROMANES (Melbourne) — Will the Minister for Ports advise the house of the steps taken by the Marine Board of Victoria to successfully salvage the vessel *Devprayag* that was grounded in Portland on 21 April?

Hon. C. C. BROAD (Minister for Ports) — I am very pleased to advise the house that the Victorian agencies that dealt with the grounding did so in an extremely professional, cooperative and expedient manner and that that led to the successful refloat with minimal impact on the environment.

As members of the house may be aware, the vessel went aground in gale force winds on the evening of 21 April. The vessel is a 50 000-tonne bulk container, which had fortunately discharged its cargo at Portland and was at anchor, so there was no cargo on board. However, it had on board some 960 tonnes of fuel oil, 107 tonnes of marine diesel, some lube oil and some 40 crew members, who fortunately were safely evacuated from the vessel.

The Marine Board of Victoria has the legislative responsibility for vessel safety and marine pollution responses in Victorian waters. As soon as the marine board was notified, it immediately activated the marine pollution contingency plan and the state marine pollution coordination centre. The overall coordination of the incident was undertaken by the marine board from that centre. The initial actions involved successfully facilitating the salvage agreement, which was critical to the early resolution of the incident.

The outcome of the marine board's salvage facilitation and the cooperative and controlled detailed planning of the salvage operation and pollution contingencies led to the successful refloat of the vessel on 25 April with only minimal impact on the surrounding environment. However, the effect of the grounding on the reef is now being investigated by the Department of Natural Resources and Environment, and the incident is being investigated by the Australian Transport Safety Bureau. They will report in due course.

The Marine Board of Victoria, United Salvage and all parties involved in the incident should be congratulated on managing a positive outcome to what was a complicated and sensitive operation. That successful salvage operation is proof that the planning and rapid responses overseen by the agencies and the government effectively secure Victoria's marine environment.

Boxing: control

Hon. ANDREW BRIDESON (Waverley) — Given that the federal Minister for Health and Aged Care, Michael Wooldridge, has stated that the banning of the sport of boxing is a state issue, will the Minister for Sport and Recreation tell the house his views on this important topic?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I thank the honourable member for his question on the serious issue of boxing, which has had a great deal of airing in the past few weeks. To give the house some background about boxing in Victoria, honourable members may not be aware that boxing is probably more regulated in Victoria than in any other state. There are incredible contrasts across the country in that in some states there are no regulations; they still set up tents at local fairs or behind the pubs and can still entertain fisticuffs — unsupervised and unregulated — and have people enter into boxing matches in traditional boxing tents. I know that is the case in the Northern Territory and some other states.

Boxing in Victoria is heavily regulated and in many ways is the benchmark for other states. Although boxing is not a sport I would necessarily recommend for people to engage in because of the risks associated with it, those who box are aware of the risks.

I shall give the house background on what Victoria does with boxing. The federal health minister may say he wants the states to ban boxing, but he should also speak to the federal sports minister — obviously they do not discuss the issue. The federal sports minister, through the Australian Sports Commission, is spending $1.5 million to support boxing. If boxing is an issue for the federal health minister, I recommend that he should consult with his ministerial colleague, the federal sports minister, who would be well aware of what is happening across Australia with the sport of boxing. But, of course, the federal health minister is not aware of those things because he does not speak to the federal sports minister! I will tell the house what is happening nationally.

Honourable members interjecting.

The PRESIDENT — Order! This is a serious issue, and the house is entitled to hear the minister's answer. I ask opposition members to desist from interrupting the minister.

Hon. J. M. MADDEN — The federal sports minister would be able to tell the federal health minister that a working group has been established by the Sport and Recreation Ministers Council to address issues

associated with boxing and combat sports. But the federal health minister is not aware of that because he does not speak to the federal sports minister!

An important recommendation of the working group related to the commissioning of a three-phase research project into the effects of participating in boxing and other combat sports. The clear intention of the working party's recommendation was that there be national research — —

Hon. Andrew Brideson — On a point of order, Mr President, the minister has been providing background for some 5 minutes. I asked him a specific question and invited him to put his views on the banning of boxing.

Hon. J. M. MADDEN — I will return to my answer. Sometimes it is important to give background.

The PRESIDENT — Order! The minister does not often deliver brief answers and likes to expand. He is expanding and giving the house background, which he is entitled to do. I presume at the end of that he will come to the nub of the question, which asks for his views on the banning of boxing.

Hon. J. M. MADDEN — We will continue to promote the conduct of the working party research on issues concerning boxing at the standing committee on recreation and sport at the Sport and Recreation Ministers Council. I hope the federal sports minister can advocate with the federal sports minister what is happening.

I also inform the honourable member that the Professional Boxing and Martial Arts Board has established a medical advisory panel that advises on safety issues for contestants, including the latest medical developments internationally. I am eager to hear from the board's medical advisory panel on ways we can minimise risk with boxing. Were Victoria to ban boxing, other states would probably take up the slack and boxing could be involved in sports where there are no regulations. It is better to have safety regulations here than have them boxing in the back of some tent in the Northern Territory. We will work closely to ensure that the risks associated with boxing are minimised.

Small business: e-commerce

Hon. D. G. HADDEN (Ballarat) — Will the Minister for Small Business inform the house of the assistance and initiatives the Bracks government is providing to small businesses to support them in the take-up of e-commerce?

Hon. M. R. THOMSON (Minister for Small Business) — As we have demonstrated with the Better Business Taxes package, the government will be looking after small businesses and their need to understand the importance of e-commerce for their future. In the past 12 months we have conducted a number of programs relating to e-commerce, one being the VEEMS program, which encourages small business in local municipalities to look at ways they can take up the use of e-commerce.

The government has announced Victoria's E-commerce Advantage, a strategy that was launched by the Treasurer and me on 18 April. It is the first policy statement that has been made on e-commerce by the Victorian government. I have spent a lot of time in this house talking about the importance for small business of taking up e-commerce options for their businesses and about the advantages there for them. It is important that the advantages are taken up now and not delayed.

Through E-commerce Advantage we have examined ways we can help to encourage small businesses to look at e-commerce as a tool — something they can utilise to advance their own business practices. Victoria's E-commerce Advantage is a new, $10 million strategy. It is, as I said, the first e-commerce policy that has ever been produced by a Victorian government, and it will help small businesses to take up e-commerce options.

Some of the things E-commerce Advantage will do include developing e-commerce advocates who will go out to talk to businesses, either on a one-on-one basis or to groups to advise people on how they can utilise e-commerce for their businesses. It will encourage businesses to work cooperatively and to look at ways they can work together on e-commerce options. It will also develop a road show that will travel throughout Victoria to display the latest developments in e-commerce and to help educate small businesses on their options in the take-up of e-commerce. One of the hardest things for small businesses is to work out who they can trust when they look at e-commerce packages and to decide what kind of package they need.

Vic IT will be an online access point for small businesses that will assist them in finding e-commerce expertise and in adapting their own business management to take up e-commerce.

We also need to make consumers aware of e-commerce and the way they can use it responsibly to ensure they protect themselves. Part of the e-commerce strategy is a consumer education program to ensure consumers understand how to use e-commerce wisely, and their rights and obligations.

The government is also developing an e-commerce procurement strategy to assist businesses, but particularly small businesses, in understanding how they can use e-commerce more advantageously to obtain government contracts. It is another demonstration of how the Bracks government is delivering for small business.

BUSINESS OF THE HOUSE

Photographing of proceedings

The PRESIDENT — Order! I advise the house that tomorrow at 2.00 p.m. before question time photographs will be taken of the chamber in operation because several changes in personnel and seating arrangements have occurred since the last photograph.

QUESTIONS ON NOTICE

Answers

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

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

Motion agreed to.

Hon. M. M. GOULD — The question numbers are: 1425–7, 1440, 1447–9, 1454, 1462, 1464–5, 1467, 1469–70, 1472–4, 1478, 1481–6, 1488–9, 1491, 1493, 1495–6, 1631–4, 1636–8, 1640–2, 1644–60, 1662–3, 1669, 1675–6, 1678, 1681.

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.

PETITION

Land tax: government policy

Hon. B. C. BOARDMAN (Chelsea) presented a petition from certain citizens of Victoria requesting that the government does not accept the recommendations of the Harvey report regarding the introduction of a flat rate of land tax of 2.89 per cent (51 signatures).

Laid on table.

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Annual review

Hon. JENNY MIKAKOS (Jika Jika) presented report on 1999 and 2000 regulations, together with appendices.

Laid on table.

Ordered to be printed.

Alert Digest No. 4

Hon. M. T. LUCKINS (Waverley) presented *Alert Digest* No. 4 of 2001, together with appendices.

Laid on table.

Ordered to be printed.

PAPERS

Laid on table by Clerk:

Auditor-General — Report on Implementing Local Priority Policing in Victoria, May 2001.

Bendigo Regional Institute of TAFE — Report, 2000.

Box Hill Institute of TAFE — Report, 2000.

Caritas Christi Hospice Limited — Report, 1999–2000.

Central Gippsland Institute of TAFE — Report, 2000.

Chisholm Institute of TAFE — Report, 2000 (two papers).

Council of Adult Education — Report, 2000.

Deakin University — Report, 2000.

Driver Education Centre of Australia Limited — Report, 2000.

East Gippsland Institute of TAFE — Report, 2000 (two papers).

Gordon Institute of TAFE — Report, 2000.

Goulburn Ovens Institute of TAFE — Report, 2000.

Holmesglen Institute of TAFE — Report, 2000.

Judicial Remuneration Tribunal — Reports —

Judicial Salary and Allowances Report, 17 January 2001 and Attorney-General's reasons of 24 April 2001 for accepting the recommendations.

Victorian Civil and Administrative Tribunal's Salary and Allowances Report, 17 January 2001 and the Attorney-General's reasons of 1 May 2001 for varying the recommendations.

Kangan Batman Institute of TAFE — Report, 2000

La Trobe University — Report, 2000.

Melbourne University — Report, 2000.

Mercy Public Hospitals Incorporated — Report, 1999–2000.

Northern Melbourne Institute of TAFE — Report, 2000.

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

Ballarat Planning Scheme — Amendment C40.

Bass Coast Planning Scheme — Amendment C2 (Part 1).

Boroondara Planning Scheme — Amendment C13.

Campaspe Planning Scheme — Amendment C13.

Casey Planning Scheme — Amendments C20, C28 and C29.

Darebin Planning Scheme — Amendment C17.

Glen Eira Planning Scheme — Amendment C10.

Horsham Planning Scheme — Amendment C5.

Hume Planning Scheme — Amendments C6 and C20.

Knox Planning Scheme — Amendments C6 and C15.

La Trobe Planning Scheme — Amendment C8.

Maroondah Planning Scheme — Amendment C13.

Melbourne Planning Scheme — Amendment C43.

Moonee Valley Planning Scheme — Amendment C23.

Moreland Planning Scheme — Amendment C3.

Mornington Peninsula Planning Scheme — Amendment C26 (Part 1).

Pyrenees Planning Scheme — Amendment C3.

Stonnington Planning Scheme — Amendment C7.

Whittlesea Planning Scheme — Amendment C17.

Yarra Ranges Planning Scheme — Amendments C6 and C7.

Royal Melbourne Institute of Technology — Report, 2000

South West Institute of TAFE — Report, 2000 (two papers).

Statutory Rules under the following Acts of Parliament:

Gaming Machine Control Act 1991 — No. 31.

Local Government Act 1989 — No. 30.

Road Safety Act 1986 — No. 29.

Subdivision Act 1988 — No. 28.

Supreme Court Act 1986 — No. 26.

Supreme Court Act 1986 — Corporations (Victoria) Act 1990 — No. 27.

Wildlife Act 1975 — No. 25/2001.

St Vincent's Hospital (Melbourne) Limited — Report, 1999–2000.

Subordinate Legislation Act 1994 —

Ministers' exception certificates under section 8(4) in respect of Statutory Rules Nos. 26 and 27/2001.

Ministers' exemption certificates under section 9(6) in respect of Statutory Rules Nos. 23 and 29/2001.

Sunraysia Institute of TAFE — Report, 2000.

Swinburne University of Technology — Report, 2000.

University of Ballarat — Report, 2000 (two papers).

Victoria University of Technology — Report, 2000.

William Angliss Institute of TAFE — Report, 2000.

Wodonga Institute of TAFE — Report, 2000

Proclamations of His Excellency the Governor in Council fixing operative dates in respect of the following acts:

Gambling Legislation (Miscellaneous Amendments) Act 2000 — Sections 5, 9, 10(3), 11, 12, 22(2), 37, 41, 42 and 53 — 26 April 2001 (*Gazette G17, 26 April 2001*).

Gaming No. 2 (Community Benefit) Act 2000 — Remaining provisions of Parts 5 and 6 — 26 April 2001 (*Gazette G17, 26 April 2001*).

Gas Industry Acts (Amendment) Act 2000 — Sections 3, 6 to 10, 12, 13, 16 to 22, 25 to 28, 30 to 37 and Part 4 — 12 April 2001 (*Gazette G15, 12 April 2001*).

PROSTITUTION CONTROL (PROSCRIBED BROTHELS) BILL

Second reading

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

That this bill be now read a second time.

The purpose of the Prostitution Control (Proscribed Brothels) Bill 2001 is to amend the Prostitution Control Act 1994 in respect of the procedure for declaring premises to be a proscribed brothel.

Section 80 of the Prostitution Control Act 1994 enables the police to apply to the Magistrates Court for a declaration that a premises is a proscribed brothel. This is an important mechanism to prevent the proliferation of unlicensed brothels. An authorised officer of a responsible authority under the Planning and Environment Act 1987 may also make an application under section 80. This provides an equivalent power to officers authorised by municipal councils or by the Minister for Planning or by any person whom a planning scheme specifies as a responsible authority.

Once proscribed it is an offence under section 82 to be found in, or entering or leaving the premises except for some lawful purpose or in ignorance of the making of the declaration. The effect of making a declaration therefore is to close down the business.

The first part of section 80 of the act relates to applications by the police and provides that the Magistrates Court may declare premises to be a proscribed brothel if it is satisfied on the balance of probabilities that the business of a brothel is being carried on at those premises.

The effect of a recent decision of the Magistrates Court as to the meaning of the words ‘is being carried on’ has been that the police cannot make a successful application for a declaration unless they can show that the business of a brothel is being carried on at the premises in question on the day the application is made to the court. Any earlier period of police investigation could not be relied upon in making the application.

This makes it extremely difficult for the police to obtain a declaration because of problems in collecting evidence such as witness statements from persons using the premises on the actual day of the application. This clearly inhibits the effective use of this method of controlling the proliferation of unlicensed brothels.

The bill will amend the Prostitution Control Act 1994 so that in seeking a declaration it will be sufficient for the police to show on the balance of probabilities that the business of a brothel has been carried on at the premises in question at any time during the period of 14 days up to the date of the filing of the application.

The bill further amends section 80 of the act to afford authorised officers of a responsible authority under the Planning and Environment Act 1987 an equivalent 14-day period.

This is an important amendment to the act as it will facilitate the effective utilisation of section 80 for its intended purpose — to help prevent the proliferation of unlicensed brothels.

I commend the bill to the house.

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

Debate adjourned until next day.

CONSTITUTION (SUPREME COURT) BILL

Second reading

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

That this bill be now read a second time.

This bill amends the Constitution Act 1975 and the Supreme Court Act 1986. It expressly provides that judges of appeal may act as additional trial judges of the Supreme Court for a period of up to six months, or for the purposes of a particular proceeding. The chief justice and the President of the Court of Appeal must agree that a judge of appeal should act as an additional trial judge, and the judge of appeal must be willing to do so.

The government is committed to ensuring the independence of Victorian courts, and enabling the courts to provide effective services to the community. This bill increases the options available to the Supreme Court for judicial resourcing of the court, while continuing to respect the division between the Court of Appeal and the trial division.

The bill will also provide the opportunity for judges of appeal to broaden their judicial experience by conducting trials.

The bill is consistent with the current structure of the Supreme Court, by providing that the chief justice and the President of the Court of Appeal must agree before a judge of appeal may sit in the trial division, and that the judge of appeal must be willing to do so.

The bill also makes a number of technical amendments to the Magistrates’ Court (Infringements) Act 2000. The main amendment is to the commencement provision, to allow part of that act to be proclaimed to commence before the remainder of the act.

I commend the bill to the house.

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

Debate adjourned until next day.

ELECTRICITY INDUSTRY ACTS (FURTHER AMENDMENT) BILL

Second reading

Debate resumed from 4 April; motion of Hon. C. C. BROAD (Minister for Energy and Resources).

Hon. PHILIP DAVIS (Gippsland) — I am pleased to speak on the Electricity Industry Acts (Further Amendment) Bill and shall make a few general remarks before discussing the details of the bill.

Firstly, it is some time since the house has considered electricity legislation. The last time must have been in the spring sessional period last year. In some sense nothing much has changed and yet everything has changed. There is now a growing recognition in the industry and among stakeholders and regulators that the progress on energy reform has largely dissipated as a consequence and clearly evidenced by the fact that this Parliament agreed to an extension of time for the introduction of full retail competition for small consumers, notwithstanding the three-year sunset period. That time frame has been extended beyond 1 January 2001.

It is a shame that has occurred. It was a signal that was understood around Australia that Victoria had been setting the pace under the stewardship of Alan Stockdale. He set a blistering pace in energy reform which created momentum — indeed a vacuum — and which other jurisdictions followed. Victoria is now back in the ruck. It is not progressing in relative terms with the efficacy that had been achieved to date.

Energy reform has provided significant benefits not only to individual customers but also to the general economy. In February's Australian Bureau of Agriculture Resource Economics annual forum analysis revealed that electricity reform between 1995 and 2000 contributed a net benefit of about $1.5 billion to the economy compared with a no policy change state — in other words, no reform. Clearly that energy reform process has been of significant benefit to the nation and in particular to Victorians.

Recently the Productivity Commission analysis revealed a real price reduction of around 24 per cent for contestable users of electricity. That is no small achievement and was achieved on the back of a strong political commitment to obtain those reforms. However, the job is only partly done. Until there is a fully contestable market, full reform and the removal of government interference in setting political frameworks there will be delay in benefits for both individual customers and the economy generally.

Given that the Victorian government has dropped the leadership mantle, interestingly the federal Minister for Industry, Science and Resources, the Honourable Nick Minchin, has recently tried to re-engage national energy ministers and the state jurisdictions in the energy reform process following the recognition of the need to pick it up again. That call has been supported by ad hoc comments around the nation by various groups, including as recently as last week the Energy Users Association of Australia, which raised concern about the risk of a possible California power meltdown in the national energy market on the basis that the reform is only partly completed.

It is fine for Victoria to have initiated a reform process. However, not seeing it through to completion so that the proper market signals arise to ensure a proper balance between supply and demand will ensure that Victoria and the nation are vulnerable to market distortion. That could be the consequence if the government fails to maintain progress towards a fully developed national electricity market.

Interestingly the recent Nemmco statement of opportunities indicated that a significant squeeze on supply would arise over the next few years as a consequence of a failure in recent times for there to be confidence in investment in either the augmentation of interconnects or generation capacity. While the minister has recently talked in this house about projects that are on foot, the reality is that investment in both generation and interconnects in Victoria has not yet come to a point where commercial decisions have been made to commit the requisite capital. Therefore, we are in a negative environment for general speculation.

In an article in the *Age* of 18 April, under the heading 'States facing energy crisis', Rod Myer reported concern about the current balance between supply and demand. These are negative signals that will do nothing to build confidence and address the concerns of participants in the national electricity market. There must be a positive environment on which observers report and comment in a positive and constructive way rather than a sense of policy drift, which is seemingly apparent to many observers at present.

Clearly we need to face up to the questions of augmentation with both generation and transmission. I understand the government is considering a recent report to it from Vencorp on augmentation of the interconnect with New South Wales. I would be interested to know when it will stop considering that report and take some action.

I will now briefly look at the proposals in the bill. Before commencing with matters arising from the bill I indicate that the opposition is looking forward to having some discussion in the committee stage on several issues of detail that would be better canvassed during that stage of the bill than during the second-reading debate. I will now speak to the principal issues covered by the bill.

In a policy sense probably the principal matter the bill deals with is Vencorp's powers and functions in electricity demand management and its ability to recover its costs in that task. Of all the issues the bill canvasses this is the principal policy issue — it is a significant change of policy and an initiative proposed by the government that will perhaps have significant consequences.

It is important that during the committee debate the minister clarifies just what is intended by the structure of the bill, because the clause relevant to these powers does not make clear what the range and scope of that activity may be. One could argue that this is a major backflip for the Victorian government and that the Parliament's agreeing to it would be a backflip because it would provide scope for intervention in the electricity market in an unprecedented fashion. Strong representations have been made to the Liberal Party from a number of stakeholders about this proposal. Concern has been expressed about what the government intends, because the intention expressed in the minister's second-reading speech is not reflected in the detailed drafting of clause 10. I will come back to that issue.

I also make an observation about the cross-ownership provisions. The bill proposes to amend the cross-ownership provisions of the Electricity Industry Act as they apply to new generation projects. The opposition is concerned about the powers being vested in Vencorp to anticipate and intervene in the market in managing demand. The opposition would fully support any mechanisms provided to encourage investment in new generation capacity, and I would not want it to be represented otherwise. However, the opposition is extremely interested to understand what the minister intends with the procedures that will be followed for approvals involving cross-ownership and what risks there are of the development over a long period of an oligopoly, where a small group of proprietors collectively controls the generation capacity in the state. The opposition is interested to understand the detail of the effect of the clauses, particularly clause 9.

Clause 5 provides for the establishment of a deemed contract between electricity distribution companies and retail customers. In the committee debate the opposition will be keen to hear in some detail from the minister about how the arrangement will work. It is another policy change, one the opposition would not have introduced itself but will certainly not oppose with this legislation. The opposition would like to clearly understand and would like the house to understand the government's rationale for making this change from what has been understood in the industry to be a straight-line relationship between customers, retailers and distributors to a different relationship because of the introduction of a deemed contract with a distributor. The opposition seeks to enhance its understanding of the government's intention on that clause.

The bill does a number of other things. Although it is small, it is a fairly busy piece of legislation. It clarifies the scope of the obligation created under the supplier-of-last-resort scheme. That is an important amendment, because it provides clarity and ensures that customers can be confident that, notwithstanding the failure from a regulatory or commercial perspective of a retailer, another retailer will step in and continue supply under arrangements that are overseen by the Office of the Regulator-General. These amendments help to clarify those obligations.

It is sensible for the government to continually look at the way the regulatory framework operates on matters affecting the implementation of full retail contestability. In that respect, provisions to modify the government's power to make orders in council in relation to metrology procedures is consistent with the general approach of moving towards satisfying the requirements for market settlement arrangements for the national electricity market. Therefore we have some scope to move full retail contestability along.

There is an issue here of some small concern in relation to jurisdictions having their own arrangements. While I am advised that the view of the government and Nemmco is that it is not possible for metrology to be regulated at a national level, it would be desirable that we have a nationally consistent arrangement. With each of the jurisdictions now putting in place its own regulatory framework for metrology, it is inevitable that some inconsistencies will arise.

Another matter dealt with under the bill is the clarification that customers who obtain electricity fraudulently or illegally are not deemed to have a contract. Interestingly, as the act stands, it can be argued that someone who has illicitly obtained supply has then a mandated or deemed right to continue to have that supply because that supply exists. I suppose this is something we have become accustomed to today — the rights of villains, as it were, who claim they have a right to be protected from any action on the part of the person against whom they have offended. This change in the way the act operates is clearly sensible and timely to ensure that customers who have taken an unfair advantage — indeed, illegal or fraudulent advantage — are not then in a position to benefit from that activity.

