PARLIAMENT OF VICTORIA

# PARLIAMENTARY DEBATES (HANSARD)

## LEGISLATIVE COUNCIL

## FIFTY-FOURTH PARLIAMENT

## FIRST SESSION

**24 May 2001**

**(extract from Book 5)**

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The Hon. P. R. HALL from 20 March 2001

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The Hon. P. R. HALL to 20 March 2001
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## THURSDAY, 24 MAY 2001



## QUESTIONS ON NOTICE

### TUESDAY, 22 MAY 2001



### THURSDAY, 24 MAY 2001

## Thursday, 24 May 2001

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

## JUDICIAL COLLEGE OF VICTORIA BILL

*Second reading*

**Debate resumed from 22 May; motion of Hon. M. R. THOMSON (Minister for Small Business).**

**Hon. P. R. HALL** (Gippsland) — I am pleased to commence the debate on the Judicial College of Victoria Bill. I am approaching my contribution from an educational aspect rather than a legal aspect, given my general interest in education. I will talk about some of the significant changes that have occurred in education over the past 10 to 12 years, many in post-secondary education.

A number of new universities have been created in Victoria, mostly arising from the amalgamation of TAFE colleges and institutes of advanced education. That term 'institutes of advanced education' is almost a blast from the past because various institutes have merged with universities or, in some cases, gone out of existence. In large part that has been due to the policy of the former Labor federal Minister for Employment, Education and Training, the Honourable John Dawkins, who introduced a unified national system of higher education that consequently led to the merging of many of those institutes of advanced education with universities, and in some cases with TAFE colleges to become universities.

Changes have also occurred within the vocational education sector in Victoria, with the rationalisation of some TAFE institutes. Perhaps I should say from the outset that they were called TAFE colleges but are now called TAFE institutes.

We have also seen significant changes in adult and further education and, very significantly, the emergence of a large number of private providers in the post-secondary education area. They have provided diversity and have therefore improved the Victorian education system.

However, what is before us today is quite different from any of the changes made in the past 10 or 12 years. The establishment of a judicial college, to be called the Judicial College of Victoria, is a first, and it seems is not similar to any other institution currently existing in Victoria. It is an interesting concept. It will be a publicly funded institution yet will provide courses for only a select group in our community. That is quite different from what we are used to seeing with the normal publicly funded education institutions. Unlike other publicly funded post-secondary education providers the college will not have any power to acquire, hold or dispose of real property, and will need the permission of the minister to acquire or dispose of any property with a value of more than $50 000. That is an unusual set of circumstances in that it will not give the college much independence. It seems it will be constrained in almost every move it makes by the government of the day.

The college is also different in that it will have a board of directors of six people — four of whom will be directors by virtue of the positions they hold in the judiciary system and the community and only two of whom will be appointed by the minister. It is unusual for such a large number of positions on a board of directors to be determined by the area of employment in which the directors are employed. Interestingly the bill provides for there to be alternate directors. That is a new concept; to my knowledge there is no post-secondary education institution in Victoria at which alternate directors can be appointed to positions on a council.

I am not saying that these are bad things, or indeed good things — the test of time will determine whether they are good or bad — but that they are different from what occurs with other types of tertiary education institutions that currently exist in Victoria. I will watch the progress of the Judicial College of Victoria with a great deal of interest.

The National Party supports this bill. It supports the establishment of a judicial college and appreciates that it was recommended by a judicial education working party convened by the chief justice. Apart from making recommendations on the structure of the college I understand part of the function of that working party was to look at other judicial training models that have been established, particularly in New South Wales but also in some overseas countries, such as the United Kingdom, Canada and New Zealand.

The second-reading speech states that the Judicial College of Victoria will have broad powers for judicial training and gave an example of the sort of training, although that was not explicitly stated in the bill.

Firstly, I will compare this model with a similar model which exists in New South Wales and which was considered by the working party as an appropriate model for judicial professional development in that state — the Judicial Commission of New South Wales.

It is a statutory body that was established under legislation in 1986. Last night I printed a couple of pages of its annual report from the Internet. The report sets out its mission statement, which is:

> To contribute to the enhancement of the quality of justice by providing professional support services to judicial officers and the courts.

It also sets out its legislative charter, which is to:

> organise and supervise an appropriate scheme for the continuing education and training of judicial officers;
>
> assist the courts to achieve consistency in imposing sentences; and
>
> examine complaints against judicial officers.

That can be compared to the proposed functions of the Judicial College of Victoria, as set out in clause 5 of the bill. They are:

> (a) to assist in the professional development of judicial officers;
>
> (b) to provide continuing education and training for judicial officers;
>
> (c) to produce relevant publications;
>
> (d) to provide (on a fee for service basis) professional development services, or continuing judicial education and training services, to persons who are not judicial officers within the meaning of this Act;
>
> (e) to liaise with persons and organisations in connection with the performance of any of its functions.

There is one big difference between the New South Wales commission and the proposed college — that is, the New South Wales commission has the power to examine complaints against judicial officers. That is not proposed to be a function of the Judicial College of Victoria; I think it is a function of the Law Institute of Victoria. Certainly the institute handles complaints about members of the legal profession, but I am not sure if that extends to judicial officers or not — —

**Hon. C. A. Furletti** — No, not likely.

**Hon. D. G. Hadden** — It is in legislation.

**Hon. P. R. HALL** — Not likely? Honourable members in the law will understand this better than me. By way of interjection they suggest we will not have anything in Victoria to examine complaints against judicial — —

**Hon. C. A. Furletti** — No, no — —

**Hon. D. G. Hadden** — Yes, legislation does.

**Hon. P. R. HALL** — I will be advised by my colleagues on this particular point as the debate continues.

**Hon. C. A. Furletti** — Stick to the education.

**Hon. P. R. HALL** — I will stick to the education — thank you very much.

So there is a comparison of the functions of each of those two bodies. As I said before, it is interesting that this is going to be a publicly funded institution. I note that the New South Wales judicial commission also receives 98 per cent of its funding from the consolidated fund. Whether it was going to be a publicly funded institution was a question I had to ask during the briefing and the National Party's discussions on the bill. The second-reading speech makes no reference, not a single reference, to whether the commission will be publicly funded. I was advised in the briefing yesterday that it will be a publicly funded institution and $2.7 million will be provided for its establishment. I searched through the budget papers and finally found it on page 108 of budget paper 2, where it says:

> To enhance the educational support provided to judicial officers, funding of $2.7 million over four years will be provided to establish a Judicial College of Victoria. The college will increase the ability of judicial officers to keep abreast of developments in the law, as well as non-legal issues relating to different groups of society, particularly people from different cultural backgrounds.

As I said, that was on page 108 of budget paper 2, and it rather intrigued me that it was not mentioned anywhere in the Treasurer's speech. It seems the government has not loudly proclaimed the fact that it is establishing a new publicly funded institution. Indeed I thought it was almost trying to hide it, because there has been no publicity whatsoever about the funding that is going to this body. I was intrigued about why the government has not been up front in announcing that this is a publicly funded institution.

After all, professional development is a good thing. I would think professional development for members of the judiciary is just as important as professional development for any other profession. Perhaps it is because many people in the community believe the judiciary needs to be kept abreast of community views and expectations — and that is fine — but I am still intrigued about why more has not been made of the establishment of the college and the fact that it is publicly funded. Perhaps the government fears the public would frown on the exclusiveness of the college or believe members of the judiciary should contribute to the funding. After all, it is a matter of course with

most other professions that the person who undertakes professional development contributes towards its cost.

If you go to university you contribute by way of a higher education contribution scheme, or HECS, fee. If you go to a TAFE college you contribute a minimum of $500 to do a course. Even public servants such as schoolteachers contribute to the cost of the professional development they undertake. Often it is paid for by the school, but there is certainly a cost in most instances. It is interesting to note that in this case, from as much as we can glean from the second-reading speech and the bill, that the college will be totally publicly funded. It appears that no personal contribution will be made by anybody who undertakes a professional development course offered by the Judicial College of Victoria. If I am incorrect in that assumption, I am happy for the minister to correct me in her summing up of the debate.

I will quickly refer to a couple of other clauses. The first is clause 6, which relates to the powers of the college. As I said at the start of my contribution, the college will not have the power to acquire, hold or dispose of any real property. My comment to the advisers was that that restriction would prevent the college from acquiring or holding any real property and that we would therefore assume that the Judicial College of Victoria will probably lease a building or a floor of a building somewhere around the city in which to conduct the affairs of the college.

I also referred to the fact that under clause 6(3) any acquisition or disposal of personal property beyond the value of $50 000 will have to be approved by the minister. I made the comment that that is a fairly restrictive provision to impose upon the directors of the college and that it certainly reduces their independence from government.

The other clause I want to speak about briefly is clause 19, which contains a provision I have never seen before in an act relating to a post-secondary education institution.

**Hon. M. R. Thomson** — I think it is a post-tertiary institution.

**Hon. P. R. HALL** — Post-secondary is tertiary or higher education. It is a common term we use. It is a post-secondary education institution.

**Hon. M. R. Thomson** — I am having a joke.

**Hon. C. A. Furletti** — The minister is suggesting it is post-tertiary — in other words, those who attend have been to tertiary. It is a joke.

**Hon. M. R. Thomson** — It was a joke. It obviously did not work.

**Hon. P. R. HALL** — I must be a bit slow this morning. I cannot understand that. The general term we talk about is secondary or post-secondary. Post-secondary is anything beyond high school or secondary college, I suppose.

**Hon. D. G. Hadden** — This is post-tertiary.

**Hon. P. R. HALL** — If it is post-tertiary that probably gets me back to the other point I was talking about — the exclusivity of the college. That goes right back to the definitions in the bill.

**Hon. M. R. Thomson** — I am sorry.

**Hon. P. R. HALL** — No, you reminded me I should have commented about the exclusivity of the college.

*Honourable members interjecting.*

**Hon. P. R. HALL** — It is publicly funded, but as I said it is for an exclusive group in our community. You have to be a judicial officer, which is either a judge or master of the Supreme Court, a judge or master of the County Court, a magistrate of the Magistrates Court or Children's Court, a coroner within the meaning of the Coroners Act or a member of the Victorian Civil and Administrative Tribunal if you want to attend one of the courses to be conducted by the college. In our society, where we encourage open and equitable access to services provided by the state, it seems to me fairly restrictive that where we have a publicly funded institution you have to satisfy that narrow category of employment provisions before you can actually obtain a place in one of the courses.

**An honourable member** interjected.

**Hon. P. R. HALL** — I call it exclusive. Then I looked at subclause (d) of the clause setting out the functions of the college, which states, in part:

> to provide (on a fee for service basis) professional development services … to persons who are not judicial officers …

I thought, 'Well, here we go. We're in. I am not a judicial officer'. But I am told it is intended for judicial officers outside the jurisdiction of Victoria, so it might be for interstate judges, for example, but it is not for us laymen. We will never get a guernsey in one of those publicly funded courses.

Before the minister's joke, which sidetracked me somewhat, I was referring to clause 19, which is headed 'Parliamentary requirement for information'. I have never seen such a clause in any other post-secondary institution bill. I am told it is particular to and is not uncommon in legal bills. I asked the question: why is this special provision needed when all other post-secondary institutions are required to table their annual reports in Parliament? I was advised that the tabling of the annual report will still be a requirement of the college under the Public Sector Management and Employment Act. Members of Parliament can look forward to receiving the annual report of the college and therefore making some assessment of its performance. As it involves public money it is important that members of Parliament at least have the opportunity to scrutinise the activities of the Judicial College of Victoria.

I will conclude my remarks before I get myself into too much trouble with my colleagues who are better informed on the law than I am. It is an interesting concept and we believe only good can come from it. There are some interesting aspects that we will watch closely, but we wish the Judicial College of Victoria well in its undertakings.

**Hon. C. A. FURLETTI** (Templestowe) — On behalf of the Liberal Party I am pleased to support the Judicial College of Victoria Bill. I wish to touch briefly on the suggestion by the Leader of the National Party that the bill is in some form elitist or exclusive. The bill's title says it all: it is a college for judicial officers with the intent and purpose of assisting the professional development of judicial officers and providing continuing education and training for judicial officers.

The government's proposals are based almost entirely on the recommendations of a working party that was established under the chairmanship of Chief Justice Phillips and included the heads of all other jurisdictions, including Mr Justice Kellam, the president of the Victorian Civil and Administrative Tribunal (VCAT); Chief Judge Waldron of the County Court; former Chief Magistrate Michael Adams, who represented the Magistrates Court until November last year when his position was taken over by the Acting Chief Magistrate, Mr Brian Barrow, to conclude the working party's report; Professor Sallmann, Crown Counsel — appropriately, in this instance — and two representatives from the Department of Justice. The working party was engaged for some six months in the preparation of the report, which was tabled in February. I note with interest that all the recommendations contained in the report have been taken up by the government and are reflected in the bill.

I will comment briefly on the bill. Apart from the purposes, to which I have already referred, the other functions of the college are set out in clause 5. They include producing relevant publications and providing on a fee-for-service basis — that is, it will be a fee-generating institution — professional development or continuing judicial education and training services to those who are not judicial officers within the meaning of the act. As the Honourable Peter Hall said, that needs to be read in conjunction with the definition of a judicial officer, which of course refers to the heads of and members and judges of the Victorian judiciary. While on a literal interpretation the term 'not judicial officers' could include lay persons, the intention of the clause appears to be that it will allow for interchange and training intercourse with judicial officers from other states.

The function to liaise with persons and organisations in connection with the performance of any of the functions is also included. That is a very broad umbrella function and allows the college to expand its operation into areas not specifically mentioned in the bill. Similarly, clause 5(2)(c) stipulates the breadth and flexibility of the college. If the college is to be established the opposition agrees that it should certainly be given appropriate powers and functions.

The establishment of the college as a statutory body corporate with its own identity and with the powers referred to in clause 4 implements the working party's recommendations. I understand that the working party investigated various forms and structures pursuant to which the college could be established and chose the one in the bill as the most appropriate. Obviously the government accepted that recommendation in toto.

It is interesting that the provisions of clause 6 restrict the full powers the statutory body corporate would otherwise have. I admit that I have some degree of concern about its implementation. I do not see that the provision reflects that as part of the recommendation of the working party; it provides that the college will not have the power to acquire or dispose of real property. Perhaps in the short term that may not be a bad thing, but it would appear to be somewhat a waste of resources if, in a few years, the college needs to have its own freehold and the house is asked to amend legislation to enable that to happen.

If that issue were of concern I would have suggested to parliamentary counsel and the government that such a provision could have been added to clause 6(3), which provides that the college needs to procure the prior written approval of the Attorney-General before it can acquire or dispose of personal property valued at

$50 000 or higher. Were that provision amended to add the words 'or acquire or dispose of real property' the purposes of accountability as referred to in the second-reading speech that appear to be the main reason for the inclusion of clause 6 would have been appropriately dealt with and it would have become easier to administer the college.

The reason for my concern about the operation of clause 6 is because I have a very strong commitment to the separation of powers and the absolute need to ensure that the judicial system and the vehicles within it remain totally separate from the legislature. Everybody knows what happens when the legislature — the executive, in this case — holds the purse strings. That appears to be the real effect of clause 6 — that is, it compels or obliges the directors of the Judicial College of Victoria, before they incur any major expense, to go cap in hand to the Attorney-General to seek approval to conduct their normal affairs. It is strange from the point of view that the judicial college appears to be encouraged to engage in some form of private enterprise in the provision of its services to outsiders. Given the specific reference to providing those services for fees, one would assume in those circumstances that the services are intended to be an opportunity to acquire and accumulate funds, yet the college will not be allowed to spend more than $50 000 on one item, I assume — although that, too, is not clear — without having to run to the Attorney-General for his approval.

Part 3 sets out the management and procedure of the college. The board of directors and the structure of the administration of the board is, as recommended by the working party, headed by the chief justice. A couple of observations need to be made. It is of interest that the President of the Court of Appeal is not a member of the board. That may be an omission or a request. Given the provisions of the bill introduced in this place recently to amend the Constitution Act relating to the interchange of Court of Appeal judges with the trial division, certainly a glaring gap is brought to one's mind. While the Constitution Act provides that the President of the Court of Appeal is a judge of the Supreme Court and, therefore, could be nominated by the Chief Justice of Victoria, the fact is that the President of the Victorian Civil and Administrative Tribunal, who is a Supreme Court judge also, is specifically mentioned. It is a void that I thought needed to be noted by the house.