Finally, the bill amends the Electrical Safety Act 1998 and aims to improve the operation of the electricity safety management scheme provisions and bushfire mitigation plans. As somebody who spent most of his life on a rural property, I am very familiar with the latter. In September or October each year the local electricity supplier distributes leaflets to all land-holders advising them of their obligations to deal with the risks associated with the bushfire season and advising that private powerlines are the responsibility of land-holders.

The amendments in this bill impose a requirement on distribution businesses to extend their bushfire mitigation plans to include and cover the fact that they do not control or own private powerlines, which are an adjunct to the delivery and supply of electricity to customers. It is clearly sensible that arrangements are put in place to minimise risk. The only question that arises in my mind is the prospect that this provision might be used by some to avoid their responsibilities with their powerlines. If land-holders and occupiers consider that somebody else has the statutory obligation to maintain bushfire mitigation plans for their properties, one could understand they might think they should not have to bother too much about it. Rather than clarifying the responsibilities, I suspect there is some small risk that this could further confuse the responsibilities in respect of bushfire mitigation.

I would like to specifically refer to some comments about the principal policy issue in the bill. I regard most of the issues we have dealt with as technical changes for the purpose of achieving a more workable, regulatory scheme for the provision of electricity supply in this state, However, the principal policy issue is the proposal to widen the powers vested in Vencorp to allow it to become a demand management broker and to give it the power to recover its costs. I am advised by government officers that the costs associated with this role will be limited, and very small — indeed quite modest. On further pursuit of that explanation I was informed that a range of $500 000 to $1 million per annum was envisaged.

I will ask the minister during the committee stage to confirm that that is her expectation and not just something that I have picked out of the air as a number. I am keen to understand what the government thinks this will mean.

While the opposition is concerned about the role Vencorp will play under these provisions, the concern does not lead it to conclude that it should oppose the bill. Its position is quite open. It is essentially flagging concern about this significant policy change that clearly has the potential of putting a significant risk on the state and more particularly on customers who will pay for Vencorp's demand management activities. If its role is limited to that of being an agent or broker, those costs may well be limited. In her second-reading speech the minister said it may be prohibitively costly for demand management to develop at a retail level and that the only way for effective demand management to evolve would be for the government to play an agency or brokerage role.

That may be well and good, but the legislation does not specify any cap on the charges that will need to be recovered ultimately from the consumers of electricity. There is no provision in the bill to limit the nature of the arrangements in which Vencorp can involve itself. While I understand those activities require the approval of the minister for the time being, Parliament is vesting in the minister enormous power and that is a role that exposes Victorian taxpayers and electricity consumers.

It is on that basis that the opposition is flagging a note of caution. During the committee stage the opposition will be looking for a very detailed and satisfactory explanation about the operation of those clauses. But at this point the opposition does not oppose the bill.

Hon. P. R. HALL (Gippsland) — I am happy to indicate that the National Party will not be opposing this bill. However, it will be seeking to move an amendment during the committee stage. The move to full retail competition in the electricity industry is expected to be complete by 1 January 2002, which is not far away. On that date it is expected that the lower level of consumers in the community — the households and small businesses — will have a choice of retailer from whom they wish to buy their electricity. I am sure full retail competition will bring many benefits to customers. The large users who already have the benefit

of competition and the ability to choose their retailer have experienced some of those benefits.

There have been benefits and there will be further benefits with the move to full retail competition but the move has created some enormous challenges for the businesses involved in the generation, distribution and retailing of electricity. The industry regulators and those like us who have to legislate to accommodate the changes face some even bigger challenges. No electricity bill which has been through this house in the past four or five years has been easy to understand or comprehend. Some technical issues have certainly been involved. Although this is a small bill it contains some important technical issues which are sometimes difficult for us to get our minds around.

Full retail competition is a new experience and we are still developing and modifying the processes and systems needed to facilitate its introduction. However, we are getting there and we are not far away from 1 January 2002 when hopefully everything will be in place and for the first time householders will be able to choose from whom they wish to buy their electricity. It will operate a bit like the telecommunications industry where there is choice at the householder level as to which company one choses to do telecommunications business with. There are choices in the fixed landlines into our houses and many choices in mobile telephone coverage around the nation.

The provisions of the bill will do a number of things. The bill will further develop the system which will be required when full retail competition is achieved. The bill amends the Electricity Industry Act on matters relating to the generation of electricity and to demand management. Some amendments will be made to the Electricity Safety Act for good measure, and I will refer to that later.

Clause 4 of the bill clarifies the relationship between the customer and the distributor when the distributor is different from the retailer: it deems that a contract exists between the customer and the distributor. I have based my interpretation of that on the example of my own household. Currently I live in an area of Victoria which is serviced by TXU, so TXU is the company which distributes and retails electricity to my household. On 1 January 2002 I should have the choice of company from which I wish to purchase my electricity. I may be able to choose from a number of companies like Citipower or Powercor or any of the other retail companies that exist today. If I choose to I will be paying my bill to Powercor but the lines outside my house will continue to be owned by TXU. In that case, as a consumer I would want reassurance on issues such as reliability of supply and that standards will be maintained. For that reason I need to have some contact with the people who own the distribution lines around my house. Clause 4 deems that a relationship will exist between a customer and a distribution company even if that distribution company is not the same company that retails the electricity to me.

At this point I pay tribute to the Office of the Regulator-General. The move to full retail competition in the electricity industry has been a complex issue but the Office of the Regulator-General has done a magnificent job in working through some of those problems. An example of the work it has done is the production of an electricity distribution code. That was done comprehensively with discussion papers distributed across Victoria seeking the views and opinions of not only the businesses involved in electricity but also consumers.

The office has introduced a fairly comprehensive electricity distribution code which covers issues like quality and reliability of service, guaranteed service levels, emergency response plans, provision of information, and complaint and dispute resolution procedures. That distribution code is available to the general public and I understand a summary of it was circulated to all Victorian households to explain the rights and expectations of customers of electricity companies. The conditions in the distribution code are the standards we would expect to be maintained in the deemed contract between the householder and the company which owns the distribution network.

The Office of the Regulator-General has been at the forefront and has done a magnificent job in leading change in the industry, but I would voice one note of concern that I have about the future of the office. The government has indicated that it intends to expand the Office of the Regulator-General and perhaps call it the essential services commissioner. That would take in a broader range of areas than electricity and gas. Media reports have suggested that the position of Regulator-General will be abolished and replaced by an essential services commissioner, a position which will cover areas like electricity, gas, water, transport and ports, and items of that nature.

I would be concerned that with the larger range of responsibilities to be undertaken by an essential services commissioner the focus of the very good work which has been undertaken by the Office of the Regulator-General might be diminished somewhat. However, I guess that is a debate that we will have at a later time in this house if legislation to that effect comes

before us. I think the Office of the Regulator-General does a fantastic job.

Clause 9 of the bill allows existing generation companies to develop new generation facilities without breaching cross-ownership provisions. When the electricity industry in Victoria was privatised certain rules were set which meant that a single company could not have the controlling interest in more than one generation facility in the state because we did not want to create monopolies.

However, that will be an impediment to the development of new generation capacity in the state — for example, Mission Energy, based in the Latrobe Valley with the Loy Yang B power station, has plans to build a new 300 megawatt capacity gas-fired generator. As I understand it, under the current rules of ownership Mission Energy would be in breach of the act if it owned two separate generation facilities which operated as separate companies in their own right. I understand that the provisions contained in clause 9 will allow owners of existing generation facilities to also own new generation facilities. The term 'new' is an important emphasis; they will be able to develop and own new generation facilities in Victoria but not existing facilities.

I know that has been supported by some of the feedback that I have received in my consultations. In a letter to me dated 27 April Hazelwood Power, also known as HP, states:

> HP supports the proposed changes which provide for existing wholesale market participants to expand their participation in the Victoria market through construction and operation of new generating plant.

And it goes on. That provision would be warmly accepted by generators in Victoria.

Clause 10 is of concern to the National Party and is one clause I will seek to amend during the committee stage. It enables Vencorp to play a facilitating role in demand management negotiations between retailers and large customers, or that is what one would consider to be the case if one read the second-reading speech in isolation. The minister states:

> … it is not envisaged that Vencorp would itself participate in the market for demand-side responses by contracting with retailers or customers.

It is not envisaged that they contract with retailers or customers. However, if one looks more closely at the bill, particularly clause 10, one can see that proposed section 79A(b) of the Electricity Industry Act clearly states that Vencorp can:

> enter into agreements and arrangements relating to the development and implementation of proposals for the management of electricity demand.

Therefore, as the Honourable Philip Davis said, it can actively compete or contest in the market, be actively involved in the market and not play just a facilitating role. In its consultations the National Party found that clause to be the most controversial. TXU was very concerned about it. In a letter of 27 April to me it states:

> Our main concern with the bill relates to clause 10. It proposes a new section (79A) which expands Vencorp's powers to manage electricity demand. Under the new section Vencorp may facilitate the development of arrangements relating to the management of electricity demand and may enter into agreements and arrangements relating to the development and implementation of proposals for the management of electricity demand.
>
> It is clear that Vencorp will have the right to directly contract with retailers or customers if it so desires …
>
> TXU's position is that if it is not intended that Vencorp would enter into direct contracts with retailers or customers, then the legislation should accurately reflect this.

TXU then outlines its reasons for adopting the view that Vencorp should not be in a position to enter into direct contracts with retailers or customers. I will be happy to outline those reasons during the committee stage.

TXU's position was also supported by Powercor. In a letter of 24 April, C. T. Wan, the chief executive officer of Powercor, states:

> If the bill is passed Vencorp will have extremely wide demand management powers. Although it is currently unclear how Vencorp will utilise such powers, the legislation would not prohibit Vencorp entering the retail electricity market and directly contracting with customers to manage electricity demand. While I do believe system security is very important, I am concerned that Vencorp and the government may seek to exercise this power in an inappropriate manner. This would represent a further distortion to the operation of the national electricity market.
>
> I would therefore prefer that the bill be amended to specifically prohibit Vencorp from participating in the market and contracting with customers directly.

That view was also put to me by Hazelwood Power. I will not quote that letter but it was about the same issue and expressed much the same sentiments as those expressed by TXU and Powercor.

The National Party has therefore prepared an amendment to clause 10 which I will put during the committee stage of the bill. I will elaborate on the reasons for that amendment at that time.

My final comments concern part 3 of the bill, which amends clauses 11 and 12 of the Electricity Safety Act. The explanatory memorandum states that clause 12:

> amends section 107 to insert a new subsection (1A) that allows for the submission of an electricity safety management scheme that combines any of the three separate electricity safety management schemes available under section 107.

That was a lot of gobbledegook to me. I found it difficult to comprehend exactly what that means and even in our briefing we found it difficult to work our way through and fully understand that particular provision. However, my mind was set to rest by comments supplied to me by Edison Mission Energy, which said in part:

> We have reviewed the proposed changes outlined in the bill and in the second-reading speech and we have no comment, other than the changes relating to ESMS allowing for the consolidation of one scheme to which EME is in agreeance with.

So with their endorsement for that particular change I am happy to allow that to proceed without further comment.

Hon. W. R. Baxter — I do not think I am any the wiser.

Hon. P. R. HALL — No, I am not going to help you there much, Mr Baxter, but I am at least encouraged that Edison Mission Energy believe it is a good idea.

Clause 11 relates to bushfire mitigation plans. Members of the National Party always take a great interest in bushfire mitigation plans because there are always issues about the exposure of land-holders to liability over private power lines. I am grateful to the minister's adviser, Robyn McLeod, who this morning clarified for me the financial or legal impact that the changes to clause 11 may have on private land-holders. Without quoting from the notes supplied to me by the minister's adviser I am pleased to say that I am satisfied that the provision does not contain any negative changes for private land-holders.

All property owners will still be liable for ensuring that any private powerlines on their property meet the current safety requirements and standards. That liability will still exist. As I understand it, it is purely the functional arrangements that will allow the distribution company — the owner of the powerlines — to include those private powerlines under a consolidated bushfire mitigation plan that needs to be submitted by that company. So I have been assured that there is no adverse impact on private land-holders. I have also spoken with members of the Victorian Farmers Federation who agree with that point and are satisfied with the provisions contained in that clause.

Therefore, the National Party does not oppose the legislation but will welcome the committee stage, when we will further explore clause 10, as I foreshadowed.

Hon. E. C. CARBINES (Geelong) — The amendments to the Electricity Industry Acts (Further Amendment) Bill aim to strengthen the regulatory regime in the electricity market and ensure its integrity prior to the introduction of full retail competition on 1 January 2002. The bill contains three key amendments. The first involves the proposal for Vencorp to undertake a facilitation role in demand-side management. The second involves the removal of restrictions on the development of new generation facilities by existing generators. The third involves an amendment to make provision for a deemed contract between electricity distribution companies and the retail customers to whom they will be supplying electricity.

The amendments are very important to Victoria's electricity supply industry. The first amendment alters Vencorp's strategic role from managing electricity demand to a more proactive role. It does so by giving Vencorp a facilitation role in demand-side management. Therefore, encouragement will be given to the market for the development of commercial demand-side participation proposals. It will result in Victoria's electricity supply being less vulnerable and therefore more reliable.

The amendment that proposes exemption of new generation facilities from cross-ownership restrictions will also help ensure adequate supply of electricity in Victoria. Of particular interest to all Victorians will be the introduction of full retail competition in the electricity industry from 1 January 2002. As of next year all domestic and small business customers will be able to choose the retailer from whom they purchase their electricity. The passage of the bill will set in place a deemed contract between the electricity distributor and the retail customer. That is aimed at protecting the rights of both the consumer and the distribution companies.

As a member for Geelong Province, I will be very interested to see the reaction to the onset of full retail competition next year in the electricity industry. The local electricity supplier, Powercor, has a very questionable record of service delivery in the Geelong region. During the summer after I was elected in late 1999, Geelong suffered months of electricity outages. Week after week Geelong consumers were subjected to power outages. Domestic consumers and Geelong

businesses were seriously affected. Indeed, last year I spoke in the house on the matter. Many constituents contacted my office because they were upset by the inconvenience and disruption to their lives and businesses by the power outages.

In response, my colleagues Ian Trezise, the honourable member for Geelong, and Peter Loney, the honourable member for Geelong North, and I called a public meeting in Geelong in April last year to gain community input for a submission to the Regulator-General on the future of the Victorian electricity industry. We heard many accounts of the effect of the unreliable power supply on Geelong residents and businesses. Those accounts and others we received in discussions we held formed the basis of a 66-page submission last year to the Regulator-General on behalf of the people of Geelong. In the submission we called for the Regulator-General to take action to restore confidence to the 113 000 Powercor customers in the region by ensuring better service delivery.

I will read from the press release of 24 July last year outlining the submission to the Regulator-General on behalf of the people of Geelong. The press release, which is headed 'MPs submit recommendations to Regulator-General for more reliable electricity supply in Geelong', called on the Office of the Regulator-General to take swift action to restore confidence and stated that the recommendations called for:

> Better service delivery which must include:
>
> > improved access for customers to information about power outages when they occur;
> >
> > better response times to restore electricity supply to customers;
> >
> > more maintenance and skilled crews to limit the likelihood of pole fires.

On pricing, we asked that Powercor not be allowed to increase prices:

> … until demonstrated improvements [were made] in the delivery of electricity services to Powercor customers in Geelong.

We recommended also that:

> Powercor's performance next summer should be monitored. Any rise in costs for customers should only be considered after a thorough review of the company's performance in the summer 2000–01.

Following the outages during that summer the *Geelong Independent* of 29 December 2000 reported on page 3 in an article headed 'Powercor complaints surge' with the subheading 'Utility could be forced to reimburse customers' that:

> A drastic surge in complaints against Powercor has prompted a report into the efficiency of the distributor.
>
> The Energy Industry Ombudsman's … annual report revealed the increase in problems suffered by Geelong's electricity supplier and lists recommendations to improved service reliability.
>
> However, if Powercor fails to meet the report's recommendations it could be forced to reimburse customers for poor service.

There were significant power outages in Geelong over the summer and again even as recently as last week.

Just prior to Christmas Geelong was yet again thrown into chaos by power outages. The *Geelong Advertiser* of 23 December 2000 states in a small paragraph beside the page 1 headline 'Christmas chaos':

> Drenching rain, power outages and a shopping frenzy combined to create pre-Christmas chaos around Geelong yesterday. As the last-minute rush began, the skies over Geelong opened, sending shoppers dashing for cover. With local roads swarming with frantic shoppers, the rain caused a host of minor traffic accidents. And to add to the chaos, power faults outed traffic lights, slowing the already frustrated drivers.

The article on that front page, with the subheading 'Thousands hit by power cuts', states:

> Thousands of homes and businesses lost power around Geelong yesterday afternoon when three faults affected customers from Grovedale to Corio.
>
> Motorists were thrown into temporary chaos when traffic lights went out along Latrobe Terrace and Pakington Street, while trading ground to a halt in some shops when a cross-arm broke on a power pole in Elizabeth Street, Geelong West. This caused a high-voltage line to fall onto a low-voltage line, damaging several houses and cutting power to 3500 residences and businesses.
>
> …
>
> The outage affected residents in Newtown, Chilwell and Geelong West, and came as a blow to retailers in Pakington Street, many of them unable to trade for almost an hour on one of their busiest days of the year.
>
> Countershock children's clothing store owner Karen Bartlett said she had virtually closed during the 55-minute outage as she was unable to use Eftpos or open the till to give change.
>
> Pako Meats owner Fail Thomas said work had virtually stopped in his shop.
>
> 'We can't weigh anything up, so we've been unable to sell it,' Mr Thomas said. 'The scales are out, the tills are out, everything's out, the refrigeration.
>
> It's the busiest day of the year and we can't sell anything.'
>
> …

> Residents in Whittington, St Albans Park, Marshall and Grovedale lost power about 1.10 p.m. yesterday …

As I said, that was right on Christmas. We were not saved in the new year, either, because on New Year's Day Geelong suffered several power outages across the region. On page 3, under the heading 'Blackout affects 3000', the *Geelong Advertiser* of 2 January states:

> More than 3000 Geelong West residents had an unfortunate start to the new year yesterday when they were without power for up to 6 hours.
>
> A fault at three substations in Geelong West meant 3600 premises were without power from 7 a.m.
>
> Geelong West resident Doreen Luscombe called the 6-hour power loss 'just ridiculous'.
>
> 'We've had blackouts before, but never for this long, it's a very bad start to the new millennium,' she said.
>
> 'We had one … before Christmas and one after, it's shocking'.

On the same page, in a little paragraph headed 'Power failures', the following appears:

> About 200 houses around Geelong were without power for several hours last night. Homes in Corio, Norlane, Lovely Banks, North Geelong, Bell Post Hill, Bell Park and Grovedale lost electricity just after 5.00 p.m. yesterday.

As I said, even last week we were subject to more power outages in Geelong. On 24 April I received an email from Mr Hugo Armstrong, the corporate affairs manager of Powercor Australia, notifying me as a member for Geelong Province of a significant electricity outage. The details include that 14 000 consumers serviced from the Waurn Ponds zone substation were without power. He states:

> Centres affected included Highton, Belmont, Waurn Ponds, Mount Duneed, Bellbrae, Torquay, Jan Juc, Connewarre, Anglesea, Aireys Inlet, Fairhaven, Moggs Creek, Barrabool, and Ceres.

My home was affected by that outage. The email continues:

> The fault stems from an underground fault, and has triggered longer outages on some of the feeders emanating from Waurn Ponds ZSS serving the Torquay–Anglesea region. Repairs are continuing and will be followed by an investigation into [the] root cause of the problems.

Geelong residents were not spared on Anzac Day, either. I received another email from Mr Armstrong on 26 April, notifying me of a significant electricity outage. He states:

> Approximately 19 000 customers serviced by the Geelong East zone substation were without power last night (Anzac Day) between 5.45 p.m. and 7.20 p.m. A further brief related outage occurred between 8.25 p.m. and 8.35 p.m. Areas affected included Geelong, Geelong East, Grovedale, Belmont, Connewarre, Curlewis, Leopold, Marshall, Moolap, Point Henry, Wallington and Whittington.

It is hard to believe that not one home in Geelong has not been affected by power outages in the past couple of years. The outage on Anzac Day affected not only domestic consumers but entertainment venues. Customers at the Reading cinema in Grovedale were dismayed when the film being screened ground to a halt. They were asked to leave the cinema and have their admission fees reimbursed so they could return to watch the film's conclusion on another day.

I was interested to read an insightful letter in the 'Your Say' section of the *Geelong Advertiser* of 28 April. The heading to the letter from Matthew Vos of Grovedale is 'Powercor blacks out, again', and the letter states:

> Come on you Geelong people. How much longer are you prepared to put up with the pathetic levels of power supplied to your homes and businesses?
>
> Three power blackouts on the evening of Anzac Day for me were the final straw. I have been given the excuse of 'young birds learning to fly hitting powerlines' so many times it's a joke.
>
> This excuse is even more comical when you consider my electricity is underground, so unless there's a ground-burrowing species of bird you have to wonder about Powercor.
>
> Try getting an answer on the faults line. That's a feat in itself.
>
> You could be on hold for anything between 5 and 20 minutes only to be told that they have had no reports of problems in your area. When they decide to have a real good look at their systems, then they discover that there really is a fault.
>
> This is, of course, after you have been told to 'check your safety switch' even though your whole street is blacked out.
>
> What do we have to do to go back to the good old days where you could actually rely on having electricity supplied constantly to your home?
>
> It's time we stood up to Powercor and told them to pull their finger out and that we won't tolerate their frequent interruptions to our power supply any more.

The house will understand my interest in the introduction of full retail competition for electricity next year. It will be interesting to see how many Geelong consumers opt to stay with Powercor. Reliability of electricity supply is essential for all Victorian consumers. The Electricity Industry Acts (Further Amendment) Bill seeks to strengthen the reliability of Victoria's electricity supply. I commend it to the house.

Hon. C. A. STRONG (Higinbotham) — I support the bill. When honourable members read the bill they certainly feel a keen sense of deja vu, as almost all the issues dealt with in the bill have been dealt with in previous legislation. As I will later detail, the issues in the last electricity bill debated in the previous sessional period dealt with many of the issues covered by this bill.

It is disappointing and frustrating that this should happen. The house has talked about full retail contestability being introduced next year, but it was intended to have full retail contestability from 1 January this year. Every time more amendments or deja vu-inducing clauses and details are debated here I am further disappointed because they highlight the fact that the process has a long way to go. Most honourable members would wish that the process was much closer to finalisation. I am sure I speak for the minister and everyone working in the electricity reform area when I say they all wish it would be concluded, because it seems to just grind on and on.

I will run through what I regard as some of the key issues covered by the bill. Amendments will be made to the supplier-of-last-resort provisions. They are technical amendments, to put it mildly, and specify how a person can cease to be supplied by the supplier of last resort. For instance, if a person no longer wants to be supplied by the supplier of last resort, he or she has to tell the supplier they do not want to be supplied. The detailed legislation contains such high-level matters as that; it specifies various conditions under which a person is no longer supplied.

The amendments have been requested by the Office of the Regulator-General. During the various briefings on the legislation the opposition was not given details about the extent to which the provisions have caused problems. We are unaware of instances of people removing themselves from the supplier of last resort having caused such problems that the government has been required to introduce legislative amendments. I would have thought few people would have availed themselves of those provisions in the legislation.

The next major issue dealt with is deemed distribution contracts. Many of the provisions give rise to deja vu, but the amendment relating to deemed distribution contracts is a significant change because the system has operated from 1994–95, when the process commenced, until now with the retailer who supplied the electricity basically having the supply agreement with the distributor to provide consumers with electricity. The distributor was governed by the electrical distribution code as to what it could or could not do, and its feet were also further held strongly to the fire in that the electrical distribution code was part of its franchise agreement. That franchise was something the distributor valued highly because it paid a lot of money for it. In other words, the supply of electricity ran a little like the supply of most other goods and services. If, for instance, a shop or an individual wished to take delivery of a product, it would order that product from the wholesaler, who would arrange to have it delivered to the shop or the individual. The wholesaler would arrange for the supply contract. He would enter into an arrangement with the trucking company, or whatever, to have the goods and services delivered.

The straight-line model that has been used until now adopted what I would call the standard industry approach: if you wanted to take delivery of goods, you arranged for the supplier of those goods to get them to you. It was his job to arrange for the transportation of the goods.

In essence, the deemed distribution contract is a contract with the supplier of the goods as well as the trucking company that brings goods to consumers on behalf of the supplier. Although there must be a good reason for this, it seems to create another level of detail. I am at a loss to understand why the delivery of electricity is any different from the delivery of other goods. It requires me, for example, to have a contract not just with the supplier of the goods but with the company that delivers the goods on behalf of the person from whom I purchased them. I am not paying the transport company directly; I am paying the deliverer of the goods who is paying the transport company. Therefore I am not entirely sure why a deemed contract is necessary. It appears to be another level of concentration, of complexity and sophistication that will make it more difficult for the average householder to understand.

The deemed contract means obligations for the distribution company as well as the retailer. It is only a small step to have a deemed contract with the generator so that everybody will be wrapped up! As I said, unfortunately this introduces another level of complexity. In line with the history of this development the Office of the Regulator-General will look at the deemed distribution contracts and say that because a problem exists new amendments are required to follow through. I do not see why electricity should be different from any other good.

The next major area of the bill relates to metrology procedures. I predict that the proposed amendments to

these procedures will probably be what happens with deemed distribution contracts. A previous electricity bill contained amendments to the metrology arrangements and this bill further refines the detail. Once again the Office of the Regulator-General is involved with further dotting of the i's and crossing of the t's to cover every option that may conceivably arise. Although clearly metrology is an issue that needs to be developed with care it is disappointing that the amendments to the metrology process are another signal that the whole thing is slowing down, needs more detail and is not travelling at the speed it would have if it had been left to the industry to organise.

Further amendments have been made to controlling and substantial interests. This provision involves new generation and I do not think anyone has any fundamental problems with what is proposed. Any new generation that comes on board should not be limited by the controlling or substantial interests test. I hope the minister can give some advice on the effect of these provisions when summing up. I understood the previous amendments in this area meant that the Office of the Regulator-General had only a peripheral role because the controlling and substantial interests test came under the Trade Practices Act and if somebody wanted to bring new generation on stream they did not have to first pass the controlling interest test of the Office of the Regulator-General and then pass the controlling interest test set out in the Trade Practices Act.

The regime that is being put in place is that if an organisation passes the controlling interest test set out in the Trade Practices Act the Office of the Regulator-General will approve the application without unnecessary extra documentation or time being spent in substituting the case. The proposed amendments seem to put the Office of the Regulator-General back into the loop because it looks as though the controlling interest test has to run the gauntlet of the Office of the Regulator-General and then the trade practices test. I would be pleased if the minister told me that I am wrong in my assessment of the provision.

The bill also amends provisions relating to demand management and the role of Vencorp. These provisions have been dealt with at some length by other speakers, but again it is deja vu because Vencorp was given these powers in a previous amendment to the Electricity Industry Act. Through these amendments the house is now refining the provisions and asking the significant question as to the limit of Vencorp's involvement in this process. In a briefing members of the Liberal Party were assured that Vencorp's role was purely one of facilitation. It would advertise for people to come forward with offers of contracts and facilitate those offers but play no role in entering into contracts for demand management capacity or interest in bidding for electricity. Its role is to facilitate the industry to put power into a demand management pool and the generator who would make an offer for the cost. It would be an honest broker.

The question has been raised whether the provision allows Vencorp to go further. I understand that issue will come up during the committee stage, but apart from what that may mean we should be mindful of the experience when the Queensland and New South Wales government-owned generators went into the national electricity market and cost those states billions of dollars through their commitments. It is important that Victoria, through Vencorp, does not get involved in the market because the history demonstrates that the cost of governments getting involved in the marketplace has been woeful for consumers and taxpayers.

The fifth and final main area the bill deals with is electricity safety regimes and bushfire mitigation plans, and the worthwhile amendment to the electrical safety management schemes that will allow this good provision to work better and function more efficiently.

With those few comments I indicate my support for the legislation and reiterate that it would be nice if in the next session of Parliament we do not have another one like this and we see the end of the process rather than have more amendments.

Hon. T. C. THEOPHANOUS (Jika Jika) — I support the Electricity Industry Acts (Further Amendment) Bill, and in doing so I acknowledge that at least the Liberal Party has indicated its support for the bill, as expressed by Mr Strong. I know the National Party has a concern about a particular clause and intends to move an amendment during the committee stage, which will be debated at that point. The government is not in a position to accept the amendment that has been foreshadowed; however, the minister will give a full account of the reasoning behind the clause as it appears in the bill.

I commend the government, and in particular the minister on this occasion, for the way it has handled the complex and difficult set of arrangements that was inherited from the former government. Unfortunately during the privatisation process not a great deal of thought was given by the former government to how the arrangements post-privatisation would work for the benefit of consumers.

In the mad rush to privatise little thought was given to how adequate consumer protection could be put in place, to how the government of the day could guarantee supply of electricity and to a whole range of other issues involving conservation, demand management and so on. The previous government was interested only in the sale of electricity assets by the state and had little interest in the arrangements that had to be put in place to protect consumers. That is why since this government has been in power we have had to deal with the problems concerning electricity that confronted the previous government but were left to us.

The bill is an important part of the process of ensuring that Victorians have access to an appropriate level of service from the electricity distribution companies and that the supply of electricity can be guaranteed into the future. It has three key elements: the proposal for Vencorp to play a more active role in facilitating demand-side management; the removal of restrictions on the development of new generation facilities by existing generators; and the amendment to make provision for deemed contracts between the electricity distribution companies and the retail consumers to whom they distribute electricity. Those three issues are important in maintaining adequate electricity supplies into the future and adequate protection for consumers but they were not even considered by the previous government in its mad rush to privatisation.

I shall take each in turn. Vencorp currently has a statutory role in managing load shedding when there is or is likely to be a shortfall in the supply of electricity. The proposed amendments would give Vencorp a more proactive role in managing electricity demand by enabling it to facilitate demand-side activity. I know the National Party wishes to move an amendment to that provision during the committee stage, and that will be debated in due course, but it is the government's view that having Vencorp play a facilitative role will provide encouragement to the market for demand-side responses by supporting the development of commercial demand-side participation proposals.

Clearly there are circumstances in which industry and major consumers of electricity can play a role when there are significant strains on the system, such as on very hot days. Through a process of demand management and contractual arrangements surrounding that management it is possible for demand to be managed so that we do not have a shortage of electricity for the broader community. I would have thought that would be welcomed by the opposition as something which was overlooked during the process of privatisation and which the government is seeking to address.

The exemption of new generation facilities from cross-ownership restrictions is designed to encourage the coming on stream of new capacity. As honourable members would be aware, there are currently cross-ownership restrictions that prevent generators from owning significant parts of other generators, which is part of competition policy and is aimed at maintaining a competitive model in the electricity industry at generation level. Cross-ownership rules in electricity generation are as important as cross-ownership rules in the media. They are designed to maximise competition and minimise monopoly power. The danger with this type of model is that it could be extended to new generators.

That means an existing generator who wanted to build another generation facility would face the problem of coming under the cross-ownership rules. Clearly that would dissuade it from building another generator, even if there was demand for the additional electricity and the project was viable in all other respects. Therefore the government has said in the case of new generation and a proposal for a new generator to be constructed and built, the cross-ownership rules would not apply. This is an important step the government has had to bring in.

Mr Strong tried to suggest that the Trade Practices Act coming into effect would in some way make this provision unworkable. He wanted assurances — I think he used the words 'if I'm right' about his reading of the act — that it would come into effect and restrict a generator from building another generation plant.

I am afraid you are wrong, Mr Strong — and it is not unusual for that to be the case. No merger or acquisition is involved in new generation. The capacity simply to build a new generator is not a merger or an acquisition, therefore the Trade Practices Act does not come into effect. The Trade Practices Act deals with the regulation of mergers and acquisitions. The basis of Mr Strong's concern does not hold up. However, I thank him for once again raising an issue of concern, even though on this occasion I do not think it is correct.

Let me be clear about what is being done. One of the problems of the system set up by the previous government was that it militated against new investment in generation. The Labor government is fixing that up with this amendment, which will allow new generation to be exempt from the cross-ownership restrictions under the act.

The third major aspect of the bill is that it allows for the legislative underpinning of obligations the Office of the Regulator-General has placed in the Electricity

Distribution Code, which was published in January this year. The amendment ensures that the obligations in the distribution code are enforceable between distributors and retail customers. That is very important. It goes to the protection of not only the consumers but also the distributors themselves. The mechanism the government will use is a deeming contract.

There are two ways of managing a system in which there are distributors as well as retailers. When full competition comes in consumers will be able to choose their retailer. In choosing their retailer they will have a contractual arrangement with the retailer for the provision of electricity, but they will not have a contractual arrangement with the distributor. Since there are five distribution companies, which were established under the previous government, that will provide the network — the wires — to actually bring the electricity to the consumer, it seems inappropriate for there to be no contractual arrangement between the consumer and the distribution company. For instance, if the quality of the wire that is distributing the electricity to the consumer is not up to standard or is faulty, the consumer would not have a contractual relationship with the distribution company under which they could seek to have the wire repaired and the service upgraded.

To overcome that problem the government has decided to deem that a contract exists between the distribution company and the consumer. The alternative was to have a contractual arrangement between the retailer and the distributor, but that would have meant that the consumer would have no relationship with the body responsible for maintaining the wires to their premises. The government decided, through a deemed contract, to allow consumers to have a direct relationship with distribution companies, even though they may be dealing with retailers who are not also distributors.

There will be cases where distribution companies will have their own retail arms, so it could operate in that way, but there will be a significant number of cases in which the distributor is not also the retailer. The provision is designed to ensure that consumers are protected. It also allows distribution companies to insist directly to consumers that the level of the infrastructure — the wires — they provide is up to the standard required under the code. It is a win-win situation. This is another of the issues overlooked by the previous government in its rushed privatisation that has been taken up by this government and this minister.

The bill also contains some miscellaneous amendments that are important. Currently the Electricity Safety Act requires an electricity supplier to provide a bushfire mitigation plan, but the legislation does not extend to overhead private electricity lines. It refers only to electricity lines that are operated or owned by the distribution companies. This amendment is important because it means distribution companies will be required to provide bushfire mitigation plans not only for their wires but also for private lines — and this would apply especially to large farms or major manufacturers in regional Victoria that have significant private lines leading to their properties. Suppliers will now be required to ensure that they provide bushfire mitigation plans for those lines as well. That can only be to the benefit of both the suppliers and the state generally as Victoria does have a significant bushfire problem from time to time.

The Electricity Safety Act currently requires a network operator to submit separate safety management schemes for works, but does not provide the administrative convenience of combining the schemes. The bill will allow that to occur.

As I have said, the bill is important. It is innovative. It addresses three major concerns with the electricity distribution system. One involves trying to get more investment into the generation side of the industry. Another is to protect consumers through an appropriate code of conduct and a deemed contract. The demand management component of the bill is especially important because it allows a whole range of mechanisms to be put into place to facilitate the appropriate management of demand during difficult periods.

In supporting the bill I say that, although it is important that distribution companies be accountable to their customers as consumers, the strength of that reasoning comes from the fact that distribution companies, irrespective of what retailer a consumer chooses, are paid for the infrastructure that delivers the electricity to the consumer and are paid at a set rate — not a competitive rate but a rate which is set in accordance with the Regulator-General. Consumers do not get a choice between distributors. They are locked into a distributor and they pay that distributor's networking costs in the price they pay for electricity. As a result, it is appropriate that there be a deemed contract between the distributor and consumer. I ask all honourable members to support the bill. I commend it to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1 agreed to.

Clause 2

Hon. C. C. BROAD (Minister for Energy and Resources) — A range of matters have been raised about clause 2 during the second-reading debate. I propose, for the sake of brevity, to address those matters as the committee discusses the other clauses rather than refer to them now.

I take the opportunity, however, to respond to a comment made in the second-reading debate about the complexity of electricity bills. I agree with the honourable member and indicate that one reason why these bills become very complex is that the government, in the course of consulting with industry and consumer representatives, endeavours strongly to achieve an outcome that is agreeable to all of the parties as well as meeting its objectives. A number of the parties with whom we consult are concerned to ensure that their legal advisers have a strong role in this. Of course, the government has its own legal advisers. The outcome of that tends to be that the bills become even more complex than they were at the start. I do not think there is any way around that. Clearly, there are very important issues and assets involved in the electricity industry and it is to be expected that all parties will want these matters tied up in legal terms.

Clause agreed to; clauses 3 and 4 agreed to.

Clause 5

Hon. PHILIP DAVIS (Gippsland) — I seek clarification on deemed distribution contracts as referred to in the clause. I take up the comments of Mr Theophanous during the second-reading debate. It is all very well for Mr Theophanous to allege, as he did, that the government is dealing with omissions of the previous government. Indeed, he belaboured this point on several occasions and spoke of the need to have a deemed contract in place as if there were some deficiency in the previous legislative model. It would seem to me this measure is clearly a function of the government determining to change the policy. The arrangements reflected in this clause go specifically to a change in the nature of the relationship between the parties — that is, as has been alluded to with the straight-line relationship between customers and retailers and distributors versus the triangular model into which we are now descending.

The reason I am interested to hear the minister's comments on this clause in particular is that the obligations on the distributor in relation to the provision of service to a customer are tied up in the electricity distribution code that the Office of the Regulator-General has established, and in the licence conditions for a distributor requiring them to provide a standard of service. The opposition is not intending to oppose the bill as such, but wants to understand the rationale to change the model from a straight line to a triangular relationship.

Given the arrangements in place for a competitive market for customers why does this need to be done at this time? Those customers have not been significantly compromised. By deeming the contract the government is now changing the nature of that relationship.

Interestingly, I understand the regulatory framework of the telecommunications industry at a commonwealth level contains service provision requirements of the network provider. In the case of telecommunications that is largely Telstra and those obligations are service obligations depending on a licence rather than a deemed contract. Will the Minister for Energy and Resources explain the rationale and expand on the way this provision will operate?

Hon. C. C. BROAD (Minister for Energy and Resources) — The model for the relationship between the customer and his or her distributor and retailer is a straight line, as has been said — that is, a customer contracts only with a retailer for the supply of electricity and the retailer contracts with the distributor to carry that electricity to the customer. I understand that model is commonly adopted throughout the electricity industry with full retail competition.

However, as has also been said, a customer must owe certain obligations directly to a distributor and vice versa. These obligations primarily relate to ensuring that the wires are fit to carry supply and do so, and that nothing is done by either the customer or the distributor to interfere with those functions. The distribution code that has been developed and issued by the Office of the Regulator-General in full consultation with industry reflects these obligations. The deemed distribution contract is simply the means by which the obligations in that code are enforced. That is the rationale for introducing deemed contract provisions — so the code can be enforced through a contractual arrangement.

Hon. PHILIP DAVIS (Gippsland) — As I understand the minister's inference — I will have the minister correct me to help me understand this — and as I have asserted, the relationships are such that the obligations on a distributor can be enforced as part of its licence conditions — that is, the Office of the

Regulator-General can ensure that the obligations of a distributor are met simply by attention to the distributor's licence. However, without the proposed deemed contract there is no obligation on the customer to perform its part of the relationship. I am not sure that the minister has really made a case for the deemed contracts other than to create an environment where the customer has to perform an obligation: if there is no deemed contract there is no requirement on the customer to perform. Is the intention to deem that the customer performs its part of the obligation within the relationship to receive supply?

Hon. C. C. BROAD (Minister for Energy and Resources) — That is certainly part of the necessity for creating the deemed contracts. However, I might further elaborate and say that it is also the case that the terms and conditions of the deemed contracts to be created must not be inconsistent with the code and must be subject to the approval of the Office of the Regulator-General. In going through those processes — that is, considering what terms and conditions to approve as part of the deemed contract — the ORG must be mindful of the terms and conditions of the existing retail customer contracts and those contained in the licences and use-of-system agreements. All those matters are considered by the ORG in setting the terms and conditions to apply. It is also worth pointing out that retailers have indicated their support for the ORG using these approval processes to ensure that the deemed contracts do not undermine the retail service arrangements entered into with the retailers.

Hon. C. A. STRONG (Higinbotham) — I beg the minister's tolerance. I did not realise she has a bad cold which makes this difficult. However, I understand that with the current situation the mechanism by which the code is enforced is that retailers must make provisions within their relationship with the customers to the effect that the customers must comply with the electrical distribution code and that the distributor must be allowed to enforce its right under the code. The advice the opposition has had from at least one retailer/distributor is that its legal advice is that that is an adequate mechanism. Given the minister's initial comments about how there has been legal advice at every step through this process back to the mid-1990s it would be very surprising that there was not legal advice to that effect previously. Given the great caution with which everything has been done it would be surprising that the current arrangement was not backed up by legal advice at the time it was put in.

At least one of the retailer/distributors says that its current legal advice is there is no reason to change it. Will the minister provide any reason for this? The opposition is not being difficult. I am trying to understand why a practice that must have been supported by legal advice for many years is suddenly not appropriate. Has something happened? Can the minister give the committee any clue as to the reason for this change?

Hon. C. C. BROAD (Minister for Energy and Resources) — It is surprising that some of these matters have not been addressed in the past. However, it is also the case that as the full retail competition project — if I might describe it that way — proceeds, some of those matters will be resolved as very much work in progress. The point we have reached is that the distribution code has been developed by the Office of the Regulator-General in consultation with industry and it has been considered necessary that there is a deemed contract in place as the means to enforce those obligations that otherwise are not enforceable.

Hon. PHILIP DAVIS (Gippsland) — I was hoping to abridge this discussion because I would like the minister's voice to last until we get to the end of the committee stage. However, it is not evident to the committee what the rationale for this change in policy actually is. We are being asked to change a model of relationships that has best been summarised as changing a straight line model to a triangular model on the basis, it seems, of advice from people who are not in this place.

Although I concede the point the government is clearly indicating that the model needs to be changed, it should be said that Parliament has not been satisfactorily apprised of the rationale, given that the way the marketplace operates has proven to be satisfactory. No examples have been cited that those relationships are untenable. No case has been made by industry participants that it needs to be changed. No evidence has been led in this debate that the current model is unworkable. It simply seems to be a unilateral decision on the part of the government to change the model for some reason the committee cannot fathom. I will concede the point.

Hon. C. C. BROAD (Minister for Energy and Resources) — Clearly we are now dealing only with incumbents who are both distributors and retailers, so the issue does not arise now. It does, however, directly arise when we enter into the situation where customers are able to choose retailers who are not incumbents, who are not distributors, and where the relationships and the contracts involved are very different from the ones which now operate where retailers and distributors are combined.

Clause agreed to; clauses 6 to 8 agreed to.

Clause 9

Hon. C. A. STRONG (Higinbotham) — I seek clarification about the extent that the prohibited interest provisions come under the jurisdiction only of the Office of the Regulator-General or whether they come under the restrictions of the Trade Practices Act as well. Mr Theophanous indicated that they come purely under the auspices of the Office of the Regulator-General and, given Mr Theophanous's track record with this sort of thing, I would be interested to have the minister's advice as to whether trade practices play any part in these provisions.

Hon. C. C. BROAD (Minister for Energy and Resources) — I am happy to clarify that matter. The advice to me is that the Australian Competition and Consumer Commission has powers under the Trade Practices Act to grant authorisations for mergers or acquisitions and in certain circumstances the grant of such an authorisation may also amount to exemption from cross-ownership provisions. However, this ACCC power under the Trade Practices Act does not extend to greenfield facilities and as such undertakings of this nature do not involve mergers or acquisitions. Accordingly, the Office of the Regulator-General has been given the function under these amendments to grant exemption from cross-ownership restrictions to greenfield facilities. I might also mention because this was raised in the second-reading debate that it is envisaged that in exercising the function, the procedures to be followed by the Office of the Regulator-General will be transparent and public procedures and will among other things allow for submissions and public comment.

Hon. C. A. STRONG (Higinbotham) — I thank the minister for that advice, but I will tease this out a little further. If there are no Australian Competition and Consumer Commission or trade practices implications, so there are no mergers and acquisitions, and if there are no competitive issues involved, no issues of substantial interests or lessening of competition as the minister has highlighted, why then do we need to get involved in any way in the Office of the Regulator-General giving approval for the new greenfield site if it is deemed under trade practices to not form any concentration, any lessening of competition et cetera? My question is: what is the purpose?

Hon. C. C. BROAD (Minister for Energy and Resources) — There are provisions in the act restricting cross-ownership and those amendments deal with exemptions from those provisions which will, of course, remain. It is also worth pointing out that there were provisions in the Electricity Industry Act 1993 that allowed existing licensees in certain circumstances to construct new generation facilities. However, those provisions were not re-enacted under the Electricity Industry Act 2000 for a particular set of reasons, which is why they are now in a sense being re-enacted as part of these amendments.

Hon. C. A. STRONG (Higinbotham) — Although I accept the minister's explanation, I make the point that another perhaps cleaner way of doing this would have been to remove those cross-ownership restrictions for new generation rather than put another approval hurdle in the process. I guess that was the point that I was making. We were trying to overcome hurdles involving trade practices and the Australian Competition and Consumer Commission and, as the minister has said, as there is no competition issue there is no trade practices hurdle.

Perhaps a more simple way would have been to remove that hurdle from our legislation rather than to put back the hurdle, as it were, in saying you must get the Office of the Regulator-General's permission to do that. Given under trade practices that there is no competition issue but we are still wanting to keep that control there, perhaps another way would have been to remove that control for new electricity generation. However, I accept the minister's explanation.

Hon. C. C. BROAD (Minister for Energy and Resources) — Cross-ownership restrictions will clearly need to be continually re-evaluated in the light of future market developments to ensure their continued relevance. That is a matter which the government will keep under active consideration.

Clause agreed to.

Clause 10

Hon. P. R. HALL (Gippsland) — I move:

> Clause 10, lines 18 to 29, omit all words and expressions on these lines and insert "for the purposes of paragraph (a)".

I shall explain the effect of the proposed amendment. Clause 10 proposes to insert a new section into the Electricity Industry Act. Proposed section 79A will in part provide that Vencorp may:

> (a) facilitate the development of arrangements relating to the management of electricity demand.

If my proposed amendment is accepted the clause will provide that Vencorp will also be able to:

(b) enter into agreements and arrangements for the purposes of paragraph (a).