The two lay members of the board of directors will be appointees of the Attorney-General. My concerns about the approval of the Attorney-General being necessary for certain expenditure, disposal or acquisition equally relate to the provisions of clause 8(1)(e). I appreciate that the recommendation of the working party included that two lay persons — granted with the experience indicated — be on the board, but I wonder whether that was a genuine recommendation or to ensure that the overall and major element — namely, the approval of the establishment of the judicial college — may have had some influence in it.

There appears to be absolutely no need for the appointees to be nominated by the Attorney-General or the executive. The judicial college will be a stand-alone entity. It is intended that the college will provide professional development and further education for those who will be administering justice in Victoria at the highest level and throughout the whole spectrum of our judicial system.

As I indicated at the outset, one of the most essential elements is that that system be kept separate, distinct and isolated from any influence of the legislature. It should be kept as pristine as possible. I am sure that the requirement to have two lay persons on the board could have been equally satisfied by having those persons appointed by the Chief Justice of Victoria, by a panel of the other board members or, indeed, if there were concerns of conflict, as the President of the Court of Appeal is not there, by the President of the Court of Appeal. So any number of options exist for the relationship between the Judicial College of Victoria board and the executive to have been separate and distinct.

The Judicial College of Victoria Bill is a simple but significant piece of legislation. There are some 350 judges, magistrates and tribunal members in Victoria, so they are not an insignificant group. It is important to put on record that the working party gave consideration to the proposal to establish a judicial college at a national level. As honourable members may well be aware, the Australian Institute of Judicial Administration (AIJA) has been working towards establishing a national system for some years. The Victorian working party rejected the move towards a national scheme and chose instead to pursue a state-based, state-oriented system. However, it indicated that some form of accommodation could be attained with a national body in the future as has been done by the New South Wales Judicial Commission, which is the New South Wales equivalent of the judicial college.

It is a matter of some debate as to whether we will benefit more from a state-based education vehicle than from a national one. Equally, opinions differ. I refer to an article in the *Lawyers Weekly* magazine of 11 August 2000, just after the Attorney-General indicated he would appoint the Victorian working

party. Apart from the obvious comments from the obvious players, it was interesting to note that Mark Derham, chairman of the Victorian Bar Council, was not willing to say whether the bar favoured a national or state system. He said it is not possible to teach people to be judges, and I will refer to that point subsequently.

Greg Reinhardt, executive director of the AIJA, very much favoured a national college on the basis it offered an opportunity to mix with judges and share ideas that are used in their judicial lives. Ian Dunn, ever the pragmatist, indicated that in his view the resources are finite and it would be desirable to have a uniform approach; and with the AIJA providing funding, a national program could be attained in his view with maximum utilisation of resources.

Christine Harvey, deputy secretary-general of the Law Council of Victoria, is reported as saying:

> … given the size of the Australian judiciary, the establishment of a national judicial college would be the most practical and cost-effective way to coordinate and deliver judicial training throughout Australia.

Notwithstanding the fact that the opposition supports the bill, we are happy to put on record the differing opinions as to how this form of professional development and ongoing continuing education should be administered.

My view is that, given globalisation and global shrinking and the ability we now have with technology and ease of travel, Australia should not have six or seven different judicial colleges. Although I am not a centralist by nature, I believe great benefit can be achieved through having a centralised system. Given the number of institutions being developed it will be imperative to establish some form of close communication between the various institutions for the benefit of those who utilise them.

Whether the purposes will be satisfied through the judicial college remains to be seen. There seems to be little doubt that members of the public are becoming far more informed and far more educated because of the ease with which information can be transmitted both within and outside the country. The fact that any events that occur overseas are transmitted to Australia almost instantaneously so that occurrences thousands of miles away appear to be happening in our backyard generates an awareness that perhaps did not exist some years ago. So it is that the public is now playing a far greater role by expressing opinions through the print media, talkback radio and the like, where far more criticism of judges and the judiciary is occurring than ever before. There is also a far greater awareness of what is perceived to be imbalanced sentencing and inappropriate comment.

I have always been of the view that one is not really in a position to pass comment on a sentence unless one is fully au fait with what has transpired during the hearing leading to the sentence, including evidence presented and all other matters. Every case is different; no two cases are identical because their circumstances differ. It is for precisely that reason that one cannot expect all judges to be the same.

The appointment of a judge is not based purely on the qualifications a person may have. The appointment of a judge should be, and I presume is, a very lengthy process. The elements to be taken into account that I consider to be essential in the course of determining whether a person could be an appropriate member of the judiciary would include the person's seniority; the person's degree of experience in one or a multitude of areas; the person's maturity, not only in terms of years but in terms of the breadth of experiences; the person's academic qualifications, in particular the areas in which those academic qualifications have been acquired and from where they have been acquired; the person's ability as an advocate; and peer group opinion within the legal profession, as that is a significant factor in determining one's level of success or otherwise.

I can assure the house that the legal profession is very harsh in the judgment of its peers. Performance rating within the legal profession is perceived not only by one's peers but also by those before whom one appears. For example, barristers work in courts, so their capacity and ability can be judged by the judiciary when considering their appropriateness for appointment to the bench.

All those elements, and probably many more, are and should be taken into account in determining a person's capacity and ability to make a good judge. However, each of those elements in turn are influenced and moulded by a more fundamental factor — that is, the factor of the experience of life. All the factors I have mentioned, whether taken in isolation or together, are insignificant if at the end of the day the person has not had experience of living and of the lives other members of the community live on a daily basis.

As I have said, there is no set program in which a person starts at primary school and follows down a particular road leading to being a member of the judiciary; that path does not exist. It is a matter of the Attorney-General seeing a requirement for an appointment to the judiciary, such as the very urgent requirements that exist today and which have been

discussed recently in this house, for the appointment of judges to the Supreme Court, the Court of Appeal and the County Court. It is then up to the Attorney-General to consider and filter the people thought to be appropriate, to seek good, sound advice from those involved in the area and to get on with the job of making the appointments.

However, the bill before the house is intended to hone the skills and sharpen the talents of those who have been appointed. Victoria has a very broad spectrum of practitioners who have been appointed to the judiciary. They come from all walks of life; some are classic students while others may have been scholastic strugglers who have matured later in life and are now conducting themselves with great pride and ability within the judiciary.

It is not unusual to hear that some members of the judiciary are not tuned into specific concerns of the community or that they have no insight into the needs and requirements of litigants or defendants in the criminal jurisdiction.

I note in the *Age* of 29 January 2000 an article headed 'Female and ethnic judges plea' which referred to the need for and the state government's advertising of magistrates jobs, urging women and people with indigenous and ethnic backgrounds to apply. Although that may be admirable, at the end of the day it is important that the ethnicity or gender of applicants should be taken into account as only one of the numerous factors to which I have referred in making appointments. But, by the same token, that is not to say that the intention of having persons with particular experience should not be translated into the functions of the Judicial College of Victoria, which I understand is the view of the chief justice and the working party. I understand that as part of its programs and publications agenda the college will address specific issues such as gender, ethnicity and particular difficulties of the indigenous people.

It is not sufficient that the Judicial College of Victoria be established; it is essential that the government ensure that it operates as a vehicle whereby the standing and stature of the judiciary are enhanced.

**Hon. T. C. Theophanous** — Come on, Furletti, wind up!

**Hon. P. R. Hall** — Keep going, Carlo, I am enjoying this.

**Hon. C. A. FURLETTI** — The stature of the judiciary needs to be enhanced because the public needs to be made aware — and, to my mind, reminded — that the judiciary voluntarily undertakes those elements of training. The judiciary needs to be seen as having come down from the ivory towers where it is sometimes perceived to be, to learn and to be exposed to public opinion and concerns in the interests of improving its actual and perceived performance.

Not because of Mr Theophanous's interjection but because I have concluded my remarks in any event, I am happy to commend the bill and wish it a speedy passage.

**Hon. D. G. HADDEN** (Ballarat) — I am pleased to speak on behalf of the government in support of the Judicial College of Victoria Bill. The Bracks government made an election commitment in 1999 to improve access to justice in this state, and that includes the need for a strong and independent court system and professional development and education of Victoria's judicial officers who deliver justice to its citizens.

The judicial education of Victoria's judicial officers enhances their independence, professionalism, stature and overall competence and performance. A judicial education is necessary to meet the changing demands placed on the judiciary.

In July last year the Attorney-General, the Honourable Rob Hulls, established the judicial education working party, which was chaired by the Chief Justice of Victoria, John Harber Phillips, AC, to advise the government on the best way to address the ongoing education and professional development of Victoria's judicial officers. The working party met over a number of months and submitted a final report to the Attorney-General in February this year.

The working party also comprised Justice Kellam, the President of the Victorian Civil and Administrative Tribunal (VCAT); Judge Waldron, the Chief Judge of the County Court; Mr Michael Adams, QC, then the Chief Magistrate, until his resignation in November 2000; Mr Brian Barrow, then Acting Chief Magistrate, who took over from the Chief Magistrate; Professor Sallmann, Crown Counsel; Ms Elizabeth Eldridge, Acting Deputy Secretary of the Department of Justice; and Dr John Lynch, Legal Policy and Court Services, Department of Justice.

The working party recommended to the government the creation of a Judicial College of Victoria that would be established by statute; cover judicial officers of the Supreme Court, County Court, Magistrates Court and VCAT; have a six-member board of directors, supported by education committees in each of the courts and VCAT; and assist the professional

development and continuing legal education of judicial officers.

The working party examined the New South Wales judicial education body, which was established under legislation in that state in 1968, and the New Zealand and Canadian judicial education models. It then came up with its own report and recommendations to suit the Victorian judiciary.

The working party recommended that a Judicial College of Victoria be established to provide judicial education services effectively and economically, consistent with the constitutional principles of judicial independence. It commended its report to the Attorney-General, and the report has been accepted. As I said, the bill puts into place the working party's recommendations.

A judicial officer is defined in clause 3 of the bill as a judge or master of the Supreme Court, a judge or master of the County Court, a magistrate of the Magistrates Court or the Children's Court, a coroner or a member of the Victorian Civil and Administrative Tribunal.

Clause 4 provides for the establishment of the judicial college as a body corporate with perpetual succession, et cetera.

Clause 5(1) sets out of functions of the judicial college. It is worth noting that the purpose of the college is:

(a) to assist in the professional development of judicial officers;

(b) to provide continuing education and training for judicial officers;

(c) to produce relevant publications;

(d) to provide (on a fee for service basis) professional development services, or continuing judicial education and training services, to persons who are not judicial officers within the meaning of this Act;

(e) to liaise with persons and organisations in connection with the performance of any of its functions.

Clause 6 provides for the powers of the judicial college. Clause 6(1) states in part:

… to do all things necessary or convenient to be done for, or in connection with, performing its functions.

The clause further states:

(2) The College does not have power to acquire, hold or dispose of real property.

(3) The College must not, without the prior written approval of the Attorney-General —

(a) acquire any personal property, right or privilege for a consideration of more than $50 000 or any higher amount …

(b) dispose of any personal property, right or privilege that has a value, or for a consideration, of more than $50 000 …

The judicial college will be responsible for designing its own professional development and continuing judicial education courses. It is anticipated that the college will offer a range of programs to judicial officers including intensive courses, seminars and workshops in consultation with the education committees to be established within each of the courts and VCAT.

I will now respond to some of the criticisms of the judicial college, the limitations on its powers to acquire or dispose of property and the requirement under the bill for the college to report annually to Parliament. The criticisms relate to clauses 6, 18 and 19 of the bill. The limitations on the college's power to acquire or dispose of property are designed to ensure accountability in relation to its operations and expenditure. The college will be obliged to report to Parliament annually on its operations and to provide financial statements to the Parliament under the Financial Management Act 1994. The college must be subject to appropriate levels of accountability. That is consistent with the doctrine of the separation of powers. The house will note that a similar provision can be found in the Victorian Law Reform Commission Act 2000.

Another criticism is related to the funding of the judicial college. The Attorney-General announced on 15 May that $2.7 million would be allocated from the state budget to the judicial college over the next four years. This funding is properly sourced from the budget and will be allocated to the college via the Department of Justice in accordance with the government's budgetary practices.

A further criticism related to the question of waiting for a national judicial college. That is all very fine but the working party looked at what is going on nationally and felt that it is in the interests of the Victorian judiciary to establish a judicial college now. The working party felt that if a national college were established down the track, the Victorian college would not be inconsistent with the operation of such a college. A Victorian-based college would contribute to a greater sense of ownership by the Victorian judiciary and would therefore ensure a greater level of participation by our judiciary in the activities of its college.

A lot of information is available on overseas models of judicial colleges. The only model we have had in Australia since 1986 is the college in New South Wales. In my research on judicial colleges I came across a discussion paper about the proposed Australian judicial college. This paper was prepared for the Australian Institute of Judicial Administration and the Australian judicial conference by Christopher Roper from the Centre for Legal Education in September 1999. Mr Roper's paper looked at a number of issues concerning the establishment of a national college and the basic principles which would be required to operate in such a college. In the first part of his paper he examined the arguments for and against such a college. It is interesting to note that there were arguments against judicial education generally on the one hand and against the establishment of a judicial college on the basis of fears about empire building and cost on the other.

Justice Michael Kirby of the High Court of Australia looked at the arguments against establishing a national college and quoted Lord Devlin's objection to a judicial college. He states:

> The judge's function is to listen intelligently and patiently to evidence and argument … to evaluate the reliability and relevance of oral testimony … and finally to reach a conclusion based on an accurate knowledge of law and practice … The capacity of being a judge is acquired in the course of practising the law.

Justice Michael Kirby also refers to the explicit fear that judicial training would become an illicit means of inculcating in the judicial branch the values and opinions of the executive government.

The discussion paper looks at alternatives to a judicial college and refers to the basic principles to guide its operations. It states that in 1998 the Australian Law Reform Commission as part of its review of the adversarial system, identified a number of principles for planning and implementing an effective strategy for education for judges and magistrates. Those principles should include voluntary participation, judicial involvement and endorsement, flexibility, integrated services and relevant content.

Justice Dowsett of the Federal Court in Brisbane in his paper on judicial education given at the judicial conference of Australia at the Gold Coast in November 1998 concluded that there were four key characteristics for the development of judicial education and training programs. They are:

> The program must meet real needs.
>
> The administrative structure must be as simple as possible and decentralised as possible.
>
> As many judges as possible must be involved at all stages.
>
> The program must be seen as an opportunity to share experiences rather than as one in which there are teachers and students.

The New South Wales judicial commission has a mission statement, which is:

> To enhance the quality of justice by providing the judiciary with research and education services, to give advice to the Attorney-General and to examine complaints against judicial officers.

The Judicial Commission of New South Wales is an independent statutory corporation established in 1986 under the Judicial Officers Act. It is part of the judicial arm of the New South Wales government. Its major functions are:

> to assist the courts to achieve consistency in imposing sentences;
>
> to organise and supervise an appropriate scheme for the continuing education and training of judicial officers; and
>
> to examine complaints against judicial officers.

The commission may also give advice to the Attorney-General on matters the commission thinks appropriate and liaise with persons and organisations in connection with any of its functions. Apart from its wide functions it also produces a judicial officers bulletin as well as bench books for every judicial officer; a Children's Court information bulletin; the judicial review and a monographed series.

The 1999–2000 annual report of the Judicial Commission of New South Wales notes its achievements as including the ability both to respond quickly to legal developments and to provide seminars that make use of interactive learning methods. Its other education activities involve interactive learning or important legal developments, which included sessions on Aboriginal domestic violence; judicial stress, diet and exercise; Aboriginal cultural awareness; a seminar for all courts on domestic violence in the Vietnamese community; and seminars on changes to traffic legislation and the Evidence Act. The annual report also notes that the commission provides a structured program of learning and professional development for judicial officers.

The bill is timely and has the full support of the senior judicial officers in the state. It implements the recommendations of the working party report. I commend the bill to the house.

**Hon. P. A. KATSAMBANIS** (Monash) — I confirm that the opposition does not oppose the bill, which establishes the Judicial College of Victoria. It is not a controversial bill. Previous speakers have mentioned that the bill flows from the report of a working party that included the chief justice and other senior members of various courts in Victoria, and that judicial officers have been requesting the establishment of the college for some time.

The purpose and functions of the college are set out in clause 1 as follows:

> the purpose of this Act is to establish the Judicial College of Victoria with the function of assisting the professional development of judicial officers and providing continuing education and training for judicial officers.

If implemented correctly the judicial college will assist judicial officers as they go about their daily work deliberating in the courts and tribunals of Victoria.