It proposes that Vencorp may enter into agreements and arrangements to facilitate the development of arrangements, not enter into agreements and arrangements to get into the area of electricity demand management.

As I said in my contribution to the second-reading debate, the matter was raised consistently by some of the distribution and generation companies with which I made contact. Their understanding was very clearly that proposed section 79A(b) allows Vencorp to enter into direct contracts with retailers or customers. The view expressed not only by me but by others in the debate is that it would be undesirable for Vencorp to be involved in direct contracts with retailers and customers. As I said, that is certainly the view of some of the companies I have contacted. For example, TXU made the very strong point that Vencorp should not be able to enter into direct contracts. In its letter of 27 April it states:

> Our rationale for this position is that —
>
> Vencorp, a Victorian government-owned corporation, directly contracting with retailers or customers will distort the energy market and is a risk for future private investment in generation in Victoria.

In other words, TXU is saying it is not Vencorp's job to be directly involved. It states also:

> Vencorp may well enter into contracts which no commercially astute market participants would consider. This risk is eliminated if Vencorp is restricted to only a facilitation role.
>
> The proposed section 79B provides Vencorp with the power to recover from a retailer or from a person who purchases electricity directly the costs incurred under section 79A. In other words, the Victorian electricity customers underwrite Vencorp's risks.
>
> If this section is accepted, retailers must also have the legislative protection to be able to directly pass these costs to customers. Currently the government has reserve powers to regulate retail prices and retailers may be prevented from passing through these costs.

So three very sound reasons were put forward by TXU, a major distribution company in Victoria. It argues against allowing Vencorp to enter into direct contracts with retailers and customers. The proposed amendment reflects that position and would not allow Vencorp to enter into such direct contracts.

The position is supported also by Powercor. I will not quote from its letter because I did so during the second-reading debate.

Hazelwood Power also supports the position. In a letter of 27 April to me it put a clear view that ideally Vencorp should not be involved in direct contracts with retailers and customers. It states that if Vencorp were so involved:

> In order to overcome this risk, it will be important that Vencorp's involvement in demand side is transparent to the market, and subject to both market scrutiny and market risk. The ideal mechanism to achieve this is for the legislation to require that any demand-side participation facilitated by Vencorp must be formally bid into the energy market (using the existing market mechanisms which provide for demand-side bidding).

Clearly its first preference is that Vencorp should not be involved in direct contracts with retailers and customers. As I said, that view has been expressed strongly by three participants in the electricity industry.

The view expressed by the minister in the second-reading speech is very clear and I will repeat those words:

> … it is not envisaged that Vencorp would itself participate in the market for demand-side responses by contracting with retailers or customers.

If it is not envisaged, the legislation should make that point very clearly and it should reflect the intent as expressed by the minister in her second-reading speech.

My amendment does exactly that: it will allow Vencorp to play a facilitation role in demand management. It will allow Vencorp to enter into agreements and arrangements to facilitate further agreements between retailers and customers, but will not allow Vencorp to be directly involved in contracts with retailers and customers. It is very clearly the wish of the industry participants who have contacted me and the views expressed not only by me but by others that Vencorp should restrict itself to a purely facilitation role. For those reasons, I urge the committee to accept the amendment.

Hon. PHILIP DAVIS (Gippsland) — One must address the clause if one is to speak about the amendment. Clause 10 provides what I described earlier in the debate as the principal policy issue contained in the bill. It is a significant departure from the general principle that has applied in Victoria since the mid-1990s — that is, that the government was getting out of the electricity industry and leaving it to the market to determine appropriate levels of investment and tariff and, on a competitive basis under the national competition guidelines, how the market could best evolve so as to deliver the cheapest and best possible outcome in price and an appropriate level of service according to the demands of the marketplace.

Clause 10 presumes that there has been and is market failure. The proposal contained in the legislation has raised alarm as Mr Strong, Mr Hall and I have outlined today during the debate. The alarm is limited to active participants in the energy industry because of course, regrettably, the average customer — or the householder — does not become aware of the issues until well after they become issues in the function of the market — in fact, too late. The representations made to the opposition parties have essentially been from businesses that have significant equity in the industry and those representations have been outlined by Mr Hall. Loy Yang Power has raised issues relating to demand management activities and states:

> Could the minister/Vencorp act just because prices are high? If so, this seems to conflict with the operation of the market — and would represent a distortion to economic signals.

Citipower also raised concerns about the provisions in similar terms to those raised by TXU. In particular it states:

> The cost-recovery provisions are open ended with the ability for costs to be retrospective and with no constraint on the amount of expenditure.

I will not repeat the quotation from the Hazelwood Power letter, but the concern expressed by that company is really about the appropriate level of intervention by any of the market managers, whether it be Vencorp or Nemmco, in threatening the market's ability to signal the need for new investment. That is a key element in the issue.

The government has determined as a matter of policy that the issue of demand management should be addressed by giving Vencorp the capacity to play a role, but the role is undefined. It is important in considering the amendment moved by Mr Hall that the committee is properly advised by the government why the clause has been drafted in its present form, because there is evident ambiguity between it and what was intended initially by the government in a policy sense, as outlined in the second-reading speech.

I am not convinced that the amendment moved by Mr Hall achieves the purpose he outlined, but the Liberal Party's stance on that depends on the debate the committee is about to have. Mr Hall is clearly trying to put a net around the scope of the activities of Vencorp in its broker-market intervention role. The question is whether the amendment will achieve that purpose.

I will be interested to hear further debate on the amendment, but it is clear that the minister will need to convince the committee that the role of Vencorp will be circumscribed not only in the liability arising not just to the customers, who have ultimately to pay the costs incurred in the demand management role, but also and critically in ensuring that the level of intervention by a statutory body cannot expose the state to a significant additional liability. Further, the minister will have to convince the committee that this amendment will not create a distortion of the market that so corrupts market signals as to provide a disincentive for investment in the energy industry in Victoria.

I seek to find a way to satisfy the committee that the government's intention, which I presume is properly reflected in the second-reading speech, is achieved by the present construction of clause 10. Further, that the minister will need to satisfy the Liberal Party that the amendment moved by Mr Hall, which he has clearly moved on the basis of advice about establishing parameters for the liability to which I alluded, will not achieve that outcome. If the minister were to say that that outcome would be achieved by Mr Hall's amendment, the committee would have cause to think about it.

Hon. C. C. BROAD (Minister for Energy and Resources) — The clause is an important proposed change, and I am pleased to take this opportunity to outline to the committee the government's intentions in putting forward this change.

The committee will recall that last year the government's security of supply task force report clearly identified demand management as a necessary part of energy policy. It was always to be expected that participants in the electricity market who are in the business of selling electricity may have some reservations about demand management. Notwithstanding those reservations, at officer level the government has had extensive discussions and negotiations with the businesses about the wording of the changes. Some of the statements in the second-reading speech, to which I will return, have been inserted to address the concerns raised by some of the businesses during the consultations.

I do not believe we are far apart on concerns raised by the businesses in the changes the government has made in drafting the clause and the statements it made in the second-reading speech. However, some of the concerns raised possibly pre-date some of the changes made in the drafting of the bill and the second-reading speech and some of the businesses remain concerned about any involvement in the demand management area.

It is worth returning to the second-reading speech to go over the statements the government intended to make as clearly as possible. It states:

> … Vencorp may facilitate arrangements relating to electricity demand management and can enter into agreements and arrangements relating to electricity demand management.

It is clear that the agreements and arrangements relating to electricity demand management that are again referred to in clause 10 are linked to the facilitation of arrangements relating to electricity demand management. It is worth pointing out that in the wording of clause 10 the 'and' that links paragraphs (a) and (b) of proposed section 79A is intended to convey the linking detailed in the second-reading speech. That speech clearly states:

> … it is not envisaged that Vencorp would itself participate in the market for demand-side responses by contracting with retailers or customers.

Members of the committee will have noticed the efforts of the government to facilitate investment in further generation capacity in Victoria and to facilitate further investment in capacity by interconnects. Clearly the government is not seeking in any way, shape or form to intervene in the market or to undermine investment in further generation capacity. It is also worth stating that the government sees the measures as being complementary to ensuring that Victoria has adequate reserves and capacity in the electricity system.

It is also worth pointing out that it is proposed that Vencorp will now have two roles. Firstly, under the current provisions of the Electricity Industry Act, subject to the direction of Nemmco, it will ensure involuntary load shedding in situations of electricity shortage. That would not be regarded by some as a true demand-side management role, but it is still characterised as such. It is an important role for Vencorp. That will continue.

Secondly, the amendments propose to give Vencorp a true management role as a market maker or facilitator to encourage or facilitate commercial agreements between customers and retailers aimed at reducing electricity demand in periods of excess demand or supply shortage, which is of course a true demand-management role.

The proposal to have Vencorp perform this market-maker role does, as has been alluded to earlier, reflect the fact the industry has generally agreed that it is not economic for some 20-plus retailers licensed to operate in Victoria to separately try to set up a market in demand management and that a centralised process through an established body like Vencorp is a preferable way to proceed provided that role is limited to that of facilitation.

In relation to what may be characterised as market failure, it is worth explaining that the transaction costs associated with retailers pursuing demand-side management with larger customers are potentially high and the experience to date is that neither retailers nor customers are prepared to spend the resources on business development. The role envisaged for Vencorp is designed to correct this market failure arising out of these transaction costs which form a barrier to demand-side participation. It is expected that Vencorp's facilitative role should reduce those costs although not necessarily eliminate them entirely. It will certainly assist in reducing transaction costs and consequently the development of a demand-side management market, which the government believes is a high priority.

As I said, the proposed amendments supplement Vencorp's power to address supply shortages. It is worth explaining that facilitating the development of contractual arrangements and business cases for bringing new demand-side capacity into the market is likely to involve seeking expressions of interest from retailers for demand-side management proposals and also to involve entering into agreements to further develop these proposals and facilitate a market for demand-side management. It is intended the amendment should provide Vencorp with adequate scope to undertake a tender to review proposals from retailers contracting for new demand-side management.

There is also scope for further details of the process to be developed in consultation between the Department of Natural Resources and Environment and Vencorp. I should state again that while I have endeavoured to explain why it is necessary to ensure that Vencorp has the scope to enter into agreements and arrangements to facilitate demand-side management, the amendments will not empower Vencorp to enter into contracts with retailers for demand reductions during times of forecast supply shortages. It is very much the case that Vencorp's role will be limited to ensure the development of contractual arrangements between retailers and customers and also to the development of business cases for bringing new demand-side capacity into the market. This is the role envisaged in directly addressing the issue of transaction costs as a clearly identified barrier of demand-side participation. It is also the case that approval of the responsible minister is required before Vencorp can engage in any demand-side management activities.

The question of costs was also mentioned. To the extent that Vencorp is to use these new powers, the legislation provides a capacity to recover the associated costs via a levy on market participants. The levy is capable of being passed on to consumers as the ultimate beneficiaries of greater reliability of supply. However, the imposition of any market levy must be authorised by government through an order in council and would be subject to regulation by the Office of the Regulator-General and its successor, the Essential Services Commission. It is expected that any such levy would be relatively low reflecting the fact that the costs to be incurred by Vencorp are also expected to be low.

The proposed amendment would limit the agreements and arrangements entered into under the proposed section for agreements made for the purposes of carrying out Vencorp's facilitative role. In the government's view the amendment would create some uncertainty for Vencorp as it would be required to analyse whether it was performing only a development role or whether its actions could be characterised as an implementation role. Proposed section 79A(b) was included to address this grey area to ensure that it was beyond doubt that Vencorp had the power to undertake the role described in the second-reading speech.

Essentially the government is seeking to avoid the potential need to define 'facilitate' through litigation which would be a very unsatisfactory state of affairs. As the committee would expect, Vencorp is concerned to ensure that the powers it exercises are clearly stated and beyond challenge. The government believes the way this proposed section has been drafted meets those objectives and provides Vencorp with the certainty it requires to undertake its role.

Hon. C. A. STRONG (Higinbotham) — The minister correctly outlined the great importance of demand management and how essential it is. I do not think anyone has any doubt about that. The minister also outlined how it is important to have a catalyst to commence the process. I am sure all honourable members would agree that something needs to be done. The question is how far the power goes under clause 10. For example, clause 10 inserts proposed section 79A entitled 'Powers of Vencorp to manage electricity demand'. It does not say 'Powers of Vencorp to facilitate an electricity demand market' or something like that. Proposed paragraphs 79A(a) and (b) are moderately clear, if that make sense. Proposed paragraph (a) refers to facilitating development. Proposed paragraph (b) refers to entering into agreements and arrangements relating to the development and implementation of proposals — the key word is 'proposals' — for the management of the electricity demand. The minister also states in her second-reading speech:

> Pursuant to these amendments, it is not envisaged that Vencorp would itself participate in the market …

It is unclear what the words 'facilitate' and 'implementation of proposals' mean in proposed section 79A(a) and (b) when one considers the words 'not envisaged' in the minister's speech. They are semi-qualified words. Would Vencorp and the minister then go on to the next stage, which is to become a market participant. The clear message from members on this side of the house who have spoken today is that it would be highly undesirable if Vencorp were to become a market participant.

If the minister were to say, 'Pursuant to these amendments, Vencorp will not supply in the marketplace', those woolly terms in proposed section 79A(a) and (b) would probably suffice. The minister should give the committee an ironclad commitment that she does not intend and would not allow Vencorp to participate in the market as a player, but that it will participate in every other way in setting up the market, entering into contracts and perhaps even setting up a demand-side pool — and I do not have a problem with anything like that. It should not, however, enter into the market or play in that market with our money. It would be useful if the minister could give that assurance.

Hon. C. C. BROAD (Minister for Energy and Resources) — It is the government's view that it would be highly undesirable for Vencorp to become a market participant. I agree that the heading of proposed section 79A may have more accurately been expressed as 'Powers of Vencorp to facilitate electricity demand'.

In relation to the statement in the second-reading speech, I indicate that it is not envisaged that Vencorp would itself participate. In line with what I have already said in committee, I am willing to say that Vencorp will not participate in the market and that I as the responsible minister will not be giving approval for that to happen.

Hon. P. R. HALL (Gippsland) — We welcome that commitment. As the minister said at the beginning of the debate on this clause when she responded to the moving of my amendment, we are not too far apart. Everybody who has spoken on the bill has agreed that it would be undesirable for Vencorp to enter into direct contracts with retailers and customers. We are all in furious agreement, and the minister has given a commitment in committee that Vencorp will not enter into such contracts with retail customers.

Given that, I see no reason why the committee should not accept the amendment that I have presented which, through the best legal opinion I have received, achieves exactly what we all want to achieve and does exactly what the minister has just given a commitment to. Again, given the commitment by the minister, I ask the committee to accept the amendment.

Amendment negatived.

Clause agreed to; clauses 11 and 12 agreed to.

Reported to house without amendment.

Remaining stages

Passed remaining stages.

CORPORATIONS (COMMONWEALTH POWERS) BILL

Second reading

Debate resumed from 3 April; motion of Hon. M. R. THOMSON (Minister for Small Business).

Hon. C. A. FURLETTI (Templestowe) — The Liberal opposition supports the Corporations (Commonwealth Powers) Bill which not only deals with the application of Corporations Law on a national basis but also with its enforcement by the Australian Securities and Investments Commission. It seeks to confer the whole of the Corporations Law and enforcement of that law as commonwealth instruments on state courts within the ambit of section 77(iii) of the Australian constitution.

Notwithstanding the relatively brief nature of the bill, comprising some nine pages, it deals with a complex and significant area of the law. Much as I am prone not to do so, in this instance I commend the parliamentary draftspersons involved with the drafting of not only the bill but also the second-reading speech. I understand this was a combined effort between Victoria, New South Wales and the commonwealth. I urge honourable members who have an interest in the bill to read the explanatory memorandum which I hope is a trend that will carry on into the future because it sets out the detail with clarity and was helpful in understanding a complex area.

The background details in the explanatory memorandum are extraordinarily helpful. Its analysis of the basis for termination and references to the effect of state and territory legislation is clarified very well. I found it very helpful.

The bill arises fundamentally as a result of the July 1999 High Court decision in *re Wakim: ex parte McNally*, reported in (1999) 163 ALR 270. That decision exposed the constitutionally tenuous relationship between state and federal jurisdictions in areas where national interest was seen by the states and territories to override strict constitutional legality. The results of that decision were exacerbated by a decision the following year in the High Court in the *Queen v. Hughes*, reported in 171 ALR 155, which added further confusion to the validity of the powers of commonwealth functionaries and authorities in enforcing the Corporations Law.

On a number of occasions in this place over the past 18 months or so reference has been made to the High Court decision in Wakim. I will refer to some of the previous pieces of legislation that have passed through this house in efforts to seek to minimise and rectify the effects of the High Court's decision.

Since 1961 the state and commonwealth governments have sought to find a resolution as to the implementation of state laws on a national basis and overriding state boundaries. In fact, they have been engaging in some degree of constitutional acrobatics to have the states confer on the commonwealth–state jurisdiction in areas of law such as Corporations Law, matrimonial law, bankruptcy law, trade practices and admiralty. More recently a significant mutual recognition of laws on a national level is recognised.

Other areas where there is perhaps more contention but where a national approach would be beneficial include industrial relations law. I would venture to say that even uniform driving laws and gun laws could have avoided some considerable mirroring and repetition among the states.

In 1961 one of the early instances of uniformity was introduced in the form of the Uniform Companies Act. The difficulties being experienced in the area of Corporations Law are not new. In 1975 a commonwealth system of family law was introduced, and in 1976 the Federal Court of Australia was established. In 1989 and 1990 another effort at rewriting national Corporations Law was enacted, with cooperation and agreement between the states and the federal governments.

It is not only perceived but a reality that uniform federal laws provide stability, certainty of jurisdiction and consistency of decision making, and generally engender confidence in the legal system. Uniform commonwealth laws avoid the delays and costs associated with disputes about whether particular courts

have jurisdiction, and of course remove any advantages litigants may hope to achieve by forum shopping.

The 1980s saw some laudable efforts at what has been termed by some academics and judges as cooperative federalism between the states and the commonwealth, with the negotiation of certain cross-vesting agreements and applied law schemes. Those agreements saw legislation enacted contemporaneously at commonwealth and state levels so that the eight state and territory supreme courts, the Federal Court and the Family Court were integrated into as close to a national court system as the constitution permitted. The arrangements related principally to the conferral of state laws on federal courts and the Family Court, and laws of another jurisdiction are applied as state laws and jurisdiction in respect of the application conferred on federal courts. These cross-vesting arrangements established a mechanism through cooperation that appeared to solve many of the constitutional problems that were created and had existed since Federation.

It has always been accepted that section 77(iii) of the Australian constitution permits federal jurisdiction to be vested in state supreme courts. The reverse has been attempted, but not with a great degree of confidence. Many academics, jurists and constitutional lawyers had expressed concern about the constitutional validity of the cross-vesting arrangements and applied law schemes. Those concerns proved justified. In the two decisions to which I referred the High Court found the arrangement to be unconstitutional and struck them down.

The minister's second-reading speech somewhat understates the position with the suggestion that the validity of the state and commonwealth arrangements are 'in doubt'. The High Court decision leaves little, if any, doubt that the arrangements are invalid and have caused grave concern among the legal fraternity and the states and commonwealth.

Notwithstanding the unity of purpose and the wholehearted agreement and total consent of the states, the territories and the commonwealth, the High Court set aside the arrangements. In his reasons for judgment in the Wakim case Chief Justice Gleeson said:

> The parliaments of the commonwealth states and territories cannot by cooperation amend the Constitution.

He went on to say that the High Court was obliged to rely upon the legal basis of the arrangement and not legislative policy. The court found that the arrangements were giving a power to the federal courts which had not been conferred by the exhaustive provisions of sections 75 and 76 of the Australian Constitution. The two decisions I referred to indirectly threw into considerable doubt the decisions and judgments made over a 10-year period by the federal courts on matters arising under the conferred state jurisdiction.

Over the past 18 months or so this Parliament has been required to pass a number of bills to minimise the impact of the High Court rulings and implemented processes to deal with those judgments and transitional matters, including cases that were awaiting hearing at the time of the Wakim decisions. So it was that the Federal Court (State Jurisdiction) Act was passed in 1999 giving Supreme Court judgment status to the ineffective judgments of the Federal Court that had been put in doubt by the High Court decision. A complementary bill, the Federal Courts (Consequential Amendments) Bill, passed in April 2000, removed the conferral provisions and application of laws arrangements from the seven Victorian acts to which it referred.

Ancillary to those acts, the Corporations (Victoria) (Amendment) Bill was passed in March 2000. Each of those acts was a complex piece of legislation in its own right; however, they were required, and required urgently, to address some of the constitutional dilemmas generated by the Wakim and Hughes decisions.

The Corporations (Commonwealth Powers) Bill is another attempt to address the difficulties arising out of the jurisdictional anomalies between the state and the commonwealth. The law relating to corporations, although not necessarily the most complex, certainly affects the greatest number of Australians when its validity, operation and enforcement are questioned and put in doubt.

During the briefing I received on the bill I was advised that up to 650 000 corporations could be affected by a challenge to the incorporation powers — not an inconsequential number. Furthermore, Victoria and New South Wales are home to some 66 per cent of those companies. The states' powers are identified, and the states alone have the power to make laws relative to: firstly, the incorporation of companies; secondly, aspects of non-financial and non-trading corporations; and thirdly, certain activities of unincorporated bodies that engage in trade. On the other hand, the commonwealth government under section 55(xx) of the Australian constitution has power to make laws with respect to trading or financial corporations formed within the commonwealth.

I hope, Mr Acting President, what I have explained gives an indication of the complexities and difficulties in determining the boundaries of the respective jurisdictions of the states and the commonwealth and how it is perhaps not overly difficult to fall into the trap that has been fallen into. How could the draftsmen who prepared the Australian constitution 100 years ago have foreseen the extent of the development of corporations over that time?

Furthermore, this is an area of ongoing and constant change. As those changes are being addressed, the sand under the feet of the legislatures and the courts continues to shift and continues to require attention.

I have previously indicated in this house that three options exist to resolve this jurisdictional impasse, which was previously suspected but confirmed in the Wakim case. The first option involves retaining the existing transfer of federal jurisdictions to the states but removing the offending and unconstitutional aspects of that arrangement. That is not a favoured option because the integrity of the scheme would be lost.

The second option is utilising section 51(xxxvii) of the Australian constitution, which allows the states to refer their jurisdiction and powers to the commonwealth. It should be noted that there is a great degree of reluctance on the part of the states to divest themselves of any of their powers, but particularly to divest themselves of those powers and refer them to the commonwealth. I will deal with that aspect later in my contribution. The other difficulty with that option is that it involves the transfer by area of jurisdiction from the states to the commonwealth. That in itself could be cumbersome, but it certainly can be done with the best intentions and the agreement of the states.

The third option is constitutional change, which could be effected only by referendum. That would involve the establishment of a national court system with uniform laws and a unitary court system, which could be introduced only by means of a popular referendum. We are all, I am sure, aware of the difficulties we have in Australia in having referendums accepted — only 9 of 43 referendum proposals have been accepted, and none has been accepted since 1977. It is interesting that the second-reading speech foreshadows that there may be further change in this area and that that change could involve constitutional change. It appears on the best information that that may be the most lasting method of ensuring that the difficulties that arise under this area of the law are overcome.