All honourable members wish the college well and hope it achieves its aims, but a number of things should be put on the record, because when bodies such as this are created they give rise to fears that need to be addressed. First, what sort of professional development will the college provide? The bill and the second-reading speech do not indicate what professional development the college will provide. I am sure the college board will establish its aims and objectives and the work it will do. However, honourable members are not given direction as to what it will do.

Is it going to provide continuing education and legal development? Is it going to provide cultural sensitivity training for judges? Is it going to provide directions that judges should follow? Is it going to attempt to make judges more human? All of those things sound bland and innocuous but at the end of the day the public of Victoria must be assured that nothing this college does will affect the independence and integrity of our judicial officers. Nothing this college does should in any way compromise the fair delivery of justice in our courts. Nothing in any way should give rise to feelings of concern that an element of — and I use the term advisedly — political correctness will come into judgments as a result of the cultural sensitivity training that judges and magistrates may receive.

**Hon. W. R. Baxter** — It sticks out a mile that that is what will happen.

**Hon. P. A. KATSAMBANIS** — I am expressing concern, and I hope that that will be addressed. Mr Baxter says it is sticking out a mile. I should like to think that individuals of the ilk of the chief justice, the chief judge and the chief magistrate will take on board these concerns. They are the sorts of people in our society who are charged with the delivery of justice, and justice of itself means something more than adhering to cultural norms or slavishly following trends or some sort of guidance or direction.

The concern is that the executive may utilise the judicial college to guide judges into forms or considerations in their judgments. I hope and trust that will not happen. The board will be charged with the massive responsibility of ensuring that the training judicial offices receive through this judicial college will be training that properly equips them to execute their duties as judges, magistrates and tribunal officers, and not in any way, shape or form turn them into quasi-enforcers of political or social aims or objectives. Our judicial officers are there to deliver justice. I hope that will be enhanced with the creation of this college. I know I will be watching closely, as will others, to ensure that is the case.

Other issues that need to be taken into account include whether in 2001, given there is talk of creating a national judicial college, Victoria needs to replicate that system or whether our judicial offices would benefit from participating in a national structure for the continuing education of judicial officers. I would like to think that the board, comprising the most senior judicial officers in the state, would work together with any national body that is formed so that institutions and organisations are not replicated, Victoria gets value for money, and its judicial college provides something new and unique while ensuring its judicial officers act as judicial officers and do not exercise political or social judgments.

It will be an onerous responsibility for the college board to ensure that at all times it is seen to be totally above board. I believe the individuals who currently hold positions and who will become the board of directors are perfectly capable of ensuring that the legitimate fears and concerns of Victorians are not realised. I have great faith in those people. The proof of the pudding will be in the eating. At the moment a body is being created about which we have little detail, and there is some legitimate concern about it. Its operation in its first few years will highlight whether those fears and concerns can be allayed or are unfortunately confirmed. I have faith in the former and hope the latter does not happen.

Other issues that need to be addressed in brief are issues Mr Furletti alluded to: that while the Attorney-General is going about creating the judicial college and

worrying about other such issues, as we spoke about last week in this place there is a crying need for the appointment of new judicial officers to the benches of the Supreme and County courts, particularly the Supreme Court. The Attorney-General has so far ignored those calls from the chief justice and the chief judge. It is high time that the Attorney-General applied his mind to ensuring that an adequate number of judicial officers are available and ready to dispense justice in this state. Blame for the delays in our courts resulting from lack of availability of judges must be delivered upon the Attorney-General, who has procrastinated for far too long.

**Hon. D. G. Hadden** interjected.

**Hon. P. A. KATSAMBANIS** — We will address that issue in the bill to be debated after this one. However, it is important to put on record that the Attorney-General should do more than create colleges and such institutions. He should appoint judges, as is being demanded again and again by the Chief Justice of Victoria and the Chief Judge of the County Court, to ensure that the courts are properly staffed to enable them to dispense justice fairly, equitably and quickly in Victoria.

On the issue of the appointment of judicial officers, along with Mr Furletti I want to put on record that although there can be no doubt that all our institutions should try to reflect the make-up of our community, the primary basis for the appointment of any person to any position anywhere in this state or nation should be merit. When judges or magistrates are appointed the primary concern should be that the person will be the best judge or magistrate for that position, not that they are male or female or that they come from one background or another. The appointment should not be based on the colour of their hair or eyes but should be made because that person is the best person available to fit that position.

In the 1980s we went down the path of affirmative action, and it did not get us too far. As Mr Furletti highlighted, there is concern from reading some advertisements that we might be going down that path again. I put on the record in this house that merit should be the primary basis of any choice. If it is not, it will reflect badly not just on this government but unfortunately — and this is the rub — it will reflect badly on the delivery of justice in our legal system. It will diminish the standing of the people appointed and the quality and reputation of the body to which they are appointed. Merit must be the primary criterion. I hope the government will follow that course. Fears and concerns are held. I hope by its choices in the near future the government will be able to allay any concerns that that long-held maxim in our society will continue to be applied.

I again put on the record that the opposition does not oppose the bill.

**Hon. JENNY MIKAKOS** (Jika Jika) — I am pleased to make a brief contribution in support of the bill. I note that my colleague the Honourable Dianne Hadden has comprehensively covered the features of the bill. In my brief contribution I wish to emphasise that the establishment of the Judicial College of Victoria is part of the government's commitment to improving access to justice and ensuring an independent and professional judiciary of which all Victorians can be proud and have confidence in. It is therefore important that the judiciary seeks to address areas where the community has expressed concern, and I note in particular the isolated comments made by members of the judiciary reflecting poorly on women involved in a sexual assault case and rape cases. It is important that the judiciary takes into consideration community expectations and concerns on a range of issues.

I refute categorically the assertion by the Honourable Peter Katsambanis that the bill is an attempt by the government to introduce notions of political correctness into judgments made by the judiciary. Government members firmly believe in the independence of the judiciary and the separation of powers, and have demonstrated that belief in the provisions of many bills that have come before the Parliament on a range of matters affecting the powers and functions of the courts.

I stress in this respect that the content and subject matter of any educational programs offered by the judicial college will be set and determined by the board of the college in consultation with members of Victoria's judiciary. Therefore the government will not have any input into the types of courses to be offered by the judicial college. I hope the board will seek to offer a broad range of professional development and continuing education programs to members of Victoria's judiciary.

It is useful to refer briefly to some of the comments made by the working party established by the government and chaired by the Chief Justice of Victoria, Justice Phillips, in making its recommendations to the Attorney-General. As has already been mentioned by the Honourable Dianne

Hadden, that working party reported to the Attorney-General in February of this year, and all of its recommendations have been adopted in the bill. The working party comprised a number of representatives from Victoria's judiciary. They examined interstate and overseas models in jurisdictions with similar judicial education programs and particularly noted the types of programs offered in New South Wales, Canada and New Zealand.

The working party referred to the types of professional development programs offered in New South Wales. They include a judicial orientation program for new judicial officers, which involves sessions on judicial conduct, social context issues, courtroom management, judgment writing, sentencing, and bail. Also available is a judicial mentoring program for newly appointed judicial officers, which offers a one-on-one mentor and guidance and support to new judges; and a judicial refresher program which allows experienced judicial officers to consider and address personal and professional management issues.

The working party also took account of the types of continuing legal education programs offered by the New South Wales Judicial Commission, which include specialist conferences on specific aspects of law, procedure, and judicial skills and techniques, such as understanding the behaviour of sexual offenders and New South Wales enterprise bargaining agreements.

The working party found that the Judicial College of Victoria could take a similar approach and provide continuing legal education for members of Victoria's judiciary in the courts and the Victorian Civil and Administrative Tribunal. Its report specifically states that:

> It could offer specific seminars and conferences on new developments in the law which would be of interest to all judicial officers and auspice annual conferences for each of the courts and VCAT.
>
> Programs addressing current social and community issues could also be developed as part of this function.

It is important to note that members of the judiciary already have some ideas about the different types of programs the college may offer in both professional development and continuing legal education.

On social and community issues the working party took into account that the Canadian National Judicial Studies Institute offers multicultural awareness programs and that the New South Wales Judicial Commission has established a cross-cultural training committee. It provides cultural awareness programs for courts — for example, it has developed a particular training package on Muslim culture. Similarly, the New Zealand Institute of Judicial Studies is making judicial officers aware of Maori protocol, custom and language. These are other examples of the different types of programs the Judicial College of Victoria may wish to undertake.

The working party also looked at different types of publications. The report notes that the New Zealand institute provides bench books to members of the judiciary, including for criminal jury trials, the Environment Court, the Maori Land Court and the Youth Court, as well as a guide on ethnic minorities and a judicial education bulletin.

The working party took all of those experiences and existing programs into consideration in developing its recommendations to the Attorney-General, which he has taken on board.

It will be at the discretion of the judicial college to determine the types of programs offered and their content. I am sure, given that the board of the college will include as a member appointed by the Attorney-General a person who has educational or institutional expertise or is a member of an academic staff, that will ensure that the different types of programs are developed in an academically rigorous way.

I do not wish to go through the bill in any great detail, as my colleague the Honourable Dianne Hadden has done that very capably. However, I will address a number of comments made by opposition members.

Firstly I put on the record that in the budget handed down last week the government has committed $2.7 million over four years for the establishment of the Judicial College of Victoria. Mr Hall has not seen the relevant media releases but I assure him that the government is very proud of the establishment of the Judicial College of Victoria, and expects that the community will also support its establishment as it will offer a great deal to the professional development of our judiciary.

I also note that the budget contains funding for additional judicial appointments, including one additional appointment to the Supreme Court and two additional appointments to the County Court.

**Hon. C. A. Furletti** — Only one — that is not enough!

**Hon. JENNY MIKAKOS** — They will be a welcome addition to the resources of our court system.

The Honourable Peter Katsambanis suggested that appointments would not necessarily be made on the basis of merit. I wish to refute that assertion.

The government is very clearly committed to appointing the best possible people to our judiciary, but it is important that we encourage people of all backgrounds to consider themselves for such appointment. As a former member of the legal profession, I can say that unfortunately our judiciary still predominantly comprises white, Anglo-Saxon, Protestant males — very much like this Parliament, once again, unfortunately — but we are committed to ensuring that people of all backgrounds are fairly considered for such appointments. The fact that the government and the Attorney-General have encouraged people of all backgrounds to apply for such positions has resulted in more women in particular applying for and being appointed to such positions. It is important that the government and the Victorian community demonstrate that we are open to consideration of people across backgrounds and cultures, and I personally welcome the fact that the Attorney-General has appointed an unprecedented number of women to the Victorian judiciary in recent months.

In relation to the criticism made by the Honourable Peter Hall that members of the judiciary should perhaps pay for these services, the government's view is that judicial education is critical in improving the community's access to justice and that the judicial college should be publicly funded. I note in this respect that there is a provision for a fee for service to be charged to people other than judicial officers as defined in the bill. This is intended to cover, for example, interstate judges who may wish to avail themselves of the courses being offered by the college. Unfortunately, in Australia at this time only Victoria and New South Wales have such bodies that offer judicial education. It is anticipated that many interstate judges may wish to avail themselves of Victoria's programs.

In respect of the Honourable Peter Hall's comment about these programs not being offered to the public at large, I think it is highly appropriate that the judicial college — it is rightly called a judicial college — focus on educating Victoria's judiciary and not offering programs to, for example, the legal profession. Members of the legal profession and others are able to avail themselves of appropriate courses through the Leo Cussen Institute, the Law Institute of Victoria and other such bodies.

In respect of the point made by the Honourable Carlo Furletti about clause 6(3) and the limitation on the college having to seek the Attorney-General's approval to acquire personal property for a consideration of more than $50 000, I say that the limitations on the college's ability to deal in real and personal property are reasonable with regard to the size of the college's proposed budget. Similar limitations apply to other statutory corporations, such as the Victorian Law Reform Commission. It is not intended that the judicial college will purchase a building, but I would hope — and this is a personal view — that it could be incorporated, for example, into the new Supreme Court building that is to be constructed. There may be no need for the judicial college to acquire real property as it is highly likely it will lease or be provided with some space for its program and officers in some existing judicial building.

It is important to stress that participation by members of the judiciary in the college's courses will be voluntary. It is the government's intention that the heads of the different courts will determine in consultation with their members what type of educational programs are appropriate to a particular court or tribunal as the case may be. It is quite clear that clause 5(2) of the bill requires the college to consult with judicial officers about the nature and extent of the college's programs and also to have regard to the differing needs of different classes of judicial officers.

In relation to the criticism made by the Honourable Carlo Furletti about the President of the Court of Appeal not being included in clause 8 of the bill — that is, not being included on the board of directors — it is important to note that the Chief Justice of Victoria is the state's most senior judicial officer and is the representative of the Supreme Court on the college's board. The Court of Appeal is a division of the Supreme Court rather than a separate court and the President of the Court of Appeal has therefore not been included as an ex officio member of the board. The President of the Children's Court and the State Coroner have also not been included for similar reasons. It will of course be open to the Chief Justice of Victoria to nominate the President of the Court of Appeal to sit on the board of the college as the representative of the Supreme Court if he so wishes.

I refer to the Honourable Carlo Furletti's comment about the two nominees to be appointed to the board by the Attorney-General under clause 8(1)(e). Only two out of a total of six representatives on the board of directors will be appointed by the Attorney-General, and the qualifications of those appointees are clearly spelt out in proposed subsection (1)(e) as follows:

(i) one must have experience as a member of the academic staff of a tertiary or other educational institution; and

(ii) one must be a person who, in the opinion of the Attorney-General, has broad experience in issues affecting courts.

It is therefore expected that the appointee who has academic experience will be able to assist the board in ensuring that programs are academically sound and rigorous. It is important that the composition of that board goes beyond members of the judiciary, and I note that this was a recommendation of the judicial working party's report to the Attorney-General.

I note also the Honourable Peter Hall's comment about clause 19, which requires the college to provide information to Parliament or a parliamentary committee if requested. I emphasise that the college is also obligated to report annually to the Parliament about its operations under the Financial Management Act 1994. The provisions in clause 19 are in essence an additional requirement providing accountability of the college to the Parliament.

Finally, I address the suggestion of the Honourables Carlo Furletti and Peter Katsambanis that it would be preferable for Victoria to take a national approach rather than go its own way. Honourable members would be aware that currently there is a reference to the Standing Committee of Attorneys-General to consider the possible establishment of a national college of judicial education. Unfortunately at this time it is not clear whether the SCAG will agree to establish such a national body. The working party, which was chaired by the Chief Justice of Victoria, believed a Victorian college would not be inconsistent with the operation of a national college in the future. While it is possible that such a national college may be established, in the eventuality that it does not happen Victoria should proceed to provide a form of judicial education to its judiciary. The Victorian college will extend to members of the Victorian Civil and Administrative Tribunal, whereas a national college may not.

In conclusion, I welcome the establishment of the Judicial College of Victoria. It will address the needs of our judiciary in offering professional development and continuing education. I wish the bill a speedy passage.

**Motion agreed to.**

**Read second time.**

*Third reading*

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

That this bill be now read a third time.

I thank the Honourables Peter Hall, Carlo Furletti, Dianne Hadden, Peter Katsambanis and Jenny Mikakos for their contributions to the bill.

**Motion agreed to.**

**Read third time.**

*Remaining stages*

**Passed remaining stages.**

## JUDICIAL AND OTHER PENSIONS LEGISLATION (AMENDMENT) BILL

*Second reading*

**Debate resumed from 22 May; motion of Hon. M. R. THOMSON (Minister for Small Business).**

**Hon. C. A. FURLETTI** (Templestowe) — For the second time today I am pleased to contribute to the second-reading debate on a bill that is supported by the parliamentary Liberal Party. I will briefly take honourable members through the bill, as it is relatively complex legislation. It is an amending bill to a number of acts that are affected by the proposed amendments contained in the bill.

Perhaps the correct way to start is to briefly outline the purpose as set out in clause 1, which is to provide for the commutation of pensions payable to a number of officers of the state — namely, the Governor, judges and masters of the Supreme Court and the County Court, the Solicitor-General, the Chief Magistrate, the Director of Public Prosecutions (DPP), the Chief Crown Prosecutor and the Senior Crown Prosecutor, all of whom are dealt with under relevant acts of the Parliament.

The bill also includes an enabling provision for the spouses and relevant children of those qualified members of the scheme to make such a commutation by permitting members of the scheme to make an election for payment of the surcharge levied by the commonwealth government on superannuation contributions and entitlements. Briefly, the bill seeks to give the right to members of the scheme to make an election for the commutation of part of their pensions to pay for a surcharge recently imposed by the commonwealth government.