The bill, as I said, is relatively brief, but its significance cannot be overstated. As well as being novel in concept it is novel in structure. Although the bill is short, it relates by reference to more than 2000 pages of legislation — 2000 pages of legislation that includes the commonwealth Corporations Bill 2001 and the commonwealth Australian Securities and Investments Commission Bill 2001. Those pieces of legislation are not even before this house and are not likely to be; they have in fact been tabled in the New South Wales Parliament and are referred to as in the Corporations (Commonwealth Powers) Bill. I understand that the main purpose for structuring the bill in this way is to avoid any actual, perceived or prospective error in reproducing the commonwealth legislation the number of times that would have been needed for enactment throughout the various states and territories. As I have said, this form of introduction is novel.

The other interesting aspect of the bill is that it has a complementary agreement. It is an intergovernmental agreement that is the basis for the arrangement between the states and territories and the commonwealth — the corporations agreement of 2001. That 31-page document, although not legally binding, is intended to record the spirit and the letter of the agreement between the states and the territories pursuant to which they implement the legislation.

The bill provides for two referrals. It provides that states can refer their corporation powers to the commonwealth Parliament in the form of a tabled text, to which I have referred. That is effected under the second option to which I referred — that is, under section 51(xxxvii) of the Australian constitution. The bill also provides that the states can refer powers to make express amendments to the proposed corporation legislation.

The bill was negotiated over a lengthy period between the commonwealth and the states and territories and has been introduced in New South Wales and now here in Victoria. When I last inquired, South Australia and Tasmania, although having agreed in principle, had yet to enact the legislation as they still had some concerns, principally centred around the divesting by the states of their powers.

It is interesting to note in the second-reading speech the very strong emphasis on the fact that the bill was amended to prevent any referral of the state's powers on industrial relations. It is curious that the same restriction was not placed on the myriad other areas of state powers that come to mind.

As I indicated, the underpinning of the bill appears in the corporations agreement. Notwithstanding all of that, and perhaps giving true credence to the concerns of the

states, the provisions for termination and protection of the position of the states in this overall scheme are to be drawn to the attention of the house. The nervousness of the states in referring powers to the commonwealth is evident in the bill and the corporations agreement. A sunset provision in the bill provides that it will lapse after five years. Notwithstanding that, any state can withdraw from the arrangement on giving not less than six months notice — and no reason is necessary. Furthermore, any four or more states can agree to dismantle the scheme at any time. Section 504A of the corporations agreement effectively gives the states a power of veto on certain declarations.

Over and above all of those protections there is an agreement between the parties to engage in a review of the arrangement after three years. I understand the commonwealth government has given an undertaking to revisit the arrangement before the five-year expiry date. The protections are anticipated to guarantee that the letter and spirit of the agreement will be followed, because it allows the states to withdraw if there are concerns and if they are not consulted about those areas that are not specifically referred to and addressed in the bill.

The second-reading speech foreshadows many more consequential amendments, including the possibility of constitutional change. There will undoubtably be a number of transitional requirements for states to legislate before the scheme commences. When this type of legislation has been enacted by all the other states it is intended that the commonwealth will enact the Corporations Law and the Australian Securities and Investments Commission Bill, and the scheme will be up and running.

I draw to the government's attention the fact that as legislators we have an obligation to ensure that the legislation which comes before this house is clear, unambiguous and as effective and easy to implement as possible. The opposition has been pleased to see the cooperative manner in which this bill has been brought together and implemented, and for that reason is pleased to support it.

Many legal commentators, including the Law Council of Australia, believe that only constitutional change will completely resolve the problems in the area of constitutional uncertainty created by the Wakim and Hughes decisions. The seriousness of the fallout of Wakim's case and the uncertainty surrounding the current scheme was referred to by Professor Paul Redmond, dean of law at the University of New South Wales, as 'Only a temporary reprieve from what looked like a real disaster.' The referral that this bill implements allows the commonwealth to legislate in respect of both state and commonwealth powers, and confers the jurisdiction and the functions and powers of federal courts in respect of federal authorities and officers on state courts pursuant to section 77(iii) of the Australian constitution in an effort to overcome the problems.

I am sure all honourable members hope that for the purposes of certainty, stability and the restoration of confidence in this area the latest effort at cooperative federalism in the national interest will be successful in overcoming the constitutional dilemma that currently exists, but only time will tell. The opposition wishes the bill a swift passage.

Hon. JENNY MIKAKOS (Jika Jika) — It is with great pleasure that I speak on the Corporations (Commonwealth Powers) Bill. It has had a long and unfortunate history. I say that it is an unfortunate history because it has arisen as a result of constitutional uncertainty relating to our current system of corporate regulation. It is a timely reminder that as we celebrate our centenary of Federation, our 100-year-old federal constitution, in particular the specific limitations imposed by section 51(xxxvii), could do with considerable overhaul. This bill stands as a timely reminder that our constitutions, both state and federal, need to continue to evolve to meet the needs, expectations and values of Australian society.

The Attorney-General has gone into considerable detail about the history of the bill in the second-reading speech, and therefore it is unnecessary for me to do that today. However, I will briefly mention that in the 1980s we had a cooperative scheme across all state, territory and federal jurisdictions. This was replaced in 1991 with the template legislature system known as the Corporations Law, which saw all jurisdictions adopt substantive commonwealth law as it applied in the Australian Capital Territory and as amended from time to time, as the law in their jurisdictions. In Victoria the Corporations Law was adopted in 1990 through the Corporations (Victoria) Act.

This system also gave the Federal Court jurisdiction to hear state matters relating to the Corporations Law and associated legislation. As a result of two High Court decisions — *re Wakim: ex parte McNally* in 1999 and the *Queen v. Hughes* in May 2000 — considerable constitutional uncertainty surrounds the Federal Court's ability to hear state matters in all but limited cases and the ability of commonwealth agencies to exercise their functions under the Corporations Law.

In response to those High Court decisions the Victorian government has previously moved quickly to introduce a workable solution. The Federal Courts (State Jurisdiction) Bill passed in November 1999 and the Federal Courts (Consequential Amendments) Bill passed in May 2000 were necessary attempts to respond to the constitutional problems that arose from the High Court's decisions. The Victorian government saw the need to give the business sector and legal profession greater certainty in the area of corporate regulation and the administration of an efficient justice system.

When debating the Federal Courts (Consequential Amendments) Bill I noted that nothing short of a federal referendum and amendment to the commonwealth constitution could solve that problem. In the other place the Attorney-General acknowledged in his second-reading speech that the referral of power is not a permanent solution to the problems of the current scheme and that the commonwealth has given a firm undertaking to examine a long-term solution, including constitutional change. Any options for such constitutional change should be approached in a bipartisan manner and should be done through the Standing Committee of Attorneys-General, which should therefore involve extensive consultation with all state and territory jurisdictions.

As it is expected that any referendum decision would occur within the next five years, the referral of power to the commonwealth has been set to expire in five years from the commencement of the commonwealth legislation, although that period can be extended or terminated early in accordance with the provisions of clauses 5, 6 and 7 of the bill.

Recognising the difficulties involved in the successful passage of a federal referendum, Victoria has led the way to finding a workable solution to the current constitutional problems. In December 2000 the Bracks government reached an agreement with the New South Wales Labor government and the federal government as to the referral by those states to the commonwealth of their powers relating to the formation of corporations, corporate regulation and the regulation of financial products and services. The substance of the referral of power is set out in clause 4(1)(b) of the bill.

The agreement reached by Victoria, New South Wales and the commonwealth specifically excludes any use of the referral of power for industrial relations purposes. That is made clear in clause 1(2) of the bill and is supplemented by the provisions of the intergovernmental agreement referred to as the corporations agreement, which specifically prohibits the use of the referral of powers not only for the purposes of regulating industrial relations but also for regulating environmental matters or any other matter unanimously agreed to by all parties to be a prohibited matter.

The New South Wales Parliament has already passed the model legislation on which this bill is based. As all jurisdictions agreed in August 2000 to the in-principle referral of power to the commonwealth, it is anticipated that this bill will be accompanied by a national approach, as it should be, with the remaining states and territories also agreeing to a similar referral of power. The passage of the bill and the referral of Victoria's power will enable the commonwealth Parliament to enact the Corporations Act 2001 and the Australian Securities and Investments Commission Act 2001 in the form previously tabled in the New South Wales Parliament, together with the New South Wales bill.

The bill also enables the commonwealth to amend the commonwealth acts or regulations made under them in the future, provided that those amendments are confined to the matters referred to in clause 4 (1)(b) of the bill and that the amendments arise from express amendments to the commonwealth acts.

The corporations agreement also allows amendments to the commonwealth legislation to be introduced by the Ministerial Council for Corporations, also known as MINCO. Under the corporations agreement three jurisdictions will be required to vote to approve any amendments. In addition, the corporations agreement will provide that if four jurisdictions vote to terminate the amendment reference — that is, the reference of the matter of amending the corporations legislation — then all jurisdictions will terminate the amendment reference. The bill allows any state to individually terminate the amendment reference at which time that state will cease to be part of the new scheme.

It is anticipated that further consequential and transitional amendments will be required to give effect to the new scheme. In the meantime, the passage of this bill and the referral of power to the commonwealth will enable the commonwealth Parliament to debate its proposed legislation.

The passage of the bill will restore certainty and the uniform application and enforcement of the national system of corporate regulation. It reinforces the approach of the Victorian government that it is prepared to have a national approach and a referral of powers where the federal government is prepared to do so on a sensible basis and one which reflects the needs

of the Victorian community and business sector. I therefore commend the bill to the house.

Sitting suspended 6.25 p.m. until 8.03 p.m.

Hon. D. G. HADDEN (Ballarat) — I speak in support of the Corporations (Commonwealth Powers) Bill, the purpose of which is set out in clause 1. In a nutshell, it refers certain matters relating to corporations and financial products and services to the commonwealth Parliament for the purposes of section 51(xxxvii) of the commonwealth constitution. It amends section 85 of the Constitution Act. It also expressly states that the referred powers are not to be used for regulating industrial relations.

The bill reflects the state government's commitment to achieving a uniform and effective system of corporate regulations throughout Australia. The history of corporate regulation over the past two decades has witnessed different requirements existing in each state and territory. That has of course produced problems over the years.

In short, from July 1982 a cooperative scheme existed between the states and the Northern Territory and the commonwealth. However, as problems emerged over time there was a need for a more effective national enforcement of the corporate regulation regime. On 1 January 1991 a new national scheme for regulation of corporations of companies and securities commenced.

The current national scheme is based on a substantive commonwealth law, which applies in the Australian Capital Territory. The relevant legislation in Victoria is the Corporations (Victoria) Act. The federal court was given power to hear matters under the Corporations Law of each state by a cross-vesting scheme in the corporations acts of the commonwealth and the states. The current scheme is underpinned by heads of agreement, agreed to on 29 June 1990, and also a supplementary corporations agreement.

Two recent High Court cases have challenged the validity of the state's powers with respect to corporate regulation to be conferred on federal courts and hence the constitutional validity of such schemes has been held to be in question.

The High Court decision of 17 June 1999 in the case of *re Wakim: ex parte McNally* invalidated the Jurisdiction of Courts (Cross-vesting) Act to the extent that it purported to give federal courts created under chapter III of the commonwealth constitution, including the Family Court of Australia, jurisdiction to exercise state jurisdiction. That High Court decision affected the cross-vesting scheme with respect to corporations, agricultural and veterinary chemicals, competition, policy reform, gas pipelines access, et cetera. In effect only state courts can exercise jurisdiction in Corporations Law that arise under state laws. As I said in my contribution on 24 November 1999 to the debate on the Federal Courts (State Jurisdiction) Bill, further consequential amendments were then foreshadowed and were being developed in consultation with the commonwealth and the states and territories.

Then in May 2000 the Federal Courts (Consequential Amendments) Bill came before the house. That was to remove provisions from the state acts purporting to confer jurisdiction on federal courts and to make changes to the states' cross-vesting schemes that were complementary to amendments to commonwealth legislation, as proposed by the Jurisdiction of Courts Legislation Amendment Bill, introduced into the commonwealth Parliament in March 2000. The bills were passed in this place — as I said, in November 1999 and May 2000 — as a direct and uniform response to address the problems that had arisen over the past two decades in effect and especially by virtue of the High Court's decision in *re Wakim: ex parte McNally* in June 1999 and the *Queen v. Hughes* 171 ALR 155.

In the second decision the High Court held that the conferral of a power coupled with the duty on a commonwealth officer or authority by a state law must be referrable to a commonwealth head of power. The decision in effect casts doubt on the ability of commonwealth agencies to exercise some functions under the Corporations Law.

The two High Court decisions have prompted the Standing Committee of Attorneys-General and the Ministerial Council for Corporations to meet to address the problems facing the national Corporations Law scheme. Honourable members have already heard of the historic agreement in principle reached in Melbourne on 25 August 2000 between the commonwealth and states and territories ministers whereby the states would refer to the commonwealth Parliament the power to enact the Corporations Law as a commonwealth law and to make amendments to that law subject to the terms of the corporations agreement.

On 30 November 2000, the Corporations (Commonwealth Powers) Bill was introduced into the New South Wales Parliament. Further negotiations took place between the Standing Committee of Attorneys-General and the Ministerial Council for Corporations, and on 21 December 2000 representatives of the Victorian, New South Wales and commonwealth governments met to resolve

outstanding issues facing the national Corporations Law scheme as a result of the two High Court decisions.

As I said, on 21 December, after many months of negotiation, the Prime Minister and the premiers of Victoria and New South Wales, together with the Attorneys-General, reached agreement on a compromise proposal to facilitate the referral of power by the states to the commonwealth in relation to corporations legislation.

The letter dated 18 January 2001 from the Prime Minister to the Premier refers to the agreement between the commonwealth and the New South Wales and Victorian governments reached on 21 December last year. The Prime Minister refers to the matters in the agreement. He states also that he is sending a copy of the letter and attachment to the premiers of the other states and territories for their attention and that the commonwealth will introduce its legislation, including the new Corporations Bill, as soon as possible after the first state referral legislation is introduced with a view to commencement no later than 1 July 2001. He states:

> It is my very strong hope that the necessary state referral legislation will be in place in all states at the time the commonwealth legislation commences.

Further, the Prime Minister notes that he is grateful for this government's cooperation in ensuring that it is now possible for the remaining steps towards securing the national Corporations Law scheme to be taken.

In a nutshell, if one can summarise it, the bill enables the commonwealth Parliament to enact the proposed Corporations Bill and the Australian Securities and Investments Commission Bill, which are referred to in the bill as the tabled texts. Those two bills were tabled in the New South Wales Parliament on 7 March 2001 as commonwealth laws. The bill also enables the commonwealth to amend those laws or regulations made under them, so long as those amendments are confined, as I said, to matters of corporate regulation and the formation of corporations and the regulation of financial products and services, but only to the extent of making express amendments to the bills referred to the commonwealth. That is called the amendment reference.

Clause 1(2) provides an exclusion to ensure that the commonwealth cannot use the referred powers to legislate in the area of state industrial relations or to override state laws.

The bill also provides that the reference of power is to terminate five years after the commonwealth corporations legislation commences, or at an earlier time by proclamation. Equally, the term of the referral can be extended beyond five years by proclamation. The referral power is limited because the referral of power by the states to the commonwealth is not a permanent solution to the problems of the current corporations scheme. The commonwealth has given a firm undertaking to examine long-term solutions to address the problems that have arisen as a result of the two High Court decisions.

Clause 10 makes a direct amendment to section 85 of Victoria's Constitution Act 1975. The tabled text contains provisions that limit the jurisdiction of the Supreme Court. Under the corporations legislation, the Supreme Court will be exercising federal jurisdiction and clause 10 removes the possible argument that the referral of a matter to the commonwealth Parliament for the purposes of section 51(xxxvii) of the commonwealth constitution is covered by section 85(5) of the Victorian Constitution Act. Under that reference the commonwealth Parliament may make laws limiting or affecting the jurisdiction or powers of the Supreme Court.

The bill also contains a number of consequential and transitional amendments to state legislation that will need to be dealt with before the new scheme commences and a separate bill for that purpose will be introduced before the commencement of the new scheme. The purpose of all this is to ensure that our national system of corporate regulation is placed on a sound constitutional foundation as referred to in the minister's second-reading speech as well as to reinforce Australia's reputation as a dynamic commercial centre in the Asia–Pacific region.

The bill reflects the government's commitment to an effective and uniform system of corporate regulation across Australia which is important for its trading credibility in the region. I commend the bill to the house.

Hon. R. M. HALLAM (Western) — The Corporations (Commonwealth Powers) Bill appears on the surface to be simple. Its purpose is captured in one sentence that appears in clause 1. It states, in part:

> The purpose of this act is to refer certain matters relating to corporations and financial products and services to the Parliament of the Commonwealth …

I am not a lawyer and I have no pretensions when it comes to issues of complex legal significance. I was bemused to read that the bill runs for only nine pages. Like Mr Furletti, I assumed it was a simple bill because much of the nine pages is devoted to definitions. I

hasten to assure the chamber that although the purpose and format may be simple, I learnt to my concern that the ramifications of the bill and its background are anything but. The more I read it, the more interested I became because the bill has enormous significance.

The bill can be traced back to the original terms of Australia's constitution. Therefore, the bill has importance not only for the operation of corporate regulation today but is also of enormous historical significance. It is absolutely critical to the operation of Australia's corporate sector. It represents a masterful compromise to the extent that it provides on the one hand an effective uniform system of corporate regulation across the systems that comprise our great nation while on the other it preserves the sovereign integrity of the states and territories. On that basis, the bill represents a very good outcome.

We have effectively captured — I give credit where it is due — the best of both worlds. We have been able to minimise the variance of regulation across state and territory boundaries, thus avoiding a whole range of uncertainties, costly litigation and even the prospect of forum shopping. At the same time we have preserved the integrity of the sovereign state.

I wish it were that simple, but it is not. I do not pretend for a moment that the chamber has before it a total solution. It is acknowledged that the only prospect of a long-lasting solution in this environment is that of constitutional change. Earlier today I heard the Honourable Carlo Furletti postulating about that constitutional change. He was expounding the advantages of constitutional change over and above what he described as being maybe a short-term capture.

The only point he did not acknowledge is that constitutional change would be extremely difficult to secure. Mr Furletti talked about the number of Australian referenda that had been successful in recent years. The prospect of constitutional change is an outside chance at best in any event. However, one must add to that the incredible complexity that a constitutional change to fix this problem would involve. I would not put my money on its getting through. I will not hold my breath waiting for that sort of solution.

As I said at the outset, the bill appears at least on its surface to be simple, the purpose of which is effectively captured in one sentence. Beyond that, it is an interesting bill. I can do nothing more than commend to members of the chamber and those who have an interest in the history of our great nation a reading of the bill, the explanatory memorandum and the background because it provides a real insight into the conversion process.

Like Mr Furletti, I extend my compliments to the author. This background music and explanation is most helpful and represents an important shift in our legislative framework. The author of the explanatory memorandum has gone to a great deal of trouble to have readers of the bill understand its purpose against the historic background. I note that the background comprises eight pages while the bill runs to only nine pages. I commend that very readable background to honourable members; it gives a much better potted version of the genesis of the bill than I could produce.

I do nothing more than refer to that background, which explains that the commonwealth constitution gives the commonwealth Parliament quite limited powers in respect of the regulation of corporations, which are captured under the much-quoted section 51 of the commonwealth constitution. That provision stipulates that the commonwealth Parliament is able to legislate with respect to foreign corporations and trading and/or financial corporations formed within the limits of the commonwealth. It goes on to spell out the extension of that limited authority. It talks about the commonwealth having the authority to assist to regulate corporate activities such as interstate trade. It talks about postal, telegraphic, telephonic and like services.

It is clear that the High Court has confirmed that the commonwealth's constitutional powers do not extend to the regulation of critical aspects of areas of our commercial activity, particularly including the incorporation of companies, certain activities of non-financial and non-trading corporations and certain activities of unincorporated bodies.

By contrast it is noted that the states have broad powers to regulate corporations and corporate activities. Here comes the historic aspect of the bill: it is clear, and we are reminded, that when the commonwealth constitution was framed and Federation was born the intent was that Australia would be a nation of sovereign states. This was a quite deliberate decision to federate the sovereign states that we knew at that time. We were very careful about how that constitution was framed.

It is incredible that now, many years later, we see evidence of the insight of those who framed the constitution. It is almost as though they had mystical powers because nobody could have predicted the developments in the corporate sector or, as Mr Furletti said, the fact that years down the track not only would the corporate sector be dramatically different but that the sands would be shifting under the feet of the

legislators and that we would have to contend with a moving feast.

The bottom line is that as a result of the restrictions on the powers of the commonwealth a national scheme of corporate regulation required cooperation between constituent states and territories. Our history is replete with examples of schemes that were born under that concept of cooperation. A number have been implemented and we can trace them back until at least 1961 and, I suspect, a long way further. The current system was born in 1991. Under that scheme the commonwealth enacted a set of laws that would apply to the Australian Capital Territory.

Laws in each of the states and the other territory would be enacted upon the model to be applied in the Australian Capital Territory. The effect of that arrangement was that although the Corporations Law operates as a single national law it applies in each state and the Northern Territory as the law of that state and territory and not of the law of the commonwealth. Here was a product of enormous cooperation to determine that we should have a seamless system of regulation of the corporate sector. The deal went on further to acknowledge that the law should be administered by a commonwealth body and thus was born the Australian Securities and Investment Commission. Each jurisdiction passed laws to recognise the role of that commission in that context. We came to understand that as ASIC law.

In addition, each state and territory passed legislation to acknowledge there was a requirement for enforcement that should be administered on the basis of a single unitary system and thus we had the commonwealth Director of Public Prosecutions and the authority of the Australian Federal Police. Critically, as part of the latest scheme the commonwealth, the states and the Northern Territory established a regime of vesting and cross-vesting on jurisdiction between the Federal Court and the state and territory supreme courts. It was acknowledged that the Federal Court could exercise the jurisdiction of the state courts and vice versa — namely, the state courts could, in certain circumstances, exercise the jurisdiction of the Federal Court.

The process worked relatively well for some years as previous speakers have acknowledged but there were a couple of shots across our bows. They were the two recent decisions cited in the debate thus far — namely, the decision of *Wakim: ex parte McNally* where the High Court held that state jurisdiction could not be conferred on federal courts. This really shook the foundations of our laws. No-one had anticipated that such a view would be taken of the effects of our constitution.

In *Queen v. Hughes* the High Court indicated that where a state gave a commonwealth authority or officer a power to undertake a function under state law together with a duty to exercise the function, there must be a clear nexus between the exercise of the function or authority set out in the powers under the commonwealth constitution. That decision struck at the very core of the cooperative regime that had worked so well in the past. A question mark was raised in respect of all the issues relating to the administration of corporate regulation.

The bottom line is if the ratio in respect of the Hughes case was valid the commonwealth would not be able to authorise its authorities or officers to undertake a function under state law involving the performance of a duty unless it could be demonstrated that that function could be supported by a head of commonwealth legislative power. The whole system was put under a question mark as a result of those two cases. Enormous uncertainty was created particularly with the decision on the Wakim case. It was acknowledged there was a clear need to resolve that uncertainty and to pursue a solution.

The proposed amendments are the result of that uncertainty. The amendments effectively mean that the states and the commonwealth agreed that the states will refer the Corporations Law to the commonwealth, as a matter about which the commonwealth has power to legislate. I thought of *Black Adder* and Baldrick's cunning plan because what we have here is a very cunning device. I am not putting it down; the extent to which it has been driven by the enormous cooperation at the jurisdictional level would have us understand it is an enormous breakthrough.