Part 3 amends the Constitution Act, which provides for the pension entitlements of the Governor, Supreme Court judges and the DPP. It makes detailed provision for the implementation of the mechanism for dealing with the election to commute and the actuarial

calculation processes with respect to that election, and it also extends to spouses of the Governor and other eligible dependants the provisions extended to members of the scheme.

Part 2 amends the Attorney-General and Solicitor-General Act. That legislation is amended through reference to the amendments made to the Constitution Act. I understand the purpose or motive of the government in presenting it in that way.

Part 4 amends the County Court Act to provide for the rights of election that are granted effectively across the board. The legislation applies to County Court judges and masters and their eligible dependants.

Part 5 introduces the same provisions for the Chief Magistrate. The provisions, in effect, reiterate the provisions set out in the County Court Act.

Part 6 effects the same amendments for the benefit of the Chief Crown Prosecutor and senior Crown prosecutors. It implements the provisions of the County Court Act.

Part 7 amends the Supreme Court Act to provide the same rights of election to the masters of the Supreme Court and their eligible dependants as beneficiaries under the pension scheme. That is a brief summary of the structure of the bill.

I do not intend to go into the details of the pension scheme because I understand the Honourable Roger Hallam, who was closely involved with negotiations at the time of the imposition of the surcharge by the commonwealth government, will contribute to the debate later. I am more than happy to defer to his superior knowledge about the manner in which the surcharge affects the officers who are subject to the bill.

The difficulty appears to be that whereas in the private sector, due to the imposition of the surcharge, an amount can be deducted from the contributions made by employees or employers to the superannuation fund — the amount of surcharge is withdrawn from the contribution and paid to the commonwealth — in the case of members of the scheme affected under the judicial and other pensions legislation, because the contributions to the scheme are provided for totally out of consolidated revenue the scheme is accordingly termed a constitutionally protected pension. It is impossible to deduct at the time of accrual of the entitlement to the pension the surcharge imposed by the commonwealth government — a scenario to which all honourable members are also subjected.

The surcharge has a limit of 15 per cent of the entitlement of an officer and, as is indicated in the second-reading speech, the lump sum liability payable could be as high as $330 000 in the event of a person retiring and crystallising the entitlement to the pension, the entitlements of which had been accumulating during his or her years of service. The seriousness arises not only from the fact that the only entitlement of the participant in the scheme is to a pension and, therefore, that amount of lump sum would not be available unless, of course, there was independent wealth. The problem is aggravated by the fact that that amount would be payable within three months of, in most instances, a person's retirement. That could and does cause considerable hardship in a number of cases.

As I understand it, the purpose of the bill is to enable a member of the scheme to elect either during his or her working life to commute the amount of surcharge payable and, therefore, to have that amount deducted in effect from the pension payable and to accept a lesser pension; or to wait until retirement and make the election at that time.

In each instance, as I read the amendments, an actuarial calculation is made pursuant to a formula which I do not want to entertain, whereby the amount of the surcharge payable is calculated. The pension is reduced accordingly and upon the entitlement crystallising — that is, upon retirement — the surcharge is paid and the liability is satisfied.

The legislation seems to be appropriate. It arises from a certain degree of hard-nosed politicking by the commonwealth government which, as I indicated earlier, also affects members of Parliament and has been rectified in our case. It is therefore somewhat difficult to argue that the rights we enjoy in commutation should not be extended to those officers to whom I referred earlier and to whom the bill relates.

In conclusion, contrary to the suggestion given lengthy expression in the second-reading speech that the surcharge was preventing people from accepting an offer of appointment to the bench — to a large extent the government has beaten its own drum on that issue — I do not believe the roles of Governor, judge of the Supreme Court, magistrate, member of the judiciary, senior prosecutor or DPP necessarily hinge on the remuneration package. Surely it is only a consideration. However, as with many honourable members, people decide to serve in the interests of the public, irrespective of the remuneration they receive or to which they are entitled.

I have faith that the brightest and best of our lawyers are attracted to the judiciary and that many people of high standing are attracted to other public roles such as that of Governor and will continue to be so attracted, irrespective of the application of the bill. The pensions and post-retirement entitlements comprise only one aspect of the rewards offered to the judiciary. They deserve, as do our other officials, our ongoing gratitude and that of the public they serve. On that basis, I am pleased to support the bill and wish it a speedy passage.

**Hon. D. G. HADDEN** (Ballarat) — On behalf of the government I speak in support of the Judicial and Other Pensions Legislation (Amendment) Bill. The purpose of the legislation is to enable members of constitutionally protected pension schemes to elect to commute half of their pension to pay the commonwealth superannuation surcharge tax. That is contained in clause 1 of the bill.

Currently, members of those schemes must take their retired benefit as a pension and cannot commute any part of it into a lump sum. The commonwealth superannuation surcharge is a lump sum payable within three months of the issue of an assessment notice from the Australian Taxation Office. The surcharge is a personal liability of the member or his or her estate if the member has died.

The commonwealth Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997 impacts on the following people: governors, Supreme Court judges, masters of the Supreme Court, solicitors-general, judges of the County Court, masters of the County Court, chief magistrates, directors of public prosecutions and chief Crown prosecutors. The bill amends a number of acts that provide for pensions to be paid to those people out of consolidated revenue, and those various acts are set out in the preamble to the bill.

In essence, the policy consideration is that the tax is payable in advance. Considerable criticism of the commonwealth government legislation has come from the judiciary and the legal profession, in particular the chairperson of the Victorian bar, about the way the tax surcharge is applied and how it affects the state's ability to attract eminently qualified persons to the bench. There is also a concern that a spouse of a member who has died could face a large surcharge liability but only receive a reduced pension. As the minister noted in the second-reading speech, the lump sum surcharge liability could be as high as $330 000.

The bill provides for a person to choose to elect and provides additional safeguards to deal with the amount by which pensions will be reduced. Those matters are dealt with in clause 6 of the bill.

The bill inserts new sections 7B to 7J into the Constitution Act. Clause 6 applies to a former Governor or his or her spouse; and that provision is replicated throughout the bill to apply to Supreme Court judges, masters and so on to whom I earlier referred. Queensland, South Australia and New South Wales have moved to provide similar rights, although Victoria's provisions will be the most flexible and attractive in Australia. The commonwealth act provides for automatic commutation, and members simply have no choice.

Another important matter I bring to the house's attention is that the commonwealth legislation provides that the surcharge must be paid within three months of the issue of the surcharge notice. Under this bill members have two opportunities to elect to commute: while in office, or after retirement within two months of receiving the surcharge notice.

Another important aspect of the federal legislation is that payment of a lump sum for the purpose of paying a surcharge to the Australian Taxation Office is not deemed or considered to be an eligible termination payment under the provisions of the Income Tax Assessment Act 1936. Therefore, the ATO has recommended that the surcharge not be paid to the member but be directed to the Commissioner of Taxation. The bill makes provision for that. Another important part of clause 6 is that the reduction of a former Governor's pension must not exceed 15 per cent of his or her total pension amount.

Criticisms of the federal legislation are pertinent to matters of pensions and judicial officers. In the Supreme Court of Victoria annual report of 1998 John Harber Phillips, AC, Chief Justice of Victoria, outlines the position very succinctly under the heading 'Superannuation contributions surcharge legislation':

> We —

being the Supreme Court

> are very concerned that the opportunity for the court to recruit experienced and highly qualified judges and masters to the court may well be seriously damaged by virtue of the superannuation contributions surcharge legislation enacted by the commonwealth Parliament in 1997 …

The chief justice goes on to say:

> … judges appointed prior to the legislation —

that is, 7 December 1997 —

> are not affected by its terms … There is no similar exemption for judges appointed after the legislation came into effect, and it is upon those judges that the burden of the legislation will fall.

He points out that:

> The judge appointed before the legislation came into effect will have the pension without the new pecuniary penalty; the judge appointed since, will not.

He sees that situation as setting a division between judges appointed before 7 December 1997 and those appointed after.

The chief justice also notes that:

> One probable effect of this legislation —

that is the commonwealth legislation —

> will relate to the recruitment of women as judges. This is so because it is an historical fact that it is only in comparatively recent years that significant numbers of women have joined the bar, from where most appointments would be likely to be made to the bench.

He also notes that:

> There is another very serious consequence of this legislation —

again the commonwealth legislation —

> and that relates to the position of masters of the Supreme Court … This is grossly unfair, and represents an intolerable burden on masters …

The chairperson of the Victorian Bar Council, Mark Derham, QC, in the Victorian bar's *In Brief* fortnightly newsletter of 22 August 2000 in an article headed 'Judicial pensions and the superannuation contributions tax (or watch out if you're offered a judicial post)' states:

> The operation of the commonwealth legislation subjecting members of constitutionally protected superannuation funds to SCT carries many disturbing consequences. Most importantly, it will affect the ability of the state to recruit judicial officers and other public officers who are most suitably qualified.

He concludes:

> I bring these matters to the attention of members of the bar as it may affect the decision of a member to accept an offer of judicial appointment.

In conclusion, given that other members wish to speak on this very important bill, I commend it to the house.

**Hon. R. M. HALLAM** (Western) — National Party members resolved to support the Judicial and Other Pensions Legislation (Amendment) Bill, and I report to the house that we took very little time to come to that decision. Indeed, we actually anticipated the bill. The real interest we had in the bill when it arrived was how the impact of the federal government's widely condemned surcharge on superannuation would be applied to pensioners under our constitutionally protected schemes — that is, our judges and other senior legal officials, and even our Governor. We knew that those officials were also unintended victims of the federal government's surcharge legislation and we are on record as describing that legislation as illogical, unfair, administratively crazy and arguably unconstitutional.

I also recall having made the point in a previous debate that, to the extent that the surcharge in some circumstances represents a tax on notional income, I was affronted as a legislator by the concept and could not think of a single principle of tax law that was not totally offended by the surcharge concept. I also made the point that the tax in its application and concept was so incredibly complex that it was my guess that the administration cost would consume much of the revenue.

That was the formal assessment I made and the description I used when I was being recorded. However, when I was not constrained by *Hansard*, I was inclined to descend to much more earthy terms. My description on some occasions would have done a bullocky proud. My passion was well known by my colleagues, particularly my federal colleagues. Every time one of my federal colleagues had the misfortune to meander across my path they got an earful on the stupidity of the surcharge. It was very little consolation that not too many of them demonstrated they understood the implications of the surcharge. I know that is hardly a defence.

My point is that the National Party expected this bill. In fact, I argued when the Superannuation Acts (Amendment) Bill was debated in this place in May last year — a bill that was designed to at least soften the unfair impact of the surcharge on members of our defined benefits schemes — that we should extend the boundaries of that bill to include and accommodate the pensioners under our constitutionally protected schemes, such as judges. Indeed, I argued that the impact on the defined benefits schemes was incredibly unfair and spent some time demonstrating the components of that unfairness. But I also maintained at that time, as I do today, that the impact on the constitutionally protected schemes was even more

unfair, grotesquely unfair, if that were possible. I shall explain why I made that assessment when I get to the individual features of the bill a little later.

The point I make here is that the National Party decided to support the bill. Indeed, it acknowledges that the bill is quite clever in the way it has been framed, and commends the officers who have ploughed through some very complex concepts indeed and fashioned the compromise that is now before us. But the National Party supports the bill with little relish. Indeed it decries the need for it because the bill does not overcome the fundamental problems created by the surcharge; it provides but part relief, and certainly does not put the problems behind us. Indeed in one context it effectively institutionalises the surcharge, and from my point of view that means we are tacitly perpetuating bad law. It also means from my personal point of view that a campaign in which I was heavily involved has proven ultimately to be unsuccessful.

The assessment of the bill at the National Party table was that it is another mongrel child of the federal government's ill-conceived surcharge legislation. We know there is another child on the way, and that it, too, is a mongrel and will cost the Victorian public purse very dearly. I shall return to that a little later, as well.

I want to step back in time for a moment to describe the genesis of the bill and why I am personally so unhappy with the situation confronting us today. I start with the general acknowledgment that the cost of providing for the senior members of our community today represents a huge demand on public resources. However, I hasten to point out that we should be rejoicing to the extent that that problem is growing exponentially through improved life expectancy. If we had been having this debate 100 years ago the male members of the community could have expected to live for an average of 48 years and females for 56 years. Now, 100 years later, the life expectancy for males in our community is 79 years and for females, 86 years. Those increases of 31 and 30 years respectively have been made possible through advances in nutrition, medical services and technology. That is fantastic, and as I said, we should rejoice in it.

**Hon. C. A. Furletti** — The older you get the more fantastic it is!

**Hon. R. M. HALLAM** — Thank you, Mr Furletti. We will add that to the record. Thank you very much!

At the same time as the number of elderly is increasing the reality is — it follows automatically — that in relative terms the number of taxpayers is decreasing, so there is a greater demand falling on an ever-declining percentage of the population. If we have a problem today brought about by improving life expectancy, imagine the extent of that problem in the future when today's projections really kick in! The prospect of the impact on public finances is pretty daunting. That is my first point.

My second point goes to the acknowledgment across the political spectrum that at least part of the answer to this conundrum we face is that we should have more people providing for their own retirement, and that the concept of superannuation is of critical importance. Indeed we would all agree with the notion of statutory superannuation. The facts are that today we expect that Australian employers will contribute 9 per cent of each employee's salary to a scheme in favour of that employee and face the prospect that in the foreseeable future that will increase to something like 15 per cent. That is the world we face.

All parties pay lip-service to the importance of superannuation, and we all agree that it makes sense to entice people to provide for their own future. I hope we would all agree that it makes good economic sense to offer incentives for them to do so, particularly in the longer term, when it will take the pressure off the public purse, and that there is no argument about the logical solution to the problems confronting us in a public policy context. My concern is that although that is what we hear it is quite different from what we see.

Politicians of all persuasions acknowledge the importance of superannuation, but what do they do when they get control of the national economic levers? It appears to me they do the opposite, and it makes me as mad as hell. It is not restricted to one side of politics, because the surcharge — the mongrel child I described a moment ago — was brought in by a conservative government, and that makes me even madder. Instead of saying, 'We should offer greater tax incentives to those who are prepared to forgo income today to provide for their own retirement in the future and to that extent not represent a future burden on taxpayers', consecutive federal governments have actually wound back the tax advantages that previously applied.

The problem in the longer term is that, notwithstanding the public policy realities, federal governments have too often been seduced by the prospect of picking up some handy revenue by imposing a tax on superannuation to the point where today there is virtually no net tax incentive to attract individuals to provide for their own futures. Irrespective of what is said about the importance of superannuation, the reality is that there is virtually no net incentive. Any tax consultant in town

worth their salt will tell you that the extent to which they can work their way through the myriad tax complications, the net effect in most cases is at the margin. We have reached the stage where in my view we should expect the average Australian to say in respect of superannuation, 'Why would you bother?'. That is a very sad state of affairs.

In broad terms the tax structure today means that there is a 15 per cent penalty on employer contributions going in, then there is a 15 per cent tax on the earnings of the fund and then there is a 15 per cent tax at the point of exit. I know there are some intricacies as to how those taxes affect individual cases, but across the board it means that the tax on superannuation is getting very close to the top marginal tax rate. I know that pensioners get some advantage, in that there is a lesser burden on the pension to the extent that it is derived from their after-tax contributions. However, to the average person in the street that is miles down the track, way in the future, and the incentives up front are being wound back and have been wound back over the past few years. There is a whole industry out there screaming about the extent to which the tax treatment of superannuation is counterproductive.

As a community we should already be expecting to run into a haymaker, and on top of all that along comes this latest attack in the form of the surcharge. It is an absolute gem. I do not know who came up with the policy initiative in the first place. I used to hope I would come across that person. I will say that they could not have spent too much time working out the practical implications of the surcharge and its full effect. However, it is a fact of life that on 20 August 1996 the federal Treasurer, Mr Costello, announced that a surcharge of 15 per cent would be applied to employer superannuation contributions for high-income earners.

A high-income earner was defined as anyone with a taxable income of $70 000 or more for the 1996–97 financial year. That surcharge was to be applied progressively across the range of taxable income — that is, from 1 per cent at $71 000 of taxable income to 15 per cent at $85 000 of taxable income and beyond. However, significantly that surcharge applied to the total of the employer's contribution notwithstanding the fact that it may have been that very contribution that took the taxable income beyond the threshold — another concept that defies description in terms of taxation equity. That is the initiative at the root of the bill before the house. While the figures have been indexed and increased since, that is the only change that has been made to the surcharge.

I recall that two rationales were commonly cited at the time the surcharge came in. The first was that it was assumed that the concept of superannuation was being abused by those in our community who were better off and that only those at the top end of the income range had the opportunity to convert part of their salary package to superannuation and thereby minimise the effect of taxation. I dispute that because, as I have already said, it is pretty clear to those who do the sums that the tax advantage is marginal when it comes to converting salary to superannuation.

Even leaving that and the concept that we should be trying to encourage people to take up superannuation to one side, in my view there is another very bad misconception — that is, we assume the income remains static across the earning life of the individual. In other words, the implication is that someone will be either wealthy or poor for the entirety of their life. We know that that is not the case. There are plenty of examples of that.

In the early years of marriage the things that most confront the weekly budget are the mortgage on the house and the cost of raising and educating children. Even though people in those circumstances may want to put income away in the form of superannuation, they simply cannot afford to. They might support the concept but simply be denied the opportunity to do it. It is not uncommon in those circumstances that when the mortgage is paid off and the children have flown the coop, so to speak, the income miraculously improves. I speak from experience. The notion that with a surcharge we are knocking down just people who have the chance and the luxury, if you like, of being able to convert salary to superannuation is naive. It is terribly simplistic and does not acknowledge the reality in our community.

The other rationale put forward at the time was that, being a surcharge, it got around the Prime Minister's commitment that there would be no new taxes. I am not sure whether that does anybody an injustice, but it was part of the public debate at the time. If that was the rationale that attracted the federal government to it, it was frustrated, because when the bill went to the Senate it demanded that the title of the bill be changed to exclude the word 'surcharge' and include the word 'tax'.

It is not surprising that when the surcharge legislation became publicly available it evoked a hostile public reaction. For many people it meant a substantial increase in tax. It is also not surprising that it was greeted as a retrospective change of the rules. I

understand absolutely why people felt hurt, why to them it appeared to be a change of the rules.

I understand that partly because of the experience the incoming Kennett government faced in 1992. It became obvious when the new government confronted the reality of the massive unfunded liability of public sector superannuation — something like $19 billion on the first balance sheet — and the knowledge that it would cascade terrifyingly in front of us that the then government had to do something about superannuation. One of the things the then government determined to do was to shift away from the concept of defined benefits and take up the concept of accumulation. That was done for a variety of reasons, not the least of which was that all future governments of any persuasion would be required as a matter of course to fund the liability as it arose and could no longer put off the evil day.

In any event, the Kennett government took fundamental decisions about Victorian public sector superannuation schemes. The point I make is that the first rule, whether we enjoyed it or not, was that it was not possible to change the existing entitlements of members. The concept was that if you took a job with an employer under the contract at that time, the contract stood for the duration of the employment contract. It caused the then government some heartburn, but it is not a bad principle. In other words, existing members should be entitled to enjoy the features of the scheme that they entered until they exited the scheme, perhaps years down the track, at the end of their working lives.

Even if the then government had been tempted to change those rules it could not have done so because of the rule book written in Canberra. The same federal government that wrote that rule book later imposed the surcharge. In my view it changed the rules retrospectively — it shifted the goalposts — and on that basis I was justified in being cross about the policy.

As the then Minister for Finance I was responsible for public sector superannuation. I was involved in the debate and registered my concern about the change of rules, but I became even more hot to trot when I discovered the impact the surcharge had upon defined benefits scheme members, and there were many of them across the public sector. I admit I had a marketing problem because members of Parliament fell into that category. It made life fairly difficult at the time. When it became clear that it impacted on those who, through no fault of their own, had taken membership in a defined benefits scheme, it set the hairs up on the back of my neck immediately.

The reason for my distress was that while members of accumulation schemes may have resented the new tax, and they were justified in that, at least the extent of the employer contribution on their behalf was identifiable in dollar terms. The member could understand what the employer's contribution was each year on which the surcharge would be applied. There was no debate; it was a matter of fact. However, under the definition of defined benefits, in which many public servants were captured, the employer contribution could only ever be determined at the point of exit — that is, when the entitlement matured at resignation or retirement. The calculation of the annual contribution over the term of employment can only ever be an actuarial estimate, and one that relies upon a range of assumptions, some of which may be right but some of which may be totally wrong.

To top it off, there was no provision for any surcharge imposed erroneously, in excess, to be clawed back. It went into the great black hole called the Australian Taxation Office. I said then, as I do today, that to impose a tax on this notional contribution and call it income is incredibly unfair. I will not change my view. I offer no apology for that description. There was a whole range of further complicating issues, such as the rate of interest applying to the accumulating debt in the name of the member and many other imponderables.

A compromise was fashioned as a part remedy in the form of the Superannuation Acts (Amendment) Bill. I refer to the debate that took place on the bill on 25 May last year. I again put on the record that the bill that came before the house on that occasion had my personal thumbprint on it even though the change of government had taken place. I pay tribute to the then Minister for Finance, the Honourable John Brumby, for his willingness to allow me to be involved.

The Superannuation Acts (Amendment) Bill allowed defined benefits scheme members to defer the accumulated surcharge at the point of retirement. It put a cap of 15 per cent on the net impact of the surcharge, which was a massive breakthrough, and it became a reasonable compromise, because under the rules of those schemes members had the ability to convert sufficient of their pension entitlement into a lump sum to pay the surcharge debt. It did not overcome the fundamental problem, but at least it gave members the opportunity to respond in a dignified way.

That left members of constitutionally protected schemes, judges and others as the last ones who required accommodation through some so-called remedy. The fundamental complication governments had to acknowledge was that in these cases there is no

right to commute a pension entitlement and, thus, no capital pool at the end of the term of employment from which to pay out the accumulated debt. So a judge who has served faithfully on the bench for, say, 15 years might expect to have incurred an accumulated surcharge of $300 000 — maybe even more, based upon the views of the actuaries — and have no ability to pay that amount at retirement when it would fall due as a lump sum, within three months of the assessment being received.

Worse still, if that judge had the double misfortune to die and thus extinguished the pension right, the debt would be handed on to his or her beneficiaries. I am sure no-one had thought of those implications. I cannot believe anybody would have been cruel enough to proceed with the surcharge bill had that been known at the time it was introduced in the federal Parliament.

In simple terms, the pension system we apply to our judges today is based upon a minimum retirement age of 65 years and a maximum retirement age of 70 years, and those judges become eligible for a life pension equivalent to 60 per cent of the salary applying to equivalent judges after 10 years of service, and a surviving spouse is entitled to five-eighths of that pension for life. But the critical point is that there is no entitlement to commute any part of that entitlement notwithstanding that the surcharge debt has been accumulating at the rate of 15 per cent of the actuarial value of the employer's notional contribution since 20 August 1996. It is an absolute disaster, particularly given that the entirety of the judge's pension becomes fully taxable when it is received. There is no set-off in any form — our judges pay a tax on every single dollar they receive in the form of pension.

The bill changes those rules. Firstly, it restricts the impact of the surcharge to 15 per cent of the pension entitlement accruing from 20 August 1996. That overcomes the question marks about the relativities of interest accruing on the accumulating debt as opposed to the increase in salary over time and so on. All of those issues are put to one side because the cap applies at the point of exit. That is a good place to start.

Secondly, we allow a judge to commute sufficient of his or her pension entitlement based on actuarial assessments — so we acknowledge that it is a guess; I hope the actuaries will forgive me, but it is a guess — to pay off the accumulated surcharge debt.

Importantly, that can be done within two months after receiving the assessment. Thus pensioners are given time to get their affairs together and to make an assessment away from the excitement of retirement. They can sit down at home and work out their personal finances and make an assessment over a reasonable time frame.

In addition — and this one is also important — judges can elect to commute some of their pension during the currency of their employment. That is critical because it overcomes the problem of their being caught out by premature death. It overcomes the prospect of their untimely death terminating their pension entitlement, yet they would still be confronted with the accumulated debt.

I suspect that all of the judges on Victorian benches, and indeed across Australia — because this legislation is typical of that which has been passed by all the jurisdictions — will elect en masse to reserve the right to commute, even though they might at some time in the future determine that that decision should be reversed. That ability to elect to commute during the currency of their appointment means that they cannot be caught in the scenario that represented the worst possible circumstance.

**Hon. W. R. Baxter** — It is a form of insurance, almost.

**Hon. R. M. HALLAM** — It is a form of insurance. It gets to the point where they cannot be caught out if they make the election. They can reverse it down the track, but if they make the election we will not have the horrible circumstance where the pension entitlement is gone but the debt remains. Just as importantly, the bill provides that the spouse or an eligible child who is entitled to a reduced pension can also make the election to commute the pension in respect of a member who has died.

The bill is designed to relieve the worst features of the surcharges that apply to our constitutionally protected pension schemes, but I maintain that it is only ever going to be a halfway house. It does not change the extent to which the surcharge erodes the salary package available to judges and other senior officials.

I go back to my earlier reference to another mongrel child of the surcharge concept: the erosion of our ability to attract the very best people for appointment to the bench. There would not be an argument in this chamber against the fact that that is an important principle. Like the Honourable Carlo Furletti, I know that our best people are not necessarily enticed by a dollar sign alone. I share his view that most people are attracted by the opportunity to serve the community, but we cannot expect that potential recruits would totally ignore the question of the salary package.

I note that the second-reading speech refers to the Supreme Court annual report of 1999 and the public comments of the chairman of the Victorian Bar Council, Mr Mark Derham, QC. The problem we have is that the federal government surcharge legislation has just wiped a cool 15 per cent from the salary package of all of our judges and senior officials. That must have some impact upon future recruitment.

If we had pitched the salary package just right in the previous circumstances — and a judicial remuneration tribunal was established to do precisely that — it follows that we will have to up the ante by at least 15 per cent just to stand still. That is irrefutable. So what we have is an effective cost shift. Some 15 per cent of employers' contributions will be subject to surcharge and will go directly to the Australian Taxation Office, and the equivalent cost will ultimately fall upon Victorian taxpayers. It is a direct cost shift.

One must remember that this is not just in respect of the constitutionally protected schemes, the ones we are dealing with today. Even if it were just our judges, it would not be chickenfeed. However, it is not just our judges; it is every superannuation scheme across the public sector. If it is not just chickenfeed for the judges, it is even less like chickenfeed when one adds in all the other schemes. It will amount to many millions of dollars, and there are some interesting side issues in that respect.

The first side issue is that the Judicial Remuneration Tribunal is itself currently undergoing a review. I regret I was unable to get the terms of reference for that review in time to report them to the chamber; I am not even sure that the terms of reference are public at this stage. I would be interested to learn whether the Judicial Remuneration Tribunal review is designed in part to see whether we should be expanding its authority to look not only at salary but salary package. I suspect if it does not do that it should, because we have a massive impact in the form of a tax implication. My argument is that we should be prepared to look at what we are offering by way of total package to those we want to attract to the bench.

The second side issue is the announced intention of the Judicial Conference of Australia to initiate a representative action challenging the commonwealth legislation on the basis of its constitutionality, given its arguable retrospectivity and discriminatory impact. Honourable members will know that while I was trustee of the Victorian parliamentary scheme I was also keen to undertake a similar challenge. I am not sure where it has got to now because I am no longer a member of that august body, but I believe the rationale is exactly the same. I am unable to report where that challenge by the Judicial Conference of Australia has got to because I could not catch up with the secretary in time to report to the chamber. However, I understand it is on foot and I look forward to it with some interest because it may well be that the whole issue, which is addressed by the bill, becomes superfluous in that the underlying concept of the surcharge is rolled. That would be a good outcome, in my view, given the impracticality and unfairness of its application.

The third side issue, which I believe is absolutely delicious — —

**Hon. Bill Forwood** — Delicious?

**Hon. R. M. HALLAM** — Absolutely delicious, Mr Forwood. I am pleased to have your interjection and your involvement. I am pleased to learn you are actually listening, notwithstanding that you are not in your place!

The side issue of which I speak is the question of where we are going to find a judge who is qualified to sit on the case, to resolve whether the impact of a surcharge on the judiciary is constitutional or not.

For those reasons the National Party is happy to support the bill in that it provides at least some relief to our constitutionally protected pensioners. I acknowledge that that is the last group to be disadvantaged by the superannuation surcharge. However, I reinforce that National Party members are anything but happy with the decision taken by the commonwealth Parliament, which represents the genesis of the bill. The surcharge is both ill conceived and ill considered, and I would like to see it reversed, even if it is replaced by an adjustment of the marginal income tax rates across the state.

Victoria needs to be able to attract and retain the best possible people as judges. So on the grounds of fairness to today's judges and on the grounds of our ability to attract the best possible candidates in the future, this bill becomes an important initiative. I commend it to the house.

**Hon. JENNY MIKAKOS** (Jika Jika) — I am pleased to speak in support of the bill, and I am pleased to follow the Honourable Roger Hallam, who made a useful and knowledgeable contribution to the debate. Like many other pieces of legislation coming before the house, the bill is intended to rectify the imposition of a new federal tax. Previous speakers have already explained that the bill is intended to deal with the superannuation surcharge imposed by the Howard government. The bill aims to rectify what would otherwise be an unfair situation for members of the

Victorian judiciary, and other statutory appointees such as the Director of Public Prosecutions, the Chief Crown Prosecutor and governors of the state.

I do not want to go into great detail on the content of the bill because previous members have already explained how it is intended to operate. When the superannuation surcharge was first introduced in 1997 there was a huge outcry from members of the judiciary, and in particular the criticism levied was that it constituted an infringement on the separation of powers and was an unfair attack on the salary package offered to members of the judiciary.

I agree with the Honourable Roger Hallam that people seeking to take up appointments to the judiciary would take into consideration the salary package being offered. However, I do not believe that would be the primary consideration, as people taking up such appointments clearly take a considerable salary drop and are motivated by a desire to serve the public. It is clear that potential applicants for judicial appointments have been discouraged from applying for such positions because of the unfair impact the surcharge could have on their pension entitlements on retirement.

In his second-reading speech the Attorney-General noted that the 1999 annual report of the Supreme Court referred to the impact the surcharge legislation was having on the capacity to recruit suitable talent to the judiciary, as did a Victorian Bar Council report. Clearly there is a great deal of concern among the legal profession and in the judiciary that the impact of the superannuation surcharge is discouraging talented people from applying for appointments.

The legislation introduces a method whereby constitutionally protected officers can elect either while they are in office or on retirement to commute the amount that would otherwise be payable on retirement. As the Honourable Roger Hallam has capably explained, if they were not able to do so, on retirement they would have to pay a huge amount of taxation, representing taxation on future pension entitlements. As honourable members are aware, on retirement such officers receive a pension, not a lump-sum payment, and on being assessed could face a huge tax bill they may be unable to pay.

I support this legislation. It seeks to rectify a great injustice imposed by the Howard government. I wish it a speedy passage.

**Hon. P. A. KATSAMBANIS** (Monash) — I also speak in favour of the Judicial and Other Pensions Legislation (Amendment) Bill. It will ensure that judicial pensions are not taxed punitively as a result of changes to the superannuation taxation regime in Australia.

Following the contribution from the Honourable Roger Hallam there is not a lot I can add to this debate. He should be commended not just for his speech today but more for the work he has done in this place and in other capacities to ensure that the worst elements of this punitive tax regime are not visited on people who receive pensions similar to judicial pensions and those under defined benefits schemes. I think this place and the Victorian public owe him a great deal of gratitude and should offer him sincere thanks for the work he has done.

Anyone who knows me will know my attitude to taxation generally. It is no great wonder I would support any measure that alleviated the impact of taxation. So far as judicial officers are concerned, I think every speaker has referred to the fact that people take many considerations into account when they accept public office, be it as parliamentarians or judges, and only one is monetary. At the same time I do not think anyone expects judicial officers to incur a penalty when taking on their public appointment. This bill will correct that problem by ensuring they are not penalised.

The bill is a good outcome to a complex situation. I applaud and support the measure. I trust that in future when considering superannuation legislation federal legislators will take into account the many valid points Mr Hallam made in his speech about the requirement for people to fund their own retirement, and more so, about not considering retirement funding as some sort of linear equation. I think he was making the point that it is impossible to have linear funding in someone's lifetime, and that as they move through their life there will be peaks and troughs to take into account their personal circumstances. I hope the legislators and bureaucrats in Canberra take that into account in the future. I commend the bill to the house.