Under the aegis of section 51(xxxvii) of the commonwealth constitution the commonwealth Parliament has the power to legislate with respect to matters referred to it by the Parliament or parliaments of any state or states. It is also clear under that section of the constitution that a commonwealth law made with respect to a referred matter extends only to states which have referred the authority or which afterwards have adopted the law. The proposed state, territory or commonwealth bill that we see an example of before us today acknowledges that the Corporations Law will be re-enacted as a law of the commonwealth rather than as a law of the commonwealth, the states and the Northern Territory. Therefore, the argument runs, there will be no barrier to commonwealth legislation incorporating companies, or conferring jurisdiction with respect to the

Corporations Law on the Federal Court. Therefore, technically the problem is overcome.

It is important to understand that the bill has been carefully constructed not to strike at the thesis that underpins the constitution; quite the reverse. It is not carte blanche or a wholesale shift of the sentiment that drives our constitution; it is a carefully constructed reaction to the question mark imposed by the decisions of Wakim and Hughes.

I turn now to the methodology, because that also is clever. The way the bill is designed to achieve that effect goes to two issues in respect of methodology. The bill makes two references to matters with respect to the commonwealth Parliament, and they are very carefully constructed. I acknowledge, as did Mr Furletti, that they are complex but are carefully constructed. The first reference entitled the 'initial reference' ensures that the text of the new commonwealth act will be substantially the same as existing Corporations Law. We have been careful not to superimpose additional prospective problems as a result of changing the terminology or thrust of the act. Indeed, as Mr Furletti mentioned in an aside, I cannot remember when we have had a debate similar to this which relies on legislation tabled in other parliaments because we do not have all the issues before us. What we have are these references. The first determines that a status quo should prevail and that all the other assumptions should be read into the process.

The second reference described as the 'amendment reference' is even more clever. This reference relates to the matters of the formation of corporations, corporate regulation and the regulation of financial products and services, but only to the extent of making 'express amendments' to the proposed corporations legislation. It goes one step further and says that the term 'express amendment' is defined as the direct amendment of the text of the corporations legislation, but as not including the enactment of a provision having substantive effect otherwise than as part of the text of the corporations legislation. In other words, the bill is careful to ensure that the matters covered by the second reference cannot be the source of power for other commonwealth legislation. This provision is not designed to be open slather.

To ensure that the states are further protected in this referral, other controls are then built into the system. We learn, for example, it is intended that the corporations agreement upon which this whole concept is founded will ensure that future amendments to the corporations legislation will be made after examination by the ministerial council. It is another protective measure built into the system.

If the commonwealth Parliament were to make amendments that did not comply with the corporations agreement, a state could simply respond by terminating the reference. An important mechanism is built into the process itself, and then to make even more certain that this is not some covert grab for power the references relate only to matters that are within the legislative powers of the state and specifically not within the legislative authority of the commonwealth — that is, the bill cannot specifically refer matters over which the commonwealth Parliament already has power. The bill has been carefully framed to ensure that we do not throw the baby out with the bathwater. It goes back to the case of Wakim and looks at it carefully. The bill is constructed in a way which addresses the issues raised by Wakim but does not go beyond them.

If that were not sufficient protection, the bill has a number of other protections built in, the first of which is that the bill itself provides that the reference can be terminated in one of two ways — in other words, as Mr Furletti noted, it has a sunset clause that if nothing happens after five years the reference expires. Even if we did nothing the legislation would become ineffective at the expiration of five years. The thesis is that within five years the commonwealth will be able to come up with lasting solution. It is generally acknowledged that that lasting solution is a change to our constitution. As I said at the outset, I will not be holding my breath because we have two chances with regard to changes to our constitution of this complexity — Buckley's and none. The commonwealth has committed to seeking a long-term solution — in other words, it has acknowledged that this is a short-term solution and perhaps it will be subject to complications that no-one could foresee.

In that context I go back to our forefathers and the construction of that historic document so many years ago, our original constitution. How perceptive were those authors that they could strike a document which would today in these circumstances, that no-one could have predicted, become a protection mechanism. This demonstrates more graphically than anything I could say how perceptive those architects were.

In addition, the bill itself says that if all else fails the Governor in Council — that is, the executive government of the jurisdiction — may proclaim that the references terminate on an earlier day. The Governor in Council in each of the jurisdictions has the authority to pull back on both of those references.

There is another interesting issue on the protection mechanism about the industrial relations function. The deal structured with the attorneys-general in their meeting was that we should frame a piece of legislation, take it to one of the jurisdictional parliaments — in this case it was New South Wales — and use that as a model for the other jurisdictions. That was introduced into the New South Wales Parliament under that understanding in November last year. There has been some nervousness, to which we may have contributed, Mr Furletti, because a question mark has been raised about the appropriateness of the state and territory jurisdiction over industrial relations.

It may be inappropriate for me to canvass the issues involved, but I am proud of the decision taken by the Kennett administration to cede industrial relations powers to the commonwealth. I thought that was an appropriate decision at the time, and stand by that. I am happy to be judged on the wisdom of that decision at that time, and understand that the jurisdictions that would be nervous in that context and as a result the bill, as originally introduced into the New South Wales Parliament, has been modified to specifically exclude a referral in respect of industrial relations.

I think that itself is belt and braces, perhaps a little petty, but putting that to one side, I still think this is an important initiative in which we are involved because I have some knowledge of the operation of the corporate sector and know the importance of having a seamless system of administration.

As an aside, I will refer to the Premier's media release of 21 March ascribed when the bill was introduced into the other place. The media release headed 'New legislation to settle corporations law uncertainty' states:

> Victorian Premier, Mr Steve Bracks, today said that the legislation would end uncertainty over the Corporations Law and bolster business confidence and employment stability in Victoria.

We extend our congratulations to the Premier for those sentiments. Why would that document be seen to be relevant? It is certainly relevant, in my view, because of one comment it contained at the bottom of the first page. The Premier states:

> With the other states joining with us we can send a clear message to investors that Australia is a good place to do business and deserves its standing as a real global financial centre.

We would all agree with that sentiment. Why is that so significant? I remember — it is not all that long ago — that we debated a motion in this place which went to that very issue. It concerned sovereign risk, the question of credibility on the part of the government. I remember railing against this government on the extent to which it had not only ignored the issue of sovereign risk but had absolutely denounced such a concept in the introduction of a surcharge on electronic gaming machines. We were told that it was all right because it was only that terrible gaming industry from which we were going to take additional revenue, notwithstanding that it was Labor in opposition that had maligned the industry and vilified the players within it.

My point then, as it is now, goes to the issue of sovereign risk because what we demonstrated by the introduction of that surcharge was that we could not be trusted. We had written long-term contracts with people at arms-length in good faith and then some time down the track had torn up those contracts. We had demonstrated to the world that we could not be trusted as a government of the day.

This is the same man who said that he would honour to the letter every contract written in advance of his accession to the premiership, and who then tore them up because the companies happened to be Crown, Tabcorp and Tattersalls. And in the next breath he says, 'Trust me, because we want to be acknowledged as deserving of a standing as a real viable financial centre'.

When we debated this issue a fortnight ago I said to the Honourable Theo Theophanous, 'If you want to be taken seriously at the top end of Collins Street you have to understand what sovereign risk is all about. You cannot run with the hare and hunt with the hounds. You have to have some standards'. Now I agree with the sentiments expressed in the press release that I have cited, but it reinforces the veracity of the criticism I level at the government about the surcharge.

Leaving that to one side, and my embarrassment as a Victorian to see a government behave so badly in respect to sovereign risk, I give credit where it is due. I think this is good legislation. As I said, I will not hold my breath waiting for the long-term relief we would expect to come from a change to our constitution, but this legislation is a very clever response to our sovereign structure and to the effects of the court decisions in Wakim and Hughes. No-one could have planned those decisions or the rationale that drove them; no-one could have anticipated it. As I said, I think this bill is a clever response to the new circumstances.

What the National Party hopes is captured here is a truly seamless system of corporate regulation across the nation, and it acknowledges that all the states have

committed to pass the legislation. I know that some jurisdictions are still to formalise that process, but as I understand it there is agreement across the jurisdictions that we have to do something in response to those rulings by our supreme courts — our High Court in this case — and that we have to make sure the question mark is removed.

It is on that basis that the National Party is happy to confirm its support for the legislation and to wish the bill a speedy passage.

Hon. P. A. KATSAMBANIS (Monash) — In speaking on this bill I point out that it is interesting that this is one more bill that attempts to deal with the issues raised in the Wakim case that was decided in the High Court in June 1999.

The first instance was the Federal Court (State Jurisdiction) Bill, which was debated in this place on 24 November 1999. I distinctly recall standing here and saying back then that greater legal minds than mine hoped that that bill would deal with the issues the High Court had raised. Yet only six months later, on 2 May 2000, we were debating the Federal Courts (Consequential Amendments) Bill, which tried to plug more holes that had been discovered since the Federal Court (State Jurisdiction) Bill had been passed a few months earlier.

Now here we are again, in May 2001 — effectively one year since the last bill — attempting in part to address the issues raised in Wakim with this bill. I say 'in part' because this bill also tries to address the issues raised by the High Court in a later decision — the Hughes case in May last year.

The bill tries to ensure constitutional, and therefore legal, validity of our existing Corporations Law. The development of laws relating to companies in Australia is interesting. It probably highlights appropriately in the era we are living in the issues that faced our founding fathers at the time of Federation when they attempted to merge six colonies into a nation and, through the forging of the Australian constitution, tried to give appropriate powers to the fledgling commonwealth government.

That was 100 years ago — almost to the day. After having come a whole century down the path of nationhood it is quite apparent that, although our constitution has served us well, there are aspects of today's society that could not possibly have been contemplated back in 1901, or in the 1890s as our constitution was being formulated. Back then it would have been impossible to have envisaged the complexity of legal issues that face a nation such as ours at the commencement of the 21st century as we enter a period of continuing globalisation.

One of those major issues, which is not new but which has been confronted by legislators in state and federal parliaments since immediately after World War 2, is the issue of how to deal with Corporations Law in this nation and with the fact that, although a corporations power is incorporated in the constitution, as recently as May 2000 the High Court, the highest court in the land, deemed it insufficient to bestow initial legislative power on the creation, in particular, of corporations and the incorporation of corporations within Australia.

We are faced with bills such as this that try to correct anomalies that had their genesis a hundred years ago. As I said at the outset, this is the third attempt that has been made to rescue what is good about our Corporations Law since the decision in *re Wakim*. I hope it is the last, and I think everyone in this chamber hopes it is the last — but we do not hold our breath waiting for that hope to become fact!

There is no doubt that the existing Corporations Law is universally accepted as being appropriate for a nation such as ours at this point in its history. The best way to ensure that that law can have validity in our courts is quite clear — it is by a constitutional amendment, an amendment of the Australian constitution. It was alluded to in the minister's second-reading speech, but disappointingly the second-reading speech did not give me or too many other people much hope that this government has the best interests of Australians at heart in supporting proper and appropriate constitutional change. The second-reading speech was littered with the red herrings about industrial relations powers. I, like Mr Hallam before me — and I commend him — think it was totally and thoroughly appropriate that the Kennett Liberal–National party government handed over the powers in industrial relations to the commonwealth government. I will never resile from that. It was right then; it is right now.

But that has so little to do with legislative power over corporations — and even less to do with the Corporations Law that has been operating in our nation since 1 January 1991 — that spending so much time in the second-reading speech talking about industrial relations powers indicates to me that, should we embark on what would be a legitimate process of constitutional change, that process would suffer the same fate as has been suffered by the vast majority of previous attempts to change the Australian constitution.

The government, even before we go down that path, has shown its hand, and it is not a good hand. It has shown that it is prepared to worry about red herrings and float them as a way to defeat appropriate change before it has even been discussed, contemplated, drafted or considered, let alone voted upon at a referendum. That is disappointing. I hope in due course the government will realise that if it pursues that path it will continue to be like the little kid in the Netherlands with a finger in the dike trying to plug holes, similar to the gaping hole in Australia's constitutional structure.

An interesting point about this measure is that it is a nine-page bill — quite a small bill. It is a powerful bill that relates to thousands and thousands of pages of ancillary legislation. It is a nine-page bill that required an eight-page explanatory memorandum. It was a very good memorandum. The legislative draftspeople should be commended. However, it shows the complexity of trying to create legal gymnastics to overcome the fact that we do not want to embark upon what in my mind is the appropriate path — the path of constitutional reform.

I hope, as I hoped in November 1999 and in May 2000, that this is the last time for a while that we will need to consider legislation to ensure the validity of our Federal Court structure and Corporations Law. We know that the business community and the international business community demand certainty within our legal system, and we know that we have to provide that certainty. Again, I cannot be convinced that this bill will provide it. It is a good attempt, but one day down the track I believe we will have to bite this bullet as Australians in relation to powers over corporations and understand that if we believe it is appropriate to have a national scheme governing corporations — both their formation and their ongoing governance — the most appropriate way of achieving that national scheme and achieving certainty that it will have legal validity is embarking on the process of constitutional change.

If we do embark upon that path, and this government is still in power, I sincerely hope Labor members no longer engage in the sort of sophistry and promotion of red herrings that they have done in introducing this bill, particularly the comments made in the second-reading speech on industrial relations powers.

I do not have any problem with the bill. I hope it achieves its purposes. As I said, I am not holding my breath, but I hope that is the case. I also hope in future the government comes down off its high horse that it has to mount because of its political paymasters in the trade union movement and does not play industrial politics with our Corporations Law. Our Australian corporations and the international business community demand certainty in our legal system, and I know that everyone on this side of the house wants to support and maintain that certainty into the future.

The PRESIDENT — Order! 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 that honourable members supporting the motion rise in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Read second time; by leave, proceeded to third reading.

Third reading

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 third time.

Remaining stages

Passed remaining stages.

WATER (AMENDMENT) BILL

Second reading

For **Hon. C. C. BROAD** (Minister for Energy and Resources), Hon. M. M. Gould (Minister for Industrial Relations) — I move:

That this bill be now read a second time.

The main purposes of the bill are to amend the Water Act 1989:

to enable the two catchment management authorities which do not have waterway and flood plain management functions under the Water Act to be given those functions; and

to correct an oversight in the order which established the Lower Murray Region Water Authority.

Wimmera and Mallee catchment management authorities

Catchment management authorities provide the regional framework for the management of the health of land and water resources throughout Victoria. Integrated waterway and flood plain management is a major component of these catchment management services and is currently provided throughout most of Victoria by seven of the nine existing catchment management authorities.

Although catchment management authorities are established under the Catchment and Land Protection Act 1994, seven catchment management authorities are empowered under the Water Act to undertake waterway and flood plain management functions. The seven catchment management authorities obtained these functions by taking over the management of existing waterway management districts from former waterway management authorities.

However, this did not occur in the case of the Wimmera and Mallee catchment management authorities because no waterway management authority existed within the Wimmera or Mallee regions.

The Wimmera and Mallee catchment management authorities now wish to provide integrated waterway and flood plain management services throughout their regions and have developed regional strategies in conjunction with local communities to achieve this aim. The amendments proposed by this bill are required to enable the Wimmera and Mallee catchment management authorities to provide waterway and flood plain management services and to commence implementation of their regional strategies.

Appointment of a catchment management authority

The process for providing the Wimmera and Mallee catchment management authorities with functions under the Water Act requires the setting up of a waterway management district in the Wimmera and Mallee regions. Only an existing authority under the Water Act, or alternatively a council, can set up a new waterway management district and, therefore, it is proposed that the rural water authority operating in the region will initially set up the waterway management district. The relevant catchment management authority would be subsequently appointed to manage that district.

However, under the current provisions of the Water Act, the Wimmera and Mallee catchment management authorities cannot be appointed to take over the functions of an authority under the Water Act.

Section 98 of the Water Act enables the minister to appoint a council or existing authority under the Act or to constitute a new authority to take over the powers and functions of another authority under the act. The Wimmera and Mallee catchment management authorities are not authorities under the Water Act and cannot be constituted as a new authority under the Water Act.

The proposed bill will amend section 98 of the Water Act to enable the appointment of a catchment management authority to take over the powers and functions of an authority under the act. This will enable the Wimmera and Mallee catchment management authorities to be appointed to take over and manage waterway management districts.

Notification of affected persons

In setting up a new waterway management district the Water Act currently requires that every person who may be affected must be notified of the proposal. Proposed waterway management districts for the Wimmera and Mallee catchment management authorities would cover the whole of the Wimmera and Mallee regions. Notification of every owner of property within these regions, some 45 000 persons, is potentially very onerous.

The proposed bill amends section 96 of the Water Act to enable the minister to exempt an authority from having to give notice to every person who may be affected by a proposal to set up a new waterway management district. This provision already exists in respect to the extension of existing districts.

The proposed amendment to section 96 would not materially disadvantage those persons affected by the proposed new waterway management districts. Compliance with the other notification requirements of section 96 would ensure that:

notice of such a proposal would be given to all councils that are affected; and

the proposal would be freely available for inspection at the offices of the rural water authority; and

notice of the proposal would be published weekly for three weeks in a local newspaper and would be published in the *Government Gazette*.

It is a requirement of such a notice that it invite submissions from interested persons and the authority must consider any submissions before making a decision to proceed with the proposal.

In any event, the establishment of a waterway management district would not adversely affect persons in the district. The setting of catchment-wide waterway management tariffs by catchment management authorities has now been abolished. Therefore, the only catchment-wide impact of establishing a new waterway management district is to provide the authority managing that district with the ability to provide waterway and flood plain management services to the regional community.

Retrospective transfer of districts to the Lower Murray Region Water Authority

The bill also corrects an oversight in the order which established the Lower Murray Region Water Authority.

The Lower Murray Region Water Authority was established in January 1995 and took over the functions of the Sunraysia Water Board, the Robinvale Water Board and the Shire of Gannawarra in respect of specified water districts. The authority has been operating since that time as if all of the districts formerly managed by the two water boards and the Shire of Gannawarra had been transferred to it. However, the order which constituted the Lower Murray Region Water Authority omitted to name several districts which were previously managed by the Sunraysia Water Board.

The bill proposes to amend the Water Act to retrospectively transfer those districts to the Lower Murray Region Water Authority and to validate the authority's actions undertaken in relation to those districts.

I commend the bill to the house.

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

Debate adjourned until next day.

CITY OF MELBOURNE BILL

Second reading

For **Hon. C. C. BROAD** (Minister for Energy and Resources), Hon. M. M. Gould (Minister for Industrial Relations) — I move:

That this bill be now read a second time.

The purpose of this bill is to implement representational reform to the City of Melbourne and give the city a fresh start.

The bill will provide the best opportunity for a newly elected council to achieve internal stability, be more reflective of the diversity of interests within the city and work constructively with the state government to provide the vision, focus and leadership expected of Victoria's capital city.

The bill responds to the extensive consultations carried out by the ministerial working party earlier this year and built upon findings of the city's own facilitation panel which was engaged to advise it on means to improve governance within the council.

The council's facilitation panel provided a valuable insight into the problems within the council and made two recommendations which required state consideration — a legislated partnership between the state government and capital city, and reform to the representational structure to foster more effective representation.

The changes outlined in this bill address these issues and provide for a fresh start at the City of Melbourne.

A government working party, set up to advise on an appropriate representational structure for the City of Melbourne and on opportunities to strengthen the relationship between the state and the city, consulted with relevant stakeholders and undertook research into capital city models existing in other jurisdictions.

The government's consultation process proved invaluable and identified a number of recurrent themes. City stakeholders want stability, improved representation and good governance in their council. They want their councillors to be able to represent a diversity of views and to balance business interests and city revitalisation with residential needs.

In essence, stakeholders wanted a strengthened city council that could work with the state government to deliver an internationally competitive and livable city.

Overwhelmingly, stakeholders stressed the importance of encouraging quality candidates, able to effectively represent their constituency with a whole-of-city focus.

This bill provides a means to achieve the vision so candidly expressed by the city's constituent groups. The government firmly believes that this bill provides the best opportunity for a newly elected council to deliver stable governance, strong leadership and strategic focus.

The nature of the relationship between the city and the state government is of critical importance to the economic development of the whole of the state.

Groups representing Melbourne retail, business, property and government sectors all emphasised a need for the state government and city council to work in partnership on policies and projects of significance.

The way that Victoria is projected nationally and internationally relies in part on the level of cooperation and shared strategic vision between the state's capital city council and the state government.

To this end the bill provides for the City of Melbourne to have certain objectives above and beyond those applying to Victoria's other local governments. The bill sets out specific objectives aimed to align the strategic directions and policies of the city with those of the state. Provision is made for the city and state to meet, on a flexible basis, on relevant issues. I envisage that, as the cooperative relationship beds down, the city may establish stronger links with its constituents and convene, as needs might arise, consultative meetings with its diverse community.

In order to ensure that the vision for the City of Melbourne can be effected as promptly and effectively as possible, the bill entails legislative mechanisms which will: bring about an early election, abolish the current district-wide ward and replace the dual system with one simple unsubdivided municipality. There will be no alteration to the current number of councillors (nine), but they are to be elected with a leadership team consisting of a Lord Mayor and Deputy Lord Mayor and seven other councillors.

The bill provides for the filling of any absences or vacancies in the offices of both Lord Mayor and his or her deputy, and also provides for the grouping of candidates.

There remains the right of candidates to nominate as individuals and to elect the direction that their preferences, in the proposed Senate-style proportional representation system, be allocated to other candidates.

The bill provides that the mayoral leadership team is elected on a separate ballot paper on the basis of exhaustive preferential voting.

As in the Australian Senate there will be the simple option of above and below the line voting. The government recognises that simplicity is an important aspect of any electoral process which aims to maximise the validity of votes — all the more important in city elections which will be held, as at present, by postal ballot.

Once an order in council sets the polling day, nominations for candidacy must follow promptly and the community is advised to familiarise itself with the nomination process, with the candidates and their groups if applicable and to gear up to vote early.

The government looks forward to working with the newly elected Melbourne City Council once the voters have made their determinations at this most significant poll.

I commend the bill to the house.

Debate adjourned on motion of Hon. N. B. LUCAS (Eumemmerring).

Debate adjourned until next day.

WHISTLEBLOWERS PROTECTION BILL

Second reading

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

That this bill be now read a second time.

This bill implements a key commitment of the Bracks Labor government to introduce legislation to protect persons disclosing information about serious misconduct or maladministration in the public sector. The Whistleblowers Protection Bill (the bill) demonstrates that this government is serious about ending the Kennett government's legacy of secrecy and lack of transparency, and instead supports the principles of open, honest and accountable government.

Whistleblowers are persons (often employees) who make an allegation or divulge information about wrongdoing on the part of another person or organisation. Whistleblowers generally come forward out of a highly developed sense of public duty and personal ethical standards.

They can play an important role in protecting the public interest by exposing serious public sector wrongdoing. Ensuring the accountability of public organisations and officials for their actions leads to higher standards and performance, and increases public confidence in the public sector. These are all aims that this bill seeks to promote.

In order to encourage people with information about public sector wrongdoing to come forward, the bill will

protect genuine whistleblowers from recrimination or other adverse consequences as a result of disclosing the information. It will also establish a robust framework for investigating such complaints and ensuring that, where allegations are found to have substance, rectifying action is identified and taken.