**The DEPUTY PRESIDENT** — Order! The question is that the bill be now read a second time. I am of the opinion that the second reading of this bill requires to be passed by an absolute majority. I ask the Clerk to ring the bells.

**Bells rung.**

**Members having assembled in chamber:**

**The DEPUTY PRESIDENT** — Order! The question is that the bill be now read a second time. I am of the opinion that this bill requires to be passed by an absolute majority. In order that I may ascertain whether

the required majority has been obtained, I ask those members who are in favour of the question to stand where they are.

**Required number of members having risen:**

**Motion agreed to by absolute majority.**

**Read second time.**

*Third reading*

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

That this bill be now read a third time.

I thank the Honourables Carlo Furletti, Dianne Hadden, Roger Hallam — for a very insightful contribution — Jenny Mikakos and Peter Katsambanis, for their contributions to the debate.

**The DEPUTY PRESIDENT** — Order! I am of the opinion that the third reading of the bill requires to be passed by an absolute majority. I again ask honourable members who are in favour of the question to stand where they are.

**Required number of members having risen:**

**Motion agreed to by absolute majority.**

**Read third time.**

*Remaining stages*

**Passed remaining stages.**

**Sitting suspended 1.02 p.m. until 2.12 p.m.**

## QUESTIONS WITHOUT NOTICE

### SRO: relocation

**Hon. M. T. LUCKINS** (Waverley) — I refer the Minister for Industrial Relations to her previous answers on the relocation of the State Revenue Office and 200 jobs to Ballarat. In the case of those employees who are offered involuntary targeted separation packages, is it not a fact that under the Public Sector Management Act their jobs cease to exist, and therefore, is it not a fact that the government cannot abolish a job in Melbourne and then offer it in Ballarat?

**Hon. M. M. GOULD** (Minister for Industrial Relations) — I reiterate once again, for about the fifth time, the government's position with respect to the possibility of the relocation of certain parts of the State Revenue Office to Ballarat. As I have indicated, a feasibility study has been undertaken in cooperation with the union. That is in stark contrast to how the previous government operated. The Bracks government is committed to having options open to people if the relocation to Ballarat does take place — that is, there will be a relocation to Ballarat, with assistance; redeployment within the public service; or a redundancy package offered to those who do not take up the other two options.

### Consumer affairs: multilingual information

**Hon. KAYE DARVENIZA** (Melbourne West) — Will the Minister for Consumer Affairs inform the house what the Bracks government is doing to assist Victorians from non-English-speaking backgrounds access information on their consumer rights and responsibilities?

**Hon. M. R. THOMSON** (Minister for Consumer Affairs) — People from non-English-speaking backgrounds are one of the communities most vulnerable to exploitation and have a lack of knowledge about their rights and responsibilities as consumers. The Bracks government is committed to ensuring that these people have access to information in their own languages to enable them to ensure they know what their rights are when conducting business and acquiring commodities and services.

The government has introduced three new initiatives. The popular *Better Car Deals*, which I launched in April, has now been translated into Arabic, Chinese and Vietnamese for those communities and will be distributed through their peak community organisations and promoted through the ethnic-specific radio and press.

The second initiative is *Settling In — Renting a Home in Victoria*, which was produced by Adult Multicultural Education Services with joint funding from Consumer and Business Affairs Victoria and the Office of Housing. It is a teaching resource. It is being used by teachers who are teaching English as a second language. It deals with housing and tenancy issues and gives useful information on what people need to look for when renting a house. Last but not least are the 12 consumer fact sheets, which cover issues such as buying a home, shopping tips and dispute resolution.

**Hon. M. A. Birrell** — Shopping tips?

**Hon. M. R. THOMSON** — Shopping tips.

They are available in 12 community languages. They are being geared not only to those in the community who have been in Australia for some time, but to giving

new arrivals helpful hints on how to settle into Australia.

## SRO: relocation

**Hon. N. B. LUCAS** (Eumemmerring) — My question is for the Minister for Industrial Relations. Given the proposed move of the State Revenue Office to Ballarat to save $1.38 million in salaries, is the government pursuing an industrial relations policy to make regional and country workers the poor citizens of Victoria by deliberately paying them less to work in Ballarat than for an identical SRO job in Melbourne?

**Hon. M. M. GOULD** (Minister for Industrial Relations) — A feasibility study that sets out a number of options has been undertaken. That is exactly what it is, a feasibility study. We have done that in consultation with the union and will continue to do that in consultation with the union. The question has to be asked of the opposition: is it interested in making the public service more efficient or not?

*Honourable members interjecting.*

**Hon. M. M. GOULD** — We are committed to growing the whole of the state — —

*Opposition members interjecting.*

**The PRESIDENT** — Order! I ask opposition members to desist so that I can hear the minister's response.

**Hon. M. M. GOULD** — The government is committed to growing the whole of the state and improving the efficiency of the public service. It will do that in consultation with the public service unions, not like the opposition.

*Honourable members interjecting.*

**The PRESIDENT** — Order! If we move through question time in an orderly way all the questions will be asked; otherwise they will not.

## Youth: round-table program

**Hon. JENNY MIKAKOS** (Jika Jika) — Given the Bracks government's stated commitment to listening to the concerns and issues affecting young people, will the Minister for Youth Affairs explain what he is doing to listen to young people from culturally and linguistically diverse backgrounds?

**Hon. J. M. MADDEN** (Minister for Youth Affairs) — As Minister for Youth Affairs I have the good fortune to move across the state and meet with young people, many of whom are from multicultural communities. I am impressed by many of the young people I meet who have been born overseas, may not necessarily speak English at home, may have also suffered upheaval and loss and continue to experience marginalisation as a result of their cultural attributes.

One of the government's priorities has been to listen to the voices of all young people. On a number of occasions I have spoken about the government's youth round-table forums initiative which has given the vast majority of young people a tremendous opportunity to express their opinions. However, it has been identified that the forums can also present difficulties for recently arrived migrants, refugees and others from culturally and linguistically diverse backgrounds due to the inadequacy of their language skills, their lack of self-confidence and their ability to gain access to various forums through a lack of community connectiveness. We have noticed and appreciated that this is a significant disadvantage for those young people. As well, they have often been exposed to other difficulties such as surviving torture and trauma in their own countries, long periods of disruptive schooling, resettlement within fragmented family units and, unfortunately, continued discrimination.

We have funded the Centre for Multicultural Youth Issues in partnership with the City of Maribyrnong which has put together a leadership program to bring together a number of young people from culturally and linguistically diverse backgrounds. The leadership program leads those young people through a range of issues so that they may go out to their communities and work with their young people. They also have the great chance to relate the common issues they feel are significant. I had the good fortune to meet with those young people and they expressed openly and profoundly to me — —

*Honourable members interjecting.*

**Hon. J. M. MADDEN** — I can understand why opposition members are not interested in these issues; that is why they are in opposition!

The key issues those young people related to me were based around employment opportunities, discrimination, racism and training opportunities, as well as access to sport and recreation opportunities. A key area was separation from their family members who may be still in their country of origin. They were extremely frank and candid and I compliment those young people on their ability to overcome a range of difficulties and express what they believe is important. That gives a great opportunity to continue the good

work we are doing with young people and I congratulate those — —

*Honourable members interjecting*.

**The PRESIDENT** — Order! I put the house on notice that question time will finish at 2.33 p.m. unless the house behaves better than it is at the moment. The minister concluding his answer.

**Hon. J. M. MADDEN** — I acknowledge and compliment the project officers who worked closely with the group from the City of Maribyrnong, those from the Centre for Multicultural Youth Issues and also those young people I met who spoke with extreme frankness and have overcome insurmountable odds.

## Youth: employment line and web site

**Hon. P. R. HALL** (Gippsland) — In April last year the Minister for Youth Affairs delivered a ministerial statement in which he promised the establishment of a youth employment line and a youth web site. Given that it is more than 12 months since those commitments were made, will the minister assure the house that both the employment line and the web site are up and running, and if so — perhaps in the way he is accustomed — he can give honourable members the telephone number and the web site of those two communication facilities?

**Hon. J. M. MADDEN** (Minister for Youth Affairs) — I believe the youth web site has been established and linked to our Freeza web site.

**An Opposition Member** — What's the address?

**Hon. J. M. MADDEN** — While I do not have the web site address in front of me I am happy to give that information to the honourable member. When opposition members want the web address they ask for it, but when I give it to them they do not take it down. That shows the ignorance of opposition members in again conducting themselves like hooligans on the terraces.

The youth web site was established and the government is extending it so it links with the respective government departments. We will have a single web site that is a youth forum. Then young people can access all government services and site programs across government; they can glean the information from that web site.

As to the employment line, I believe it is being established. While it does not sit immediately in my portfolio, I am happy to relay that request to the Minister for Post Compulsory Education, Training and Employment in the other place and have that information directed to the honourable member.

*Opposition members interjecting*.

**Hon. J. M. MADDEN** — Members of the opposition can yell as much as they like. As I was saying before I was rudely interrupted by the opposition, if the honourable member would like the phone number, I can send it to him. I can make sure he has the phone number.

**Hon. P. R. Hall** — I ring 1800 123456 and I get no answer. It doesn't work.

**Hon. J. M. MADDEN** — He seems to know a whole set of numbers. If the honourable member already has that number, I need not forward it to him.

## Industrial relations: employee entitlements

**Hon. T. C. THEOPHANOUS** (Jika Jika) — My question to the Minister for Industrial Relations relates to the payment of employee entitlements when a business becomes insolvent. What progress was achieved on the matter at last week's meeting of the workplace relations ministerial council?

**Hon. M. M. GOULD** (Minister for Industrial Relations) — The Bracks government has been clear about its position on how best to protect employee entitlements in Victoria when an employer is unable to pay. The government has consistently supported a national employee entitlement scheme run by employers, not by taxpayers, that provides full payment of employee entitlements. Unfortunately that model has not been adopted. Instead the federal government has set up an inadequate and flawed employee entitlement support scheme that has not been taken up by any state, Liberal or Labor.

The scheme is inadequate because it does not protect the full entitlements employees are owed if through no fault of their own their workplaces cease to exist. It is flawed because what has to occur under the scheme proposed by the federal government is that taxpayers must meet the costs. Since February 2000, when the federal scheme was established, the federal government has consistently refused to consider any other models for appropriate schemes that address the issues, and all state governments had put such models to the federal government.

At last Friday's meeting we had a breakthrough with the new federal minister. I, along with other Labor state industrial relations ministers, requested that the federal

government re-examine the appropriateness of the scheme. I am pleased to inform the house that the federal minister agreed with that and made a commitment to review the scheme. Officers from the federal government and the various state governments will meet to examine how to improve the protection of employee entitlements on a without-prejudice basis.

I hope that signals that the federal government is finally prepared to admit its scheme is inadequate and fundamentally flawed and that the review will give us all an opportunity to ensure that employee entitlements are protected.

## Freeza program

**Hon. A. P. OLEXANDER** (Silvan) — I refer the Minister for Youth Affairs to the Freeza program, a Kennett government initiative, which the minister has described as successful in delivering drug and alcohol-free entertainment to more than 130 000 young people in Victoria. The minister should be acutely aware that the recent state budget has slashed funding for the program by a massive 50 per cent, resulting in a budget shortfall of $1 million in the coming financial year.

I ask the minister: is it not a fact that in your budget preparations you sought to maintain program funding at current levels of $2 million a year but because you failed to demonstrate the value of Freeza your expenditure framework was rejected by Treasury? Will the minister assure young Victorians that, despite his failure to justify expenditure on that crucial youth program, Freeza will not collapse in six month's time?

**Hon. J. M. MADDEN** (Minister for Youth Affairs) — I have spoken on a number of occasions about the fine work the government is doing for young people. I have also spoken on a number of occasions in this house on what a fine program Freeza is. The honourable member may not be conscious — and I reinforce what we have done with Freeza — of the fact that in our first year of government Freeza funding was $1 million. We increased it in the following year to more than $2 million. This year we have extended that funding for a further six months, which is the $1 million.

The extension for that six months is while the youth strategy, which I have talked about on numerous occasions — and I remind members of the opposition who may not have seen the youth strategy discussion paper — —

**Hon. M. A. Birrell** — It will not take long to read.

**Hon. J. M. MADDEN** — This is the plain English version, Mr Birrell. You may want to read it.

**Hon. A. P. Olexander** — On a point of order, Mr President, the minister is obviously evading the issue. The crux of the question is the future of Freeza and whether the program will continue beyond six months, which is of great import to young people in Victoria who for many years have benefited from the program. I submit to you, Sir, that the minister should answer that question because it is the question that young Victorians care about; not a youth strategy document.

**The PRESIDENT** — Order! The minister can answer the question in any way he likes but ultimately he should address that particular question. We will allow the minister the chance to do that.

**Hon. J. M. MADDEN** — As part of the establishment of the Office for Youth and the development of the youth strategy we received more than 150 submissions from which we will develop a comprehensive youth strategy which will include the Freeza program and an extension of Freeza.

I emphasise today that of those 150 submissions, many of which were from Freeza providers, outlining how significant the program was — and I wish to reinforce that — none, I believe, came from the opposition! I keep saying that the opposition is not interested in young people. I repeat: Freeza funding will be extended but it will be done in line with the development of the youth strategy. That strategy will bring together a number of programs to provide the best and most effective way of enhancing and developing programs and reinforcing the value of young people in this state, which the opposition when in government was not able to do.

## Consumer affairs: envelope stuffing scheme

**Hon. R. F. SMITH** (Chelsea) — I ask the Minister for Consumer Affairs to inform the house of any recent consumer scams that have come to her attention of which consumers should be aware.

**Hon. M. R. THOMSON** (Minister for Consumer Affairs) — Consumers need to be alerted to a new devious tactic in play in the community to separate consumers from their money, which is known as an envelope stuffing scheme.

Honourable members may have had experience in their political careers with envelope stuffing — most of it voluntary — but this is serious. Advertisements are placed in the self-employment opportunity sections of

newspapers asking people to supply money in order to gain access to envelopes and jobs. The money is sent to a post office box or, in some cases, to an address overseas which is not easy for those in our jurisdiction to track, but the envelopes do not arrive and there is no way of tracing the individuals who have placed the advertising. They are losing considerable sums of money, or are apt to lose considerable sums.

The Office of Consumer Affairs is chasing the information. We have located one of the Victorian promoters who we understand came on to the scheme through an operation which started in America, and the operator now admits to having lost money. We are looking to prosecute and follow where possible incidences occurring and based in Victoria. I ask honourable members to make their constituents aware of this scam because we cannot track down the overseas operations.

## Waverley Park

**Hon. I. J. COVER** (Geelong) — I direct to the attention of the Minister for Sport and Recreation a comment the Premier made on radio 3AW on 3 April that, 'We have to admit we have lost on the scheduling of AFL games at Waverley Park'. On 11 April, eight days later, the minister stated in a letter he wrote to a Burwood man:

> I can assure you that the Labor government is committed to keeping AFL football at Waverley Park. Both the Premier and myself are encouraging an environment where the Australian Football League … utilises Waverley Park as an AFL venue.

In that light, I ask why the minister is writing letters that directly contradict the Premier.

**Hon. J. M. MADDEN** (Minister for Sport and Recreation) — As I have expressed on a number of occasions, the government has continued to work tirelessly in trying to get games at Waverley Park. The AFL will not budge from that position.

**An Honourable Member** — That is not what the letter states!

**Hon. J. M. MADDEN** — It is interesting how vocal honourable members can be in opposition, but were they vocal about this issue when in government? Not one bit!

*Honourable members interjecting.*

**The PRESIDENT** — Order!

**Hon. J. M. MADDEN** — Where were you?

**The PRESIDENT** — Order! The minister will sit down. He has been here long enough to know that once the Chair is standing, he should sit. I suggest that the minister not provoke the opposition. We can get through this question time if the minister directs himself to the question that has been put to him.

**Hon. J. M. MADDEN** — As I said, Mr President, it is interesting how vocal they are. It is interesting — —

**The PRESIDENT** — Order! The minister will sit down. The minister has finished.

## Play it Safe by the Water campaign

**Hon. G. D. ROMANES** (Melbourne) — My question is also to the Minister for Sport and Recreation. Given that — —

**Hon. Bill Forwood** (to Hon. J. M. Madden) — You're an absolute fool, and everyone can see it!

**Hon. J. M. Madden** — I raise a point of order, Mr President.

**The PRESIDENT** — Order! It is too late for points of order.

**Hon. J. M. Madden** — It is a point of order I missed before. On a point of order, Mr President, an honourable member is making remarks across the chamber to which I take offence. I ask him to withdraw those remarks.

**The PRESIDENT** — Order! I was busy calling the next question and did not hear what was said. Whether it is in the minister's interests to repeat the words he is objecting to is up to him.

**Hon. J. M. Madden** — I will not repeat them, but I believe Mr Forwood appreciates what he said, and I ask him to withdraw.

**Hon. M. A. Birrell** — On the point of order, Mr President, given that the minister today yelled out that all opposition members were hooligans, I ask him in the spirit of allowing normal debate in this chamber to reflect on whether he wants to lower the bar so far that we get withdrawals of every comment. If he does, we will have withdrawals every 5 minutes on minor comments like the one on which he has just raised a point of order.

It is not in our interests to have withdrawals on the normal minor politically robust comments. If we are going to get withdrawals on such comments, he might want to reflect on whether he wants to call 'Hooligans'

across the chamber, as he did before. I suggest we just leave it as it is.

**The PRESIDENT** — Order! For a matter to be withdrawn, firstly, it helps if the Chair hears it, but secondly, it has to be objectively offensive. I did not hear the remark as I was calling the next question. The minister might be happy, having made his point, to leave it at that. Alternatively, he may put on the record what was said and I will rule on it.

**Hon. J. M. Madden** — If it means having to put it on the record, I will not repeat it. I believe Mr Forwood knows what the comment meant. If he wants to leave it as it is, that is his prerogative, but I still take offence at the comment.

*Honourable members interjecting.*

**The PRESIDENT** — Order! We have come this far. We may as well finish question time. The Honourable Glenyys Romanes will be heard in silence.

**Hon. G. D. ROMANES** — Given the Bracks government's commitment to safer and improved aquatic recreation, will the minister outline his plans for this important area over the next 12 months?

**Hon. J. M. MADDEN** (Minister for Sport and Recreation) — No doubt members of this house will appreciate the success of the Play it Safe by the Water campaign in recent years. I reinforce how successful that campaign has been and assure the house that the government will continue with a number of initiatives in that program this year.

Those six initiatives are a public awareness campaign, an education and training program, extension of the lifesaving season, identification and development of family-friendly beaches, improved water safety signage and the toddler drowning prevention initiative. The funding allocation for these initiatives is $2.2 million, which will come from the Community Support Fund.

## QUESTIONS ON NOTICE

### Answers

**Hon. M. M. GOULD** (Minister for Industrial Relations) — I have an answer to question 1451.

**The PRESIDENT** — Order! The Honourable Bill Forwood has written to me seeking my ruling in relation to an answer to question on notice 1686 on the testing of fuel and M and C Petroleum at Hoppers Crossing. In my opinion parts (a), (d), (e) and (f) of the question have been answered but parts (b) and (c) have not. I therefore direct that parts (b) and (c) of question 1686 be reinstated on the notice paper.

## LIQUOR CONTROL REFORM (AMENDMENT) BILL

*Second reading*

**Debate resumed from 22 May; motion of Hon. M. R. THOMSON (Minister for Small Business).**

**Hon. BILL FORWOOD** (Templestowe) — It is my pleasure to speak today on the Liquor Control Reform (Amendment) Bill. The bill is before the house today because of commitments the Labor Party gave in its 'Taking care of small business' policy at the last election. It is worth putting on the record what the Labor Party said when it went to the people. It said:

> A Bracks Labor government will immediately and retrospectively close legislative loopholes which allow large retailing chains to accumulate more than 8 per cent of the total number of packaged liquor licences.

It went on to say:

> Labor will also reinstate an 8 per cent limit on market concentration in other areas of retail liquor licensing.

Although that is the start of the process that has led to this bill being debated here today, the first thing that should be put on the record is that the Labor Party is not doing what it said it would do in its promises to the people: immediately and retrospectively close loopholes and reinstate an 8 per cent limit on market concentration in other areas of retail liquor licensing.

Although there is a bill before the house for consideration, let us not make any mistake about the first fact: the Labor Party lied when it took its policy to the people. Its policy was not true then and it is not true now, and the bill does not fulfil the commitments the Labor Party made when it went to the people.

In fact, the Labor Party made some commitments that it could not keep, particularly when it found itself in government. It found itself inheriting a legacy of the Liberal government, which had made a decision — pursuant to its review of national competition policy (NCP) in 1998 and 1999 — that it would protect the 8 per cent law. The former government decided to reject the recommendations of the Storey inquiry and to maintain the 8 per cent law on packaged liquor licences. This was not within NCP guidelines. The new government found that perhaps there might be a fine of $11 million on the state of Victoria because of that.

The coalition government at the time was prepared to wear that, but not the Labor Party. Despite the fact that it had given unequivocal undertakings to immediately and retrospectively do some things to reinstate the 8 per cent limit and close loopholes, it immediately acquiesced to NCP and had another review in an attempt to do two things, one of which was to keep the money.

So what we now have is a circumstance which is very much like that of the gymnastics at the Olympics, because what we have seen from the Minister for Small Business since she assumed control of and responsibility for the liquor industry in this government is a series of pikes, twists, backflips, rolls — you name it, this minister has had more positions on this bill than anyone can imagine. She has manipulated the English language in a way that has been an absolute delight to watch. This minister would have you believe that she is retaining the 8 per cent law.

**Hon. M. R. Thomson** — And we are.

**Hon. BILL FORWOOD** — No, you are not. Honourable members should not be mistaken on this issue. In the Labor Party the word 'retain' means 'phase out'. There is no doubt at all about that. I recall the first thing that the minister did.

**Hon. M. R. Thomson** interjected.

**Hon. BILL FORWOOD** — The minister knows I can quote her remarks at length in relation to this. I remember on 4 September last year the minister put out a press release headed 'Views sought on packaged liquor laws' in which she said:

> An inquiry into packaged liquor licences in Victoria has recommended the … 8 per cent limit should not be removed until there is a mechanism in place to ensure sufficient diversity …

Four days later the minister put out another press release, under exactly the same heading, saying:

> The Minister for Small Business … has welcomed an inquiry … that has recommended the … 8 per cent limit should be retained.

What sort of minister puts out two press releases four days apart, with the same heading but different content? A minister who has been caught out! What were the circumstances under which she was caught out? The opposition received a leaked draft copy of what was originally going to be in the report. Of course that had a set of words in it that said, 'Let us get rid of', and the minister thought she could change the words and make it 'retain'.

The history of this bill is that the minister has found herself trying to defend the indefensible. She is caught between the rock of her own commitments to the people of Victoria and the hard place of competition policy — two different things that left the minister nowhere to go. So what has she done? Initially on 1 March the minister brought to the other place a piece of legislation that was designed to paper over the discrepancies in her two positions. It was designed to close two loopholes which, as she said in her second-reading speech, potentially undermine the operation of the 8 per cent rule.

The minister introduced a piece of legislation to correct the potential undermining of the 8 per cent law in an attempt to go a little way towards fulfilling the promises the Labor Party took to the people. We know the government will not go the whole way but the minister did that much, and I give her credit for it. We know that the minister will phase the rule out in three years time but she made an effort in this area. What happened? The very week that the minister introduced her con legislation — —

**Hon. M. R. Thomson** — Yours was the con in 1998.

**Hon. BILL FORWOOD** — Your legislation is designed to paper over your artificially engendered cracks before you phase out the whole of the law.

**The DEPUTY PRESIDENT** — Order! Through the Chair.

**Hon. BILL FORWOOD** — Before the minister phases out the whole of the law. What happened? The smarties at the big end of town found another way around the law.

**Hon. M. R. Thomson** — They did.

**Hon. BILL FORWOOD** — Yes, they did. We found ourselves in the bizarre circumstance of having a funny bit of legislation with little purpose, other than to try to paper over the cracks I have outlined, suddenly having a serious purpose. That purpose is to stop Woolworths, as I said at the time, thumbing its nose at the state of Victoria. Woolworths thumbed its nose at the minister and I recollect issuing a press release of my own at about that time.

**Hon. B. N. Atkinson** — It is bad form to read your own stuff.

**Hon. BILL FORWOOD** — It is. On 7 March under the heading 'Woolworths mocks minister's liquor legislation' I said Woolworths had made a

complete farce of the Bracks government's proposal and it has. What started off as a joke has ended up being a serious piece of legislation.

It is important that we note that the bill before the house is substantially different from the bill introduced into the other place. The bill introduced into the Assembly was nine pages long before the house amendments dealing specifically with three issues were made. They were to: close the loophole that allowed the use of general licences; close the loophole that allowed for bulk licence applications at the one time; deal with the issue caused by the application in Bright of NG Noodles which established its noodle shop at a petrol station. That was the original intention of the bill. I have made it very clear — as did the lead speaker for the opposition in the other place, the honourable member for Bentleigh, in a very good contribution — that the opposition does not oppose that intention.

The key issue is that since the government introduced its legislation Woolworths has used an unknown provision — unknown to me and I suspect unknown to the minister; the minister is nodding her head — which enabled it to get around the law. I was disappointed with the contribution of the honourable member for Mitcham in the other place in relation to this. In his contribution the honourable member tried to suggest that we all knew about Woolworths' system of purchasing another company and therefore not having to seek a transfer of the licences. He said words to the effect — because I would not quote from the other house — that it beggars belief that in the past the previous minister or her office did not have the foresight to see that this would happen.

The honourable member for Mitcham is the parliamentary secretary to the Minister for State and Regional Development. Frankly, when the former minister and I, having carriage of this issue under the Kennett government, did not know that Woolworths could do this, it is a bit rich for the parliamentary secretary to blame us for not closing a loophole we did not know about at the time.

**Hon. M. R. Thomson** — Your minister at the time did.

**Hon. BILL FORWOOD** — You are suggesting that Ms Asher — —

**Hon. M. R. Thomson** — Was informed.

**Hon. BILL FORWOOD** — Of this?

**Hon. M. R. Thomson** — Yes.

**Hon. BILL FORWOOD** — I dispute that. I do not believe anybody knew that the capacity existed for this to occur. Let me put on the record bluntly that since then the government has had an inquiry — I can show the minister the inquiry report; she knows what it looks like — into the issue and not once was this raised. It is a bit rich for the honourable member for Mitcham to pull that stunt.

We find ourselves in a situation where Woolworths has thumbed its nose at the government and the people of Victoria. The intention of the legislation in its original form was that there would be a limit of 8 per cent. The minister knows that I have had a number of conversations with representatives of Woolworths. They have been robust and interesting. Mr Rohan Jeffs from Woolworths wrote to me and said:

> The comments you make about the purported intent of the Liquor Control Reform (Amendment) Bill are noted.

That was a conversation we had. Then he says:

> Woolworths is not in a position to comment on the appropriateness of the amendments, as this is a matter for the political process.

That is a very strange response. He is absolutely right: the amendments coming through today are a matter for the political process. While honourable members may not agree in detail with some of the issues that will be dealt with in committee later today, I want to place on the record my belief that it is not appropriate for organisations such as Woolworths that fully understand the intent of the legislation to artificially — that is my word — find mechanisms for flouting the law.

I note that in a recent newspaper article the chief executive officer of Woolworths, Mr Corbett, disputed that that was the intention of Woolworths when he said:

> We have not been structuring stuff to get around the government's legislation. We do not do that.

I accept his statement, but I find it difficult to believe. I genuinely believe it set out to find a way around the legislation; and through the use of the purchasing mechanisms Woolworths now has 9 per cent of the liquor licences. For that reason the opposition does not object to the mechanism being used to force Woolworths to divest itself of licences in excess of 8 per cent.

Although the opposition does not object to Woolworths being brought back to the required number, during the committee debate the opposition will discuss the appropriateness of and the reasons behind the no-relocation aspect, which I believe in some instances

is punitive. I will allow the minister to develop that theme during the committee stage.

The minister will know that I have had a number of conversations with various people about the legislation. For example, I have had long conversations with Peter Wilkinson and other members of the Liquor Stores Association of Victoria. Although I have other correspondence he has written to me, I want to record comments of his in a recent newspaper article because they go to the issue of the dismantling of the 8 per cent rule in 2003. He states that the independents:

> … can live with that, so long as there is a mechanism enshrined to replace it.

The Liberal Party awaits with interest the proposed mechanism for protecting diversity in the marketplace. As I said at the outset, the Liberal Party decided that it would keep the 8 per cent rule. It understood that although the rule had its deficiencies — for every 13 new licences Coles and Woolworths get another 1 — no-one has come up with a better mechanism. If I had the time and the inclination I could quote from some of the press releases issued by the minister, and point out that some of the things which she said would happen but which have not yet happened.

As I said, the Liberal Party awaits with interest the development of mechanisms to replace the 8 per cent rule. The Liberal Party believes absolutely in a diverse market. There needs to be a mechanism that does not allow for continual growth in the number of licences going to Coles and Woolworths. At the moment they have more than 40 per cent of the licence liquor market and slightly more than 16 per cent of packaged liquor licences. Significant long-term mechanisms must be developed to ensure diversity in the marketplace.

The other day I met with Mark McKenzie from the Victorian Wine Industry Association, and he raised an issue that has not been widely canvassed. The minister will know that Victoria has 21 wine regions, 2600 vineyard enterprises and 340 registered wineries, of which more than 200 crush less than 20 tonnes of grapes per vintage. Victoria also has a significant tourism wine sector. It is crucial that our vignerons have the capacity to sell their products. Coles and Woolworths stock limited lines and will not stock all their products. The executive summary of the Victorian Wine Industry Association submission on the 8 per cent contains a number of good recommendations, some of which I will read to the house:

> The VWIA contends that the reality of the two major retail chain's operational practices makes retail access for many smaller winemakers very difficult or impossible, and that the removal of the 8 per cent limit on packaged liquor licences would only exacerbate the situation.

The minister is on the record as saying that she will remove the 8 per cent limit, so the opposition is looking for a mechanism that will replace it. The executive summary further states:

> The limitation on the diversity of wine products available to consumers through retail outlets is a particular concern to the Victorian wine industry because of its large number of wine producers and great diversity of products.
>
> The VWIA is concerned that a change in the limitation on packaged liquor licences will inevitably reduce the viability of smaller independent liquor retailers, with a consequent increase in bad debt levels and business failures that will negatively impact on the Victorian wine industry.

Both consumers and producers believe it is important that some mechanism be developed. The Liberal Party was prepared to keep it in place, but the Labor Party is on the record as wanting to demolish it, despite the fact that previously it said it would keep it. The Labor government has also said it will do it retrospectively, but there is nothing in the bill that indicates it will be retrospective.

I understand that, even after Woolworths divests itself of the Liberty Liquor licences, the legislation will allow it to remain with its licence holdings over the 8 per cent limit because of the general licences it had prior to 23 January, the cut-off date. It is another example of how the government has breached its own commitment to the people of Victoria.

I refer to national competition policy. I met with Graeme Samuel and discussed with him what would happen with this issue. He pointed out to me that the second tranche assessment of national competition policy in June 1999 indicated that the NCP payment was not deducted if the 8 per cent rule was not removed by 30 December 2000 but that this date was changed in the third tranche assessment and pushed out two years. That has enabled the minister to get away with her sleight of hand of introducing legislation that pretends to do something.

**Hon. M. R. Thomson** — They changed the date ahead of our submission — let's get it right.

**Hon. BILL FORWOOD** — It enabled the minister to get away with her sleight of hand whereby she can bring to the house today legislation which pretends to do something while at the same time knowing that she will be able to ensure that the payment will not be blocked.

**Hon. M. R. Thomson** — I am being pragmatic! Graeme Samuel is being pragmatic.

**Hon. BILL FORWOOD** — The minister is saying that she is pragmatic.

**Hon. M. R. Thomson** — I said Graeme Samuel is being pragmatic.

**Hon. BILL FORWOOD** — The minister says that Graeme Samuel is pragmatic. Let me apply the same words for the minister in the kindest possible way, given her contortions in her attempts to justify two positions that are absolutely at opposite ends of the spectrum: we believe strongly that there needs to be protection of small independent liquor stores and country pubs and believe absolutely that nothing must be done that will open up the market unnecessarily without real protection being put in place for the small independent liquor stores.

With those few words, the opposition will not be opposing the legislation. We do not go the whole hog and support it because such a shonky con has been perpetrated, but we will not oppose the passage of the bill through this house.

**Hon. W. R. BAXTER** (North Eastern) — As the Honourable Bill Forwood has demonstrated to the house, the Liquor Control Reform (Amendment) Bill has a somewhat peculiar history. It is clearly designed, among other things, to try to cover up the fact that the Labor Party's rhetoric and commitments prior to the last election about what it would do for small business are simply not being met.