The government wishes to acknowledge at the outset the overall professionalism, skills and dedication of its public servants, public statutory bodies and those in public life generally. The introduction of this bill should in no way be seen to adversely reflect upon the generally high ethical standards that are daily upheld by the vast majority of those in the public sector.

However, that is not to say that vigilance in the protection and maintenance of high standards is not also warranted. As the sorry history of the Bjelke-Petersen era in Queensland starkly demonstrates, no-one can afford to be complacent about the potential for corruption. Mechanisms which ensure scrutiny and accountability of the public sector are vital aspects of a healthy democracy.

Development of the bill was informed by an exceptionally thorough consultation process, which saw the release of two exposure drafts for broad circulation. Given the sensitive policy objectives of whistleblower legislation, consultation was especially important to determine whether the bill was striking the right balance. It is pleasing to note that submissions revealed widespread support for the aims and objectives of the legislation as well as for the framework adopted in the bill. The government wishes to acknowledge the contributions of the many persons and organisations who went to the trouble to make submissions on the bill and thanks them for their valuable input.

This complex bill aims to balance competing public policy considerations. Strong protection provisions for whistleblowers are balanced by provisions recognising the need for there to be an objective justification for conferring such significant statutory protections and for triggering intrusive investigations. The bill equally acknowledges that the person or body against whom the allegations have been made has a right to be accorded natural justice in the investigatory process and contains safeguards to ensure that these rights are upheld.

Main features of the bill

I will now briefly outline the bill's main features.

1. Public interest disclosures

Disclosures which qualify for protection under the bill are termed 'public interest disclosures' and 'protected disclosures'.

The bill allows disclosures to be made by any member of the community who believes on reasonable grounds that a public body or public officer has engaged in or is about to engage in:

improper conduct in their public capacity; or

detrimental action against any person in reprisal for a protected disclosure. Clause 3 defines 'detrimental action' to include action causing injury, loss or damage; intimidation or harassment; and discrimination, disadvantage or adverse treatment in a person's employment.

The legislation makes it clear that public interest disclosures are about serious wrongdoing. 'Improper conduct' is defined in clause 3 as:

corrupt conduct; or

a substantial mismanagement of public resources; or

conduct involving substantial risk to public health or safety; or

conduct involving substantial risk to the environment.

The bill also requires that the above conduct would if proved constitute:

a criminal offence; or

reasonable grounds for terminating the services of the relevant public officer.

Clause 3 of the bill defines 'corrupt conduct' to clearly spell out an otherwise extremely broad and vague term. Again, the behaviour will need to be of sufficient seriousness to either constitute a criminal offence or reasonable grounds for terminating the employment of the relevant public officer.

The consequences of a public interest disclosure investigation are serious for all those concerned. The bill therefore contains filtering mechanisms over and above the requirements of the definition of 'improper conduct' to ensure that the significant protections it offers will only attach to appropriate disclosures and that investigations will be undertaken only where warranted.

To deter the making of false allegations, clause 106 makes it an offence to knowingly provide false information intending that it be acted on as a public interest disclosure, punishable by a maximum penalty of two years imprisonment or a $24 000 fine.

In addition, clause 40 gives the Ombudsman discretion not to investigate disclosed matters which he or she considers to be trivial, frivolous or vexatious or where the person making the disclosure had had knowledge of the matter for more than 12 months and fails to give a satisfactory explanation for the delay in making the disclosure.

These provisions will operate to exclude inappropriate disclosures from the scheme.

2. Public officers and public bodies

Clause 3 comprehensively defines 'public officers' and 'public bodies' under the bill. As indicated earlier, public interest disclosures must be about improper conduct on the part of public officers and/or bodies.

Public bodies include: government departments; bodies established under an act for a public purpose; state-owned enterprises; universities; hospitals and correctional service providers.

The category of public officer spans an even broader range of persons, including: members of Parliament; councillors; members, officers and employees of most public bodies (for example, public servants); councils' employees; university staff; teachers; police and others.

Some categories of persons or bodies who would otherwise be covered by the proposals are excluded by clause 4 for public policy reasons, such as their independence and accountability to the Parliament. In many cases the exclusions are consistent with the exclusion of persons from the operation of the Ombudsman Act 1973 complaints regime.

Courts, boards, tribunals and commissions will not be public bodies under the legislation. Public officers who are excluded from the scheme include:

judges, magistrates, masters and VCAT members;

the Director of Public Prosecutions;

the Auditor-General;

the Ombudsman;

the Electoral Commissioner;

certain defined judicial and parliamentary employees.

3. How may a protected disclosure be made?

In order to facilitate the making of disclosures, a potential whistleblower often has a choice under the bill about who to make their disclosure to. With one exception, disclosures may always be made to the Ombudsman. Often, disclosures can also be made to a relevant public body. The only exception to the Ombudsman's general jurisdiction to receive disclosures relates to disclosures about members of Parliament, which must be made to either the President of the Legislative Council or the Speaker of the Legislative Assembly.

Clause 6 confirms that to qualify for ongoing protection, a disclosure must not only be about conduct meeting the definition of 'improper conduct', but must also be made to the appropriate person and in accordance with the prescribed procedure. For example, the bill will not shelter a whistleblower who chooses to go outside the confidentiality framework of the legislation and reveal the information to a newspaper or at a public meeting of the relevant public body.

Disclosures may be made anonymously and can be made about conduct that occurred prior to the commencement of the act.

4. The Ombudsman will determine whether disclosures meet the criteria for protection under the bill

As foreshadowed earlier, the bill confers on the Ombudsman a special role in overseeing and investigating public interest disclosures and making recommendations at the outcome of an investigation as he or she thinks fit. This bill is unique in conferring an additional function on the Ombudsman designed to provide up-front certainty to potential whistleblowers about their eligibility for the protections in the bill.

Clause 24 requires the Ombudsman to determine within a reasonable time whether or not a disclosure meets the criteria of being a public interest disclosure and therefore gains ongoing protection. In making his decision, he must be satisfied that the disclosure shows or tends to show that the public officer or body:

has engaged in, or proposes to engage in improper conduct in their public capacity; or

has taken, is taking or proposes to take detrimental action in breach of section 18 of the bill.

Where the disclosure has not been made at first instance to the Ombudsman, but to some other authorised person or body, the bill sets out a referral process to ensure that the Ombudsman is apprised of potential public interest disclosures and can rule on their status. The bill provides time limits within which eligible disclosures must be referred to the Ombudsman for a determination.

If whistleblowers are to be encouraged to come forward and not hold back due to concern about the consequences for them, it is vital that interim protection is provided to all those who believe they have a public interest disclosure to make. Otherwise, there is a real danger that genuine whistleblowers will be deterred from coming forward by the risk that the Ombudsman will rule that their disclosure is not protected.

Therefore, even where the Ombudsman decides that the information provided does not amount to a public interest disclosure, the whistleblower's initial disclosure will still be protected. However, protection will cease for any further disclosure of the information. This intention is reflected in parts 2 and 3 of the bill, especially clause 23.

If the Ombudsman decides that a given matter is not a public interest disclosure, the person who made the disclosure may still opt to have it investigated under, for example, the Ombudsman Act 1973 if it constitutes a complaint about administrative action. The critical difference will be that the person will have no further access to the protections in the legislation.

5. The role and powers of the Ombudsman

The Ombudsman is given similar investigative powers to those set out in the Ombudsman Act 1973, and when investigating members of the police force, the Ombudsman's powers mirror those in the Police Regulation Act 1958. Investigations are private, and while there is no requirement to hold a hearing during the investigation, the Ombudsman may choose to do so. If a hearing is held, the Ombudsman has full discretion to determine whether any person may be represented by a legal practitioner.

The Ombudsman has the powers of a royal commissioner under the Evidence Act to send for witnesses and documents, examine witnesses under oath and summons witnesses to appear. The Ombudsman or his authorised officers may also enter and inspect premises of public bodies and public officers for the purposes of conducting his investigations at any reasonable time.

Given the potentially intrusive nature of public interest disclosure investigations, the bill provides for a safeguard by restricting the use that may be made of information obtained in such investigations. Under clause 108, information is not admissible as evidence if it is obtained or received by a party from the Ombudsman, Deputy Ombudsman, Chief Commissioner of Police or a public body in the course of or as a result of a public interest disclosure or its investigation.

Clause 108(2) provides certain limited exceptions to this rule. For example, the use restriction does not apply to a criminal or disciplinary proceeding taken against a member of the police as a result of an investigation by the chief commissioner under part 7 of the bill.

At the conclusion of his or her investigation, the Ombudsman may make recommendations about the action that should be taken including a recommendation that:

> the disclosed matter be referred to an appropriate authority for further consideration (for example, as to whether criminal charges should be laid);
>
> action be taken to remedy any harm or loss arising from the conduct that was the subject of the investigation, or that action be taken to prevent the particular conduct recurring.

The Ombudsman can follow up on the action taken to implement his or her recommendations and must report to Parliament about disclosures and investigations under the scheme.

6. How does the bill protect whistleblowers?

Part 3 of the bill sets out a broad range of protections for whistleblowers. Clause 14 provides that a person who makes a public interest disclosure is not subject to any civil or criminal liability or disciplinary action for making that protected disclosure.

Whistleblowers who disclose information from within an organisation will often be in breach of a statutory duty to maintain confidentiality in relation to the matter, or in breach of a confidentiality clause in, for example, an employment contract. Clause 15 provides that such confidentiality provisions do not apply to the making of protected disclosures. Therefore, no adverse consequence will flow to the whistleblower for having breached the obligation.

Clause 16 provides protection from defamation actions by conferring a statutory defence of absolute privilege for the making of the protected disclosure.

A whistleblower may themself have taken part in the objectionable conduct that they are coming forward about. It is important that the legislation does not inadvertently provide a person with total immunity for their actions when granting them protection for blowing the whistle, or it will be open to abuse. The bill therefore provides in clause 17 that a person's liability for their own conduct is not affected by their disclosure of that conduct under the bill.

Clause 18 creates a criminal offence, punishable by two years imprisonment, of taking detrimental action against any person in reprisal for a protected disclosure.

In addition to the criminal offence, clause 19 creates a statutory right of action in tort for the whistleblower to sue for damages for reprisals and clause 20 enables the whistleblower to apply to the Supreme Court for an injunction or an order requiring the person who has taken the detrimental action to remedy that action. These forms of relief will be extremely useful for the whistleblower who, despite the criminal offences created by the legislation, suffers reprisals for coming forward.

Maintaining confidentiality about the identity of the whistleblower is critical if people are to be encouraged to speak out about improper conduct. Clause 22 makes it an offence to reveal information received in the course of an investigation into a protected disclosure except for the legitimate exercise of functions under the bill and for the purposes of a limited range of proceedings. The maximum penalty for this offence is six months imprisonment.

Additionally, neither the Ombudsman nor a public body may disclose the identity of the whistleblower, or of the person against whom the disclosure was made, in any report or recommendations under the act.

7. Public bodies and investigations

It is important to briefly canvass the provisions in part 6 which set out the role of public bodies under the bill.

Clause 68 requires public bodies to establish procedures:

> to facilitate the making of disclosures under part 2;
>
> for investigations of matters disclosed in public interest disclosures; and
>
> for the protection of persons from reprisals.

These procedures must comply with the bill and with guidelines to be issued by the Ombudsman under clause 69. Public bodies must make their procedures available to all their members, officers and employees and must make a copy available to members of the public for inspection. The Ombudsman is authorised to review the procedures and their implementation at any time.

Division 2 of part 6 sets out the duties of public bodies in respect of investigations. Clause 72 confirms that the duty to investigate a protected disclosure arises upon the Ombudsman's referral. Procedural provisions cover the obligation on the public body to return a matter to the Ombudsman if its own investigation is being obstructed. Further, the person who made the disclosure may request the Ombudsman to take over the matter where, for example, he or she is dissatisfied with the manner in which that public body is carrying out the investigation. The powers of the Ombudsman in these circumstances are also set out.

Divisions 3 and 4 cover investigations by public bodies. Clause 79 requires the investigation to be in accordance with the procedures established for the public body. Clause 80 requires reasonable information about the investigation to be given to the whistleblower upon request. Clause 81 sets out the action which the public body must take at the conclusion of the investigation where it is found that the conduct the subject of the investigation has occurred, including furnishing a written report to the Ombudsman and the relevant minister. The public body is also required to take all reasonable steps to prevent the conduct from continuing or recurring and must take action to remedy any harm or loss arising from the conduct. Clause 83 obliges the public body to notify the person who made the disclosure of the findings of the investigation and any rectifying steps taken.

Under clause 104 of the bill information about public interest disclosures must be included in the public body's annual report.

8. Miscellaneous

The bill covers public interest disclosures about police members, whether they originate from members of the public or other police members themselves. A detailed complaints regime for allegations of police misconduct (spanning a much broader range of inappropriate behaviour) already exists under part IVA of the Police Regulation Act 1958. However, the remedies for persons making complaints under that act are narrower than the broad range of protections available under this bill. As public interest disclosures about police will cover the most serious forms of police misconduct, it is

appropriate that the broadest range of protective devices apply to shelter a whistleblower.

Clause 6 provides that disclosures about police members may be made to the Ombudsman, Deputy Ombudsman and the Chief Commissioner of Police. The bill also spells out their powers when investigating police matters. In order to minimise procedural duplication, the bill as far as possible provides for the same procedures to apply in police matters as would apply under the Police Regulation Act 1958. This includes granting the Ombudsman, Deputy Ombudsman and the Chief Commissioner the special investigative powers provided for under the Police Regulation Act 1958 when investigating a public interest disclosure under the bill.

The bill also contains amendments to the Police Regulation Act 1958 designed to ensure that potential public interest disclosures received under that act are referred to the Ombudsman for a determination about their status.

Tailored provisions applying to local government which allow public interest disclosures to be made about councillors and council employees have also been included.

As foreshadowed earlier, the bill contains special procedures for disclosures about members of Parliament which recognise the doctrine of the separation of powers and the fact that MPs are ultimately accountable to the Parliament and the electorate. MPs are public officers and protection will be given to a whistleblower making a public interest disclosure about them. However, part 8 of the bill provides for a different reporting and investigative scheme which involves the President of the Legislative Council or the Speaker of the Legislative Assembly having a discretion to refer a protected disclosure to the Ombudsman for further investigation.

Section 85 statements

I make the following two statements under section 85(5) of the Constitution Act 1975 of the reasons why it is the intention of the bill to alter or vary section 85 of that act.

Clause 110 of the bill states that it is the intention of clause 107 of the bill to alter or vary section 85 of the Constitution Act 1975. Clause 107 is modelled on section 29 of the Ombudsman Act 1973 which has protected the Ombudsman in the exercise of general jurisdiction under the act for over 25 years.

Clause 107 protects the Ombudsman, Deputy Ombudsman and officers of the Ombudsman from legal liability for actions taken in good faith under the bill. Where it is alleged that an act was done in bad faith, civil or criminal proceedings may be brought against those persons only with leave of the Supreme Court, which must be satisfied that there is substantial ground to believe that the person to be proceeded against has acted in bad faith. Clause 107(4) prohibits the bringing or granting of restraining orders against the Ombudsman or Deputy Ombudsman in relation to the carrying out of responsibilities under the bill.

These provisions are required to ensure that the Ombudsman and Deputy Ombudsman are not frustrated in fulfilling their important functions under the bill by constant applications to the courts. They operate to appropriately protect the Ombudsman, Deputy Ombudsman and staff of the office in the exercise of their powers under the bill, so long as those powers are exercised in good faith. The protection is vital to promote the conducting of fearless investigations.

Clause 107(5) provides that neither the Ombudsman, Deputy Ombudsman nor any of the officers of the Ombudsman may be called to give evidence in relation to matters which have come to their knowledge in the exercise of functions under the bill. This provision reaffirms the confidential nature of public interest disclosure investigations which is critical to balance the broad investigative powers that the Ombudsman, Deputy Ombudsman and staff members enjoy.

Clause 115 of the bill inserts a new section 30A into the Ombudsman Act 1973. Proposed section 30A provides that it is the intention of section 29(3) of the Ombudsman Act 1973, as substituted by clause 113 of this bill, to alter or vary section 85 of the Constitution Act 1975. Proposed section 29(3) re-enacts the existing section 29(3) to make similar provision to clause 107(4) of the bill. Section 29(3) prohibits the bringing or granting of restraining orders against the Ombudsman in relation to the carrying out of responsibilities under the Ombudsman Act 1973. Again, this provision is required to ensure that the Ombudsman is not frustrated in fulfilling his or her functions by constant applications to the courts.

Conclusion

I am confident that this bill will become an important cornerstone of open and accountable government in this state. It offers up-front, comprehensive protection to encourage people with information about public sector wrongdoing to come forward in the public interest. It

also provides for fair and thorough processes to ensure that investigations get to the bottom of allegations. All Victorians will benefit from the greater scrutiny of the public sector which this bill facilitates.

I commend the bill to the house.

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

Debate adjourned until next day.

ADJOURNMENT

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

That the house do now adjourn.

Foot-and-mouth disease

Hon. R. H. BOWDEN (South Eastern) — The matter I raise is for the attention of the Minister for Energy and Resources as the representative in this place of the Minister for Agriculture. Honourable members will note with sadness and regret the difficulty being experienced in the United Kingdom and parts of Europe with the awful foot-and-mouth disease affecting livestock. The damage that is possible to European stocks of cattle and sheep is well known to honourable members. We in Australia have been most fortunate through our circumstances, quarantine services and various geographic advantages so far to have escaped that awful situation.

I ask the minister to discuss with her colleague the mechanisms in place with a view to improving and tightening them in light of the need to be able to easily trace the movement of cattle and sheep, in particular, throughout Victoria and particularly where livestock leave the state and cross borders. Simple systems are in place already, but a full review has been suggested as being necessary.

Associated with the same problem is the rising incidence of cattle and sheep rustling, particularly now that it is approaching a multimillion-dollar crime situation. The movement of stock and the rustling and stealing of cattle was the subject of a recent rather lengthy *Landline* television program that showed a lot of cattle having been sourced from Victoria and alleged to have been processed and sold illegally in Queensland.

I ask the minister to discuss with her colleague the desirability of tightening up the documentation and the ability to verify the legitimacy of a load being carried in order to protect livestock from foot-and-mouth disease and provide a mechanism to control the increasing incidence of cattle and sheep stealing.

Skate parks: funding

Hon. S. M. NGUYEN (Melbourne West) — I raise a matter for the attention of the Minister for Youth Affairs. The popularity of skateboarding among young people is growing. Skateboarding gives young people a chance to get together and involve themselves in sport and social action. Will the minister advise the house what his department has done to assist in the development of skateboarding facilities in Victoria?

HIH Insurance: liquidation

Hon. B. W. BISHOP (North Western) — I raise my issue of concern with the Minister for Small Business. Obviously the collapse of HIH Insurance has had a huge effect on the building industry in Victoria. Substantial concern has been raised in my office about this issue, mainly by home builders in my electorate. Although the builders understand the role of the Australian Prudential Regulation Authority in this issue and have been critical of what they say is its incapacity to prevent the financial disaster, the collapse does involve issues for the government.

The minister will be well aware that insurance is a prerequisite in Victoria for the registration of builders. As builders struggle to shift the impact to another organisation, their livelihoods are at stake. Victorian laws are designed to protect consumers, but they are putting the livelihoods of many builders at risk through no fault of their own.

My request is that the government and the minister intercede to effectively provide as smooth as possible a transition for those affected by the collapse of HIH Insurance to another insurer to ensure that our builders are not severely disadvantaged and that building can continue across Victoria.

Housing: heritage properties

Hon. ANDREA COOTE (Monash) — I raise a matter for the attention of the Minister for Small Business as the representative in this house of the Minister for Housing. An article in the *Herald Sun* of 26 April headed ‘Our new bunyip aristocrats’ was about Rod Quantock who, I suggest, has a close relationship with the Premier. It states:

Last year, for instance, Premier Steve Bracks gave him a private audience to calm his outrage at the police action

against S11 demonstrators who flouted the law and the rights of others.

Rod Quantock was concerned about a derelict house in Clifton Hill which had been purchased by developers in 1997. Rod Quantock's battle went through Heritage Victoria, then to a government panel set up to investigate it, and then to the Victorian Civil and Administrative Tribunal until finally the Construction, Forestry, Mining and Energy Union was asked to slap a green ban on it. Somehow the government has found a spare $1.8 million to buy the property from the developers and turn it into accommodation for 12 low-income earners and schizophrenics.

My electorate has an enormous number of homeless people. It has the excellent Argyle Street housing, the Prahran–Malvern community housing facility and the Hanover Centre, which all need additional funding. I ask the Minister for Housing to explain how the $1.8 million funding for Rod Quantock's neighbourhood house was justified. From where was the allocation of funding taken?

Insurance: direct debits

Hon. P. R. HALL (Gippsland) — I raise with the Minister for Consumer Affairs an issue referred to me by a constituent, Louise Leggett from Traralgon. Miss Leggett took out a car insurance policy with a well-known insurance company and chose to pay the insurance on a monthly basis with direct debits from her bank account. She filled out a direct debit form and lodged it with the insurance company.

Believing all to be well she drove the car for three months until she found that the monthly debits had not been taken from her bank account. Her inquiries with the insurance company revealed that the direct debit form had never been lodged with the bank. She was fortunate not to have had an accident in that time; otherwise she would have been struggling to have the insurance company recognise her claim. Miss Leggett has raised with me the need to have checks and balances in the system to ensure that, if a person has done the right thing and lodged a direct debit form with the insurance company, the driver is covered.

I suggest the government should look into requiring the insurance company to acknowledge the receipt of that form so that at least my constituent is covered if there is further inquiry in the future. I seek advice from the minister on what can be done to ensure that when people have done the right thing in good faith they are covered for insurance purposes.

Monbulk Primary School

Hon. A. P. OLEXANDER (Silvan) — I raise with the Minister for Sport and Recreation, as the representative in this place of the Minister for Education, the compulsory removal of four portable classrooms from Monbulk Primary School. On 27 March the Department of Education, Employment and Training sent a fax to the school notifying it that four portables, currently used as eight classrooms, and a toilet block would be removed during the Easter break. The government's argument was that there was a greater need for the buildings at Clayton North Primary School in light of declining student numbers at Monbulk Primary School.

That issue started a chain of events that led to the school community, the local community and local members of Parliament knocking on the door of the Minister for Education on numerous occasions asking for that decision to be overturned. As a result of those representations the minister sent a letter advising the school that she had deferred the transfer of the four portable classrooms and a toilet block until the end of the year.

Mr Ray Yates, the principal of Monbulk Primary School, was reported in the *Free Press* of 9 April as saying:

> We now hope to get Steve Bracks and Mary Delahunty out to the school in May to inspect our programs and the use of the classrooms.
>
> There are classrooms in the state that are far emptier than these ones, yet because of their permanent status they can't be moved.
>
> And still these rooms, viewed as temporary, can be transferred even after 18 years at our school.

In response to the school's representations, the director of schools, Michael White, said that he had reviewed the classroom transfer proposal at the request of the school and appreciated that the move would have caused unnecessary disruption to student activities.

I call on the minister to recognise what her department has already recognised. I specifically ask her, in light of the disruption to the school community, the negative impact on learning at Monbulk Primary School and safety issues relating to the proximity of the toilet block and fire issues, to determine that the buildings are permanent now and not wait until the end of the year so as to remove the significant degree of uncertainty that the school community faces about its future.