The bill's other purpose is to overcome a loophole in the 8 per cent rule which has been discovered by some smart lawyers around the town. I do not have any problems with closing that loophole. It is not uncommon for this Parliament to have to introduce amending legislation for a whole range of acts because some smart lawyer somewhere has found a way around them. For example, we have only to recall the number of times we have had to make amendments to the drink-driving aspects of the Road Safety Act in this place because a lawyer somewhere around the place has been able to call its provisions into question.

I do not think there is any doubt about the intent of Parliament in passing the legislation and I do not suppose that Woolworths had much doubt about the intent of Parliament either, but nevertheless the advice that they were receiving was that they could purchase Liberty Liquor and not transgress the act as it is currently worded.

Frankly, I am not critical of Woolworths for that. I do not think it is incumbent upon Woolworths to say, 'Well, this act is deficient, but we won't take advantage of that deficiency'. We should not expect from anyone in the community that they have imposed on them a higher duty than is imposed on anyone else just because there is deficient legislation on the statute book. If the legislation is deficient, let the Parliament fix it, and that is what we are doing today. I do not think we should have said, 'Well, Woolworths shouldn't have taken the action because the act is deficient'.

On reading some of the debate in the other place I was aghast at the criticism of Woolworths. I am sure the couple of hundred thousand Australian shareholders of Woolworths would be surprised and somewhat disappointed to note the comments made by a Labor member in another place that it was one of the dreadful multinationals. One just pales at the ignorance of some people if they think that Woolworths is foreign owned, because by and large all or the great bulk of the shareholders are Australian citizens.

As I said, I do not object to the loophole being closed. It has required the inclusion of some convoluted clauses to close it and some reference to the Corporations Law and so on, and one would hope that the draftspeople have it right this time. I am happy to acquiesce. It will not be the last time that legislation has to come back to this chamber because someone somewhere has found that it was not as tightly drafted as we all thought it was when it was passed.

We are in a much more complex circumstance with the 8 per cent rule. It needs to be noted yet again that there is widespread misunderstanding in the community, particularly among small hoteliers and bottle shop operators, about what the 8 per cent rule actually means. Many of them seem to be under the impression that it is 8 per cent of the market. Of course we all know that that is not the case but that it is 8 per cent of the licences held. As I understand it, the two large chains, Coles Myer and Woolworths, have about 40 per cent of the market.

In a sense it was a rather peculiar method of limiting market dominance when the 8 per cent was inserted in the act in the first place. While I must have been a member of Parliament at the time, I cannot recall the debates at that stage and the rationale used at the time for including the 8 per cent of licences held, but clearly it was a genuine attempt by the Parliament of the day to give the smaller operators — particularly the retail bottle shops, as the industry was becoming increasingly deregulated after a number of inquiries into the

industry — some sort of protection. It has achieved that purpose to a reasonable degree.

We all know that historically hotels held a privileged position in the community and that they were largely protected from open competition. We had a tightly drawn liquor industry in those days. However, hotels also had some fairly onerous responsibilities and requirements imposed on them. Licensed victuallers, for example, had to maintain a set dining table at all hours and had to offer overnight accommodation to travellers. The hours they could open the bar were strictly regulated, so it was an entirely different lifestyle and liquor regime in those days.

It has only been in the past 30 years that the liquor industry has been freed up and its availability has become much more widespread, not only in the number of outlets and the type of businesses that can sell liquor but also the hours in which it is available. It has been a relatively recent phenomenon to have bottle shops separate from hotels and supermarkets selling liquor. I applaud the changes that have taken place in the liquor industry in my lifetime.

**Hon. T. C. Theophanous** — Mostly introduced by a Labor government.

**Hon. W. R. BAXTER** — Indeed, and I acknowledge that. I believe tightly restricted liquor availability and the forbidden fruit image are counterproductive attitudes in the community. However, some people abuse alcohol and always will, and there are concerns about young people, particularly young women, drinking more alcohol than they have traditionally. I am not entirely sure that increase is entirely due to its freer availability. I believe it is more due to changing cultural values in the community.

**Hon. Kaye Darveniza** — And how it is packaged.

**Hon. W. R. BAXTER** — Yes, perhaps how it is packaged and how it is marketed. I believe it is better to have the open and freer availability of alcohol than was the case when I was a teenager.

I believe the introduction of the 8 per cent rule was a genuine attempt to protect some of the small retailers and country hotels. However, with the passage of time it is becoming increasingly irrelevant and I believe under national competition policy it is somewhat difficult to defend. I know the previous government had taken the decision that it would maintain the 8 per cent rule and forgo the national competition dividend that was dependent on freeing up the industry. That was a perfectly reasonable policy decision for the government to make, and I do not question it. Clearly the government looked at a number of other ways of giving some protection to smaller retailers, and it was difficult to find a viable one. Many people spoke of a regional cap, bearing in mind that many of the smaller retailers who might be affected by the lifting of the 8 per cent rule happened to be located in rural and regional Victoria.

It is all very well to talk about a regional cap, but the other side of the equation is that it may well have imposed some cost penalties on country people with regard to the price they purchase their requirements. It is all very well to say, 'Yes, we will have a regional cap to protect small retailers', but if in the process the consumer is severely disadvantaged, at the end of the day I have to come down in favour of the consumer.

I therefore support the government's decision to continue the 8 per cent rule until 2003, but I wonder what the government has in mind post-2003 to match the rhetoric of its policy to protect the smaller retailers. The government has said it will phase the 8 per cent rule out over time, and that will give retailers some opportunity to prepare for the complete disappearance of it, but one wonders what more the smaller retailer can do to combat the buying power of the big supermarkets. Most of them are already in buying groups, whether it is the independent grocers or whatever. One would expect that they are already capturing whatever price discount they are able to by bulk purchasing through their groups.

Clearly they can look to the type of premises they have, the service they provide, the hours they are open and the range of goods they carry. As Mr Forwood noted, supermarkets may well concentrate on a limited range, such as the big bulk selling brands, and the smaller brands might be ignored. Perhaps there is a role there for the smaller operator to have some niche branding, but normally that does not enable price discounting because volumes are not great enough.

I look to the government to give some indication or direction as to how it might implement its policy of protecting the small retailer in this industry. I know we have the Trade Practices Act and the Australian Competition and Consumer Commission, but they deal in the broad picture, with the big corporations. It is difficult to contemplate that the Trade Practices Act provisions will be of much use to a small bottle shop with a small turnover in a country town that has a supermarket near it engaging in predatory pricing or loss leadering. I do not know that the cost of resorting to the provisions of the Trade Practices Act will assist that operator at all. I am aware that there is a grocery code of practice being discussed and formulated. I do

not believe it currently includes liquor, but I understand moves are in place to have liquor included in that code of practice.

I have never been too confident about the effectiveness of codes of practice, whether they be in agriculture or some other area. However, there is a role for codes of practice and for bringing the public spotlight and glare of publicity onto alleged unconscionable conduct by retailers. Through a code of practice there may be some opportunity to give at least a modicum of protection to smaller retailers if they think the big guys are not giving them a fair go. But I would not want to bank on it having any effect other than some sort of moral persuasion — and I am not sure that the big guys are too open to moral persuasion at times. It is a bit of a conundrum for the smaller operator to predict what effect the eventual abolition of the 8 per cent rule will have.

I have a copy of a letter from Grant Doxey, the publican at Doxey's Royal Hotel in Rainbow, a small town in the Mallee. In his very thoughtful letter Mr Doxey discusses the impact of national competition policy on regional areas and notes the pressure that is placed on his business because so many of his potential customers take advantage of shopping in supermarkets in Horsham and nearby places and buying their supplies in one-stop shopping.

Unfortunately that is a fact of life in our community now. Consumers are by and large voting with their feet — they go to the supermarket to get the bread, milk and everything else and buy the beer while they are there. That is a problem for the Rainbow hotel, as is acknowledged by the publican.

The publican is not crying poor; he has put in place a number of measures to deal with the issue, and I am pleased he is grappling with it in that way. That highlights the grave difficulties faced by small businesses and small country hotels when competing in today's environment. I again invite the minister to put on the record how the government expects to implement the policy on which it went to the election of protecting small liquor retailers.

In my home town of Wodonga are three supermarkets with attached liquor outlets, five hotels with drive-through bottle shops, and a couple of independent retailers. You might wonder how they survive. But those independent retailers are very switched-on operators — they have specials, they have a good range, they are price competitive, they open at appropriate hours, and they are located in areas that attract a deal of passing trade as well as trade from local residents. They seem to be going quite well. So far as I can tell, they are quite viable businesses.

An example of an industry in which small operators copped a hiding from the big manufacturers but have come back is the bakery trade. Small bakeries in country towns were virtually forced out of business by the big bakeries carting bread for many miles. Now we are seeing the hot bread shops coming back in, because they offer a greater range, a fresher product, better service and good prices.

Perhaps the bottle shops with smart operations will have the opportunity to survive — even against the big throughput operators in the supermarket. But it will not be easy for them, and no-one contends that it will. As I have said, the 8 per cent rule was a protection more in theory than in practice, but at least it offered some slowing down of the concentration of liquor outlets in the two big supermarkets. I stand by, and will be very interested to hear what the government will do to implement its policy.

**Hon. T. C. THEOPHANOUS** (Jika Jika) — I also support the bill before the house. This is another example of Labor's commitment to having a liquor industry that is liberalised but is also responsible and contributes to the character and nature of our multicultural society.

The purposes of this bill are to ensure that the 8 per cent limit on holders of packaged liquor licences is effective; to ensure that the predominant activity carried on under a packaged liquor licence is the retail sale of liquor for consumption off the licensed premises; and to strengthen the prohibition against granting a liquor licence in respect of premises situated within a petrol station.

The amendment should be welcomed by all members. Mr Forwood mentioned that during the term of the previous government the then opposition opposed the bill that was introduced. On this occasion Mr Forwood has at least got his facts correct. As to the rest of his contribution, I have not heard so much drivel in a contribution from him for a very long time. He must be really grasping at straws because he is trying to paint the fulfilment of an election promise by this government as somehow being the non-fulfilment of an election promise.

**Hon. Bill Forwood** interjected.

*Honourable members interjecting.*

**Hon. T. C. THEOPHANOUS** — I will talk later about some of the things that happened during the previous government.

This bill delivers on an election commitment of the government that it would render effective the 8 per cent limit on packaged liquor licences so far as new applications are concerned, and that is exactly what this legislation does. The previous minister and the previous government had an opportunity to address this issue when the loopholes became apparent. She failed. Despite repeated attempts by the opposition to get her to examine it, she procrastinated and refused to address the issue. I will come back to that issue later.

This bill arises from a comprehensive review of the 8 per cent rule undertaken during 2000 by the Department of State and Regional Development. The review noted that Victoria has the most progressive liquor licensing arrangements in Australia mostly as a result of the previous Labor government's reforms following the Nieuwenhuysen review, which brought Victoria into the 20th century so far as liquor licensing was concerned. Those reforms, which got rid of the 6 o'clock swill and allowed restaurants to have liquor licences, resulted in a massive increase in licensed restaurants and created a whole new licensed restaurant industry in this state. It helped to mould Victoria's multicultural character by allowing those sorts of restaurants to be established throughout the state, just as they are across Europe.

**Hon. J. M. McQuilten** — Look at Lygon Street.

**Hon. T. C. THEOPHANOUS** — Lygon Street is a good example that shows the multicultural nature of Australia, as do the Greek precinct in Lonsdale Street and Chinatown in Little Bourke Street. All these restaurants, these multicultural expressions, have been able to blossom as a result of Labor government changes to the legislation.

Following the previous government's changes in the Liquor Control Reform Act in 1998, a number of loopholes in the 8 per cent rule emerged. It removed the application of the 8 per cent rule to general licences. That created an opportunity for applicants to circumvent the 8 per cent rule on packaged liquor licences by applying for general licences. That was the outcome of that piece of legislation. Even though the predominant activity is the sale of packaged liquor, applicants have been able to get around the rule by applying for general licences.

Clause 8 of the bill seeks to close the loophole. Where an applicant's holdings are above the 8 per cent limit the amendments require that the director of liquor licensing not approve an application for the grant or transfer of a general licence if the predominant activity of the licensed premises would be the sale of packaged liquor.

The government is fixing a loophole that was created by legislation introduced by the former government. In discussing the legislation at the time the Labor Party, in opposition, called on the then government to hold over the bill to allow a greater degree of examination of its effects as well as to provide a greater consultation period. I will come to that in a minute.

The second loophole this legislation closes relates to the fact that although the act states that packaged liquor licences must not be granted if at the time of application an applicant holds more than 8 per cent of liquor licences, in the past the term 'at the time of application' has been used to get around the intent of the law by making multiple applications when the applicant's holding is just below the 8 per cent limit.

The third loophole the legislation closes is one which has emerged more recently and which has been discussed by speakers for the opposition. That loophole became apparent in the Woolworths acquisition of Liberty Liquor. Companies have tried — this is an example — to circumvent the rules by capturing licences that are acquired but not transferred between corporate entities. They acquire the entity but not the licence and run the entity separately. The bill introduces amendments that require companies that go over the 8 per cent limit by acquisition to return to the 8 per cent level within 12 months.

The legislation fixes up one loophole created by the previous government; it fixes up a second loophole the previous government was well aware of but did nothing to remedy; and finally it fixes up a new loophole that has emerged recently.

The government's review of the legislation included two rounds of extensive consultation. Over 25 industry organisations and community groups were individually consulted in the preparation of the report. Following the release of the report there was a second round of consultations that involved a series of public forums across Victoria, the distribution of an industry questionnaire and a call for submissions from the public. I contrast that with the approach of the previous government. I commend the current minister for undertaking this consultation and also for the way she impartially administers this important area.

The contrast with the previous government is stark. When the loopholes emerged the previous minister refused point blank to close them. She refused to deal with them. In response to a question from the Honourable Monica Gould on 25 May 1999 asking her to close the loophole involving multiple applications, Ms Asher, the then minister, refused. She simply stuck to her position that the law was adequate. That was despite the fact that the Honourable Andrew Brideson had tabled petitions in the house from some 800 constituents complaining about abuse of the loophole by major companies.

Despite the complaints from the previous government's backbenchers about attempts to circumvent the process by using this loophole to get additional licences, and that Mr Brideson had managed to gather together 800 signatures from his constituents complaining about it, the previous minister decided that no action was necessary.

When the former Premier, Mr Kennett, was caught in the appalling situation of selling sly grog to raise money for the Liberal Party, what did his government do? It obtained a retrospective licence for Mr Kennett. That shows the contempt the previous government had for the process. It did not deal impartially with the Liquor Licensing Commission. Everybody else had to go through the proper process to get a licence before they were able to sell liquor, but not Jeff Kennett. He could get his licence retrospectively, after he had set about selling liquor for the purposes of raising funds for the Liberal Party.

During the debate on the Liquor Control Reform Bill, the opposition pleaded with the then government to allow the bill to lie over so that consultation could occur and its full impact be evaluated. It even moved a reasoned amendment to that effect, but as usual its pleas fell on deaf ears. The then opposition outlined its concern about the possible operation of the amendment to remove the 8 per cent rule on general licences. It said that there were possible effects that needed to be examined more closely, and it was proven correct — a loophole has emerged. The legislation which was rushed through by the previous government without proper thought being given to the creation of new loopholes has to be fixed. Had proper consultation and evaluation occurred, we might not be back here now closing another loophole.

The previous government was keen to allow its mates — Bruce Mathieson and others — to get as many general licences as they could so that they could get more gaming licences and increase their empires. It was keen to put the legislation in place so its mates would get a kick-up and expand their empires. The contempt of the former government can also be illustrated by the way it marketed its changes through a document called 'Liquor Reform in Victoria'. Commenting on the document, Mr Best, who was involved in the liquor industry for some time, is reported in *Hansard* of 12 November 1998 as having said:

> I must comment on the attractive photograph on the cover of the 'Liquor Reform in Victoria' document.

Then in response to an interjection from Mr Hartigan, he said:

> It is a photograph not of my hotel but of the Retreat Hotel in Abbotsford, which was formerly owned by a colleague, Mr Furletti.

That is how the previous government operated. Free advertising for Mr Furletti's former pub was par for the course. That is the sort of thing it did every day and all the time. There was no process and no concern for ordinary people; the former government simply looked after its mates, whether they were Bruce