Police: chief commissioner

Hon. B. C. BOARDMAN (Chelsea) — I raise for the attention of the Minister for Sport and Recreation, as the representative in this place of the Minister for Police and Emergency Services, the swearing-in ceremony of the new Chief Commissioner of Police held on 23 April. The opposition wishes the new chief commissioner every success with the challenges she is confronting.

The government is often tedious and repetitious in promoting itself and in its use of buzz words, yet this event was a closed shop. I learnt that the ceremony would be held in Queen's Hall from a parliamentary attendant. I would have thought that as chairman of the Drugs and Crime Prevention Committee and as someone who has constant contact with the police I would have been invited or that the former chairman of the committee would have been invited.

Honourable members interjecting.

The PRESIDENT — Order! I ask the house to settle down and to allow Mr Boardman to complete the matter he is raising.

Hon. B. C. BOARDMAN — I am surprised that the government is treating this as an irrelevant issue because it is an issue concerning police. Honourable members have expressed concern that the swearing-in ceremony of the new chief commissioner was one sided. The shadow minister did not receive an invitation to the ceremony. To rub salt into the wound, because the ceremony was held in Queen's Hall I suggest all members of Parliament should have been invited. I ask the Minister for Police and Emergency Services to explain why the guest list for this important ceremony, which should have been open to all members of Parliament, was selective and secretive.

Fire services: truck registration fees

Hon. R. M. HALLAM (Western) — I raise for the attention of the Minister for Sport and Recreation, in his capacity as the representative in this place of the Minister for Police and Emergency Services, the registration fee for private fire trucks or, more particularly, the application of the road-use fee of $200, which until now has been waived for such vehicles.

The constituent who brought the issue to my attention said that the registration fee charged last year on his private fire truck was $59.40, whereas this year the renewal will cost $263.80. It may be argued that in relative terms it is still cheap registration, but I emphasise that the fee relates to privately owned and operated fire trucks, appliances which are only driven on the road when called out in emergencies or when the Country Fire Authority brigade is conducting a burn-off.

Public-spirited citizens who privately maintain fire trucks to augment those supplied by the CFA have previously had to pay only the Transport Accident Commission premium. There are many hundreds of these trucks throughout country Victoria, and they are of critical importance in protecting the community against wildfires. As I said, until now the road-use fee was waived. My constituent was advised when he questioned the renewal charge that it was not a mistake but that there has been a change in policy.

I ask the minister to seek clarification of this issue from his colleague, because if privately owned and maintained fire trucks are now to be charged the standard-use fee Victorians cannot afford to have these trucks taken out of service. If this is a bureaucratic stuff-up, as I suspect, I ask the minister to intervene urgently and nip it in the bud.

Pakenham bypass

Hon. N. B. LUCAS (Eumemmerring) — I raise for the attention of the Minister for Energy and Resources, who is the representative in this place of the Minister for Transport, a matter regarding the Pakenham bypass. The National Roads in Victoria Forward Strategy 2000–01 to 2004–05 signed by the Minister for Transport states that the principal Victorian corridors for national economic and social activity are the Pakenham bypass on Princes Highway East and obviously other roads. It states in part:

> … we must … accelerate the provision of efficient linkages between Melbourne and key regional centres.

It also states:

> We are targeting the key drivers of economic growth …

Page 15 of that strategy indicates that in 2001–02 the Pakenham bypass construction has been allocated $5 million through to 2004–05, with a total of approximately $100 million being recommended in the forward strategy. This year a further strategy was developed for 2001–02 to 2005–06, again signed by the Minister for Transport, which states:

> We are targeting the key drivers of economic growth … we must … accelerate the provision of efficient linkages between Melbourne and key regional centres.

It is exactly the same statement as the year before. At page 15 of this year's strategy one sees the first

allocation of funding for the Pakenham bypass is recommended for the year 2003–04.

The Shire of Cardinia and its residents are very concerned about funding for the Pakenham bypass. The section of the Princes Highway that runs through Pakenham township carries a lot of traffic and has one of the highest accident rates in Victoria. The mayor of Cardinia has written to me saying that this is:

> … a significant step back from previous commitments …

He is referring to the delay in the local strategy, and says:

> It is disappointing that the state is not pursuing its commitments …

The shire and all those living in Pakenham are concerned that the state government is not giving this road sufficient priority. Will the minister reconsider the extension of the starting date on the Pakenham bypass and reinstate the project to its previous priority?

Planning: broiler farms

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — The matter I raise with the Minister for Sport and Recreation, who represents the Minister for Planning in the other place, relates to the Victorian code for best practice for broiler chicken farms, which is of considerable importance to my electorate, which is an interface between urban and rural areas. I first raised the matter in late 1999.

The Kennett government started the development of the broiler farm guidelines. Following the change of government I raised the issue with the new Minister for Planning to determine what progress would be made on those guidelines. Subsequently the minister indicated that they would proceed, but nothing was heard. On 22 August last year I wrote to the minister seeking an update on the progress of the guidelines. I was advised on 16 October that he had received the guidelines and would be seeking a:

> … whole-of-government response to the final form of the code of practice so that it can be approved and implemented across the state through the Victoria planning provisions.

Since then nothing has been heard. This issue is again coming to the fore in my electorate. That is not surprising because people living in the area who wish to proceed with developments want to know what the government anticipates doing with broiler farms. It is now seven months down the track and still I have heard nothing from the planning minister about what he proposes to do with the broiler farms.

On 14 February I again wrote to the minister asking what direction he was taking with broiler farms. It is now the beginning of May and I have yet to receive a response. Firstly, will the Minister for Planning respond to my letter and, secondly, will he release the final guidelines so that the people in my electorate know where they stand?

Tourism: Mount Dandenong observatory

Hon. W. I. SMITH (Silvan) — The matter I raise with the Minister for Sport and Recreation for the attention of the Minister for Major Projects and Tourism in the other place refers to an article in the *Age* of 11 April about the Mount Dandenong observatory being revamped and put out to tender.

It is an excellent idea, and I am happy that the minister is going forward in this manner. The article says the site has been neglected and is an eyesore, which is the case. Recently local businesses have been complaining about the loss of business and tourism in the area because of the unattractiveness of the site and the attractiveness of getting people to the site which could probably be one of the major tourist destinations.

This project has been put out to tender. The newspaper does not mention the project size or the design of the development for the site. As part of the tendering process a brief will obviously go to interested tenderers along with guidelines about what is and what is not acceptable. I mention that point in particular because I am not sure that everybody is aware that the area is environmentally sensitive and has many conservation issues. That does not mean to say that a good development would be unattractive. However, it obviously has to be done in conjunction with environmental groups and conservation issues. What is the desired size and scope of the development and the time frame for the tendering process and acceptance?

Drugs: Springvale

Hon. ANDREW BRIDESON (Waverley) — I have a serious issue to raise with the Minister for Sport and Recreation in his capacity as the representative of the Minister for Police and Emergency Services in the other place. It concerns the drug menace in Sullivan Street, Springvale, in my province. With the closure of the 101 amusement parlour in Springvale Road it appears drug activity has moved into Sullivan Street, which is more or less opposite where the 101 parlour was located.

I have a petition signed by 21 families who live in Sullivan Street. They are extremely concerned about

the amount of dealing going on in their area. They are concerned about the number of cars driven up and down the street by drug dealers, who are obviously soliciting and peddling their goods. There has been an increase in drug use in the area, with syringes and other equipment used by drug addicts being found in the properties of these families.

I ask the Minister for Police and Emergency Services to take immediate steps to try to eradicate this menace from that specific area and call upon the minister to implement both covert and overt drug operations.

Gippsland: ground water

Hon. PHILIP DAVIS (Gippsland) — I raise an issue for the attention of the Minister for Energy and Resources. On 5 December last year she received a deputation from the community at Yarram which has a stake in a certain challenge with the management of the Latrobe aquifer. The ground water extractions, as the minister well understands, are the result of brown coal mining and Bass Strait oil production which amount to 97 per cent of the total draw-down of the Latrobe aquifer. Less than 3 per cent of that aquifer draw-down is the result of agricultural irrigation activities.

There is currently a moratorium on new ground water licences for agriculture, and the most immediate and compelling issue is a decline in the aquifer pressure leading to a drop in water levels which is significantly challenging irrigators' ability to continue to draw on the aquifer. There is therefore a major economic development challenge for the Yarram district.

The matter that is probably of greatest consequence to Victoria as a whole is the future risk of coastal subsidence. There is sufficient evidence around the world to show that where there has been significant depletion of ground water through oilfield activities subsidence has occurred.

Given that the Bass Strait oilfields are near coastal regions there is a clear risk. I do not wish to be alarmist and I acknowledge the minister's recent cooperation in ensuring that I have been properly briefed on this issue. I would like to see an informed debate about the issues. However, the community at Yarram is becoming increasingly strident and rather exasperated to the point where I think the debate is unlikely to remain informed.

The headlines on the front page of the local newspaper state 'Anger growing at ground water delay'. Articles have appeared in statewide newspapers, such as the *Weekly Times*, which do not serve to maintain a well-informed debate.

Will the minister use her best endeavours to facilitate the monitoring and analysis, which is a matter for discussion between the state and federal governments, so that that decisions can be taken imminently to ensure that those outstanding issues are resolved at an early stage?

Bob Jane Stadium

Hon. P. A. KATSAMBANIS (Monash) — I also wish to raise an issue with the Minister for Sport and Recreation. It relates to the government's and the minister's support, if it is forthcoming, for plans to redevelop the Bob Jane soccer stadium in Albert Park in my electorate.

Honourable members would know that the Bob Jane Stadium was built primarily with both the moral and financial support of the previous Liberal–National party government. It was a vision that could only be realised with that support. Since it started operating in 1995 the stadium has become the hub of soccer in Victoria. As honourable members would know, soccer is one of the most popular participation sports, not just in this state but in Australia. It is clear that the facilities available for top-class soccer in Victoria are currently inadequate.

The South Melbourne Soccer Club, which is based at the Bob Jane Stadium, has put forward a proposal to increase the ground's capacity to approximately 20 000 fans, with 15 000 being seated under cover. Significantly the proposal includes provision for office space for the Victorian Soccer Federation and the administration of the Victorian premier league, so that the stadium will become not only a major match venue but also the administrative centre for soccer in Victoria.

The club has already secured approximately $2.5 million in funding from private sources, and it is seeking support from the state government for a similar commitment to develop a first-class soccer facility for use by every level of the game in Victoria — from the junior level right through to the elite level, as is represented by the South Melbourne Soccer Club.

I seek from the minister an assurance that, as the Minister for Sport and Recreation, he will give strong consideration and support to this proposal to ensure that Victoria obtains a first-class soccer facility based at the Bob Jane Stadium in Albert Park.

HIH Insurance: Savcor Pty Ltd

Hon. D. McL. DAVIS (East Yarra) — The matter I raise for the Minister for Consumer Affairs concerns a company called Savcor Pty Ltd, which is based in Hawthorn in my electorate. This small, but very

productive, electro-chemical systems firm undertakes a number of activities that include corrosion prevention in industry, working particularly on bridges and wharves and other marine-type structures.

It is a successful company. It has managed to export out of Australia into Papua New Guinea and Indonesia, and it has plans for an office in Dubai in the United Arab Emirates. It is also successful in that it employs about 80 people. In many ways it is an exemplar of the sort of productive and clever company we want to see producing and growing in Victoria. However, it has been hit by an indemnity claim for damages actions arising from events in 1999, when it was insured with HIH Insurance. If the damages actions are successful the firm will be left in a very difficult situation.

Hon. M. R. Thomson — It was insured with HIH?

Hon. D. McL. DAVIS — It was insured with HIH, and it is now left without insurance, in effect.

From information provided to me at a meeting with the managing director it seems that the value of the claim is possibly greater than the assets of the company. Therefore, if a solution is not found the firm would go out of business and the 80 people in my electorate who are employed by it would be without employment.

The managing director, Mr Psaltis, has implored me to raise this very serious matter with the government. He has asked what can be done to ensure that some solution is found. The managing director believes there is a need for the state government to take an active role in the engineering industry, in which he is closely involved, and to find some solution for the HIH difficulty and the potential employment consequences for his business.

AFL: grand final tickets

Hon. I. J. COVER (Geelong) — The issue I raise for the attention of the Minister for Sport and Recreation, which got a fair amount of coverage not only in the Parliament but in the media during last year's Australian Football League (AFL) final series, relates to finals ticket scalping. It is now some seven months since the issue was put on the table. We are now into a new football season, with this year's finals just four months away.

Members on both sides of the house might recall how, among moves to examine scalping practices, the minister established an anti-scalping ticket hotline which received more than 120 calls and which I understand provided the immortal result that if you rang the anti-scalping ticket hotline established by the government you were told by a recorded message to ring the AFL if you had a problem with ticket scalping.

At the time the minister issued a press release saying that he would circulate a discussion paper to the sport and entertainment industry, including the AFL, in a move to finalise a strategy to combat ticket scalping. Some seven months down the track I ask the minister if he could table that discussion paper. If he cannot, do I ring the hotline to find out whether I should ring the AFL to get a copy of the discussion paper?

I ask the minister if he can table that paper and report on progress of his 'move to finalise a strategy to combat scalping'.

Main Ridge equestrian ground

Hon. K. M. SMITH (South Eastern) — I ask the Minister for Energy and Resources to relay to the Minister for Environment and Conservation in the other place a matter I raise for her assistance. The pony club at Main Ridge has its meetings at the Main Ridge equestrian ground. It provides a great outdoor activity for hundreds of kids on the peninsula. The club has put before the Mornington Peninsula Shire Council — I take it that the vote will take place in about a week's time — a management plan for the equestrian centre.

The ground is being looked after magnificently by the club and its members. The minister would probably be aware that some years ago neighbouring Greens Bush was taken over by the state government.

Honourable members interjecting.

The PRESIDENT — Order! I ask the house to settle down. Mr Smith is the third-last speaker. I am sure all honourable members are anxious to wind up this sitting. It would help if honourable members desisted from speaking.

Hon. K. M. SMITH — I thought they may have been anxious to listen to what I have to say, Mr President.

The club is next to Greens Bush, which is attractive land that was taken over by the state government some years ago and has since been badly neglected. The equestrian ground is on the other side of the fence.

It is anticipated that the Mornington Peninsula Shire Council will approve a management plan that will be put before Minister Garbutt in the not-too-distant future. I seek an assurance from the minister that she will as quickly as possible endorse the management plan when it comes before her. It is not often that I seek

help from this government, but I must say that I am doing it on this occasion.

Aged care: Dunolly

Hon. BILL FORWOOD (Templestowe) — I raise an issue with the Leader of the Government, representing the Minister for Health in another place, concerning the Dunolly hospital. Honourable members will recall that in 1997 the Maryborough health care service decided in its wisdom to close the Dunolly hospital and it was only after active work by the community and the Honourable Ron Best that the then Minister for Health funded an inquiry that ultimately led to the rescission of the decision to close the hospital and subsequently a decision that the government would fund six aged care beds at Dunolly.

Since then by considerable effort the community has raised over $350 000 towards this facility; yet nothing to date has happened. I am aware of great concern in the community over the lack of action by the Bracks government which was so forthcoming in its promises for rural and regional development. In two weeks time the state budget will be brought down. It seems to me that now is the time for the government to commit funds to fulfil the commitment that six aged care beds be provided at Dunolly.

Advertising: standards

Hon. M. T. LUCKINS (Waverley) — I ask the Minister for Energy and Resources to direct a matter to the Minister for Women's Affairs in the other place. I refer to the launch on 29 April by the Minister for Major Projects and Tourism of the sixth stage of Tourism Victoria's Jigsaw campaign. The magazine advertisement featured in the *Herald Sun* yesterday depicts a scantily dressed young woman blocking the doorway to her hotel room with the caption, 'Melbourne. You'll never want to leave'. I put to the minister that Melbourne has a lot more to offer than the inside of a hotel room.

Honourable members interjecting.

Hon. M. T. LUCKINS — I find it absurd that the Labor government can see this picture as a sophisticated, stylish or romantic depiction of our wonderful city and state, particularly when it is completely inconsistent with stated Labor Party and Labor government policy on advertising and women. On 8 March this year the Minister for Women's Affairs, Sherryl Garbutt, said in a press release on the portrayal of women in outdoor advertising:

> The Bracks government has committed to looking generally at the issues of women and the media and specifically at the portrayal of women in advertising in a demeaning and stereotypical way.

She was commenting on the controversial Windsor Smith advertisement. It is clear the government is being inconsistent on this issue. It has committed itself to looking at and developing an advertiser code of ethics on the portrayal of women in demeaning or stereotypical ways. I call upon the government to withdraw this advertising in what is an insulting campaign that can only embarrass Victoria internationally.

Responses

Hon. M. M. GOULD (Minister for Industrial Relations) — The Honourable Bill Forwood raised a matter for referral to the Minister for Health regarding the Dunolly hospital and six aged care beds. I will raise that with the minister and ask him to respond in the usual manner.

Hon. C. C. BROAD (Minister for Energy and Resources) — The Honourable Ron Bowden asked that the Minister for Agriculture examine and improve mechanisms to trace livestock movements in order to guard against foot-and-mouth disease and to guard against the rustling of livestock. I will pass that request to the minister.

The Honourable Neil Lucas requested the Minister for Transport to consider the starting date for the Pakenham bypass and asked him to reinstate its previous priority. I will pass that request to the minister.

The Honourable Philip Davis raised the important matter of the Gippsland ground water issue. I acknowledge the frustration that members of the Yarram community must feel in what is a long-running and difficult issue. I indicate to the honourable member that a number of studies the Department of Natural Resources and Environment has commissioned are due for completion around the middle of the year. Following their completion a review of the moratorium on additional ground water licensing will be considered. In the meantime, it is important to note that new ground water users can purchase unused entitlements from other users through ground water trading.

In reference to the commonwealth and Senator Minchin's announcement to assist last year, the commonwealth is currently offering assistance on an advisory and scientific basis only. As would be expected, the Victorian government is maintaining its

position that given that the bulk of the fluids withdrawn from the aquifer are associated with oil and gas extraction in commonwealth waters, we would expect not only continuing assistance and support for this work from Senator Minchin, but, where necessary, funding support. That is where the studies commissioned by the Victorian government are up to. We anticipate receiving those reports around the middle of this year.

The Honourable Ken Smith asked the Minister for Environment and Conservation to approve management plans to be forwarded to her from the Mornington Peninsula Shire Council as quickly as possible. I will pass that request to the minister.

The Honourable Maree Luckins requested that the government give consideration to withdrawing the latest Jigsaw advertisement for Melbourne. I will pass that request to the Minister for Major Projects and Tourism.

Hon. M. T. Luckins — On a point of order, Mr President, I raised that question for the attention of the Minister for Women's Affairs.

Hon. C. C. BROAD — I was a little confused as to whether that question was to the government at large, but I will certainly pass that request to the Minister for Women's Affairs.

Hon. N. B. Lucas — On a point of order, Mr President, I had a question for the Minister for Transport.

Hon. C. C. BROAD — That was Pakenham.

Hon. M. R. THOMSON (Minister for Small Business) — The Honourable Barry Bishop referred to the serious matter of home builders who have been left without insurance due to the collapse of the HIH group. The Minister for Finance in the other place has been given responsibility for HIH issues. She has met with members of the building industry, and the Building Control Commission is meeting regularly with members of the building industry and insurance companies. The Building Control Commission has also established a call centre to advise builders on alternative insurance options that may be available to them. I have been informed by the Minister for Finance that insurance is being made available for individual project work within two days, and for annual insurance it is about four to six weeks. They are moving as quickly as possible to deal with these insurance issues. I suggest that builders having difficulties should ring the Building Control Commission, which will assist them about their best options and advise them to whom they should go.

The Honourable Andrea Coote referred the Minister for Housing in the other place to what is known as the House of the Gentle Bunyip and asked how the funding for that project could be justified and how it was funded. I will pass that on to the minister for response directly.

The Honourable Peter Hall referred to the car insurance of a constituent, Miss Louise Leggett, who believed she had direct debit arrangements with her insurance company but found that that was not the case and that the direct debit form had not been lodged with the bank. The honourable member talked about checks and balances. I am happy to look into that. An acknowledgment seems to be an appropriate way to go, but I will certainly be looking at the issues in relation to that.

The Honourable David Davis raised the matter of yet another HIH Insurance collapse victim. It is unfortunate that the federal bodies responsible for overseeing the conduct of insurance organisations failed to pick up and act on HIH before we got to this point. I am not sure what can be done to assist with the claims directly before this company. I know the Minister for Finance has raised issues with the Honourable Joe Hockey concerning how these matters may be approached. There are difficulties getting indemnity for matters that have occurred, although most of those who have been dealing with ongoing indemnities have been getting coverage. It is a very serious matter, and there are no easy solutions to the issues.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — In relation to the matter raised by the Honourable Sang Nguyen regarding skateboarding in the community, I have recently had the good fortune to open a number of skate parks across Victoria in areas such as Knox, Boroondara, Colac and the Latrobe Valley. The Department of State and Regional Development, through Sport and Recreation Victoria, is always willing to provide strategic advice to local councils concerning any proposed development of skateboarding facilities. It can also advise those wishing to access facility funding for the development of skateboarding facilities across the state. The great contribution skateboarding and skateboarding facilities can make to local communities and the young people in them as an alternative form of sport and recreation is often underestimated.

I will refer the matter raised by the Honourable Andrew Olexander regarding portable classrooms and their relocation at Monbulk Primary School to the Minister for Education in the other place.

I will refer the matter raised by the Honourable Cameron Boardman in relation to the swearing-in service for the new Chief Commissioner of Police to the Minister for Police and Emergency Services in the other place.

In relation to the matter raised by the Honourable Roger Hallam regarding the road-use fee for private fire trucks, I will refer the issue to the Minister for Police and Emergency Services in the other place.

The matter raised by the Honourable Gordon Rich-Phillips related to the Victorian broiler and chicken farming guidelines. I will refer it to the Minister for Planning in the other place.

I will refer the matter raised by the Honourable Wendy Smith relating to the Mount Dandenong observatory and its redevelopment to the Minister for Major Projects and Tourism in the other place.

The Honourable Andrew Brideson raised the issue of Sullivan Street in Springvale and drug dealing in that area. I will refer that to the Minister for Police and Emergency Services in the other place.

The matter raised by the Honourable Peter Katsambanis concerned the Bob Jane Soccer Stadium and the potential redevelopment of that facility by the South Melbourne Soccer Club. I welcome discussion relating to any proposals for that facility from any representative of that group. The Honourable Peter Katsambanis would be well aware of the tremendous work the Victorian Soccer Federation does for soccer throughout Victoria, and particularly the great work done by Geoff Miles, the chief executive officer of the Victorian Soccer Federation, in developing the sport and working closely with communities. No doubt there will be issues relating not only to that stadium but also the development of other stadiums involving rectangular pitches. I would be happy to discuss that with anybody who might wish to contact the office of Sport and Recreation Victoria.

The Honourable Ian Cover raised the discussion paper surrounding ticket scalping. That is quite a timely question, as I have recently forwarded to my ministerial colleagues a particularly comprehensive report discussing a range of strategies and practices followed around the world and the effectiveness of those measures. It also covers the local issues we have previously discussed in the house, which are of concern to people trying to access major events such as football finals where ticket scalping may be an issue. I expect to release that discussion paper to the sector and other interested parties very shortly.

Motion agreed to.

House adjourned 10.30 p.m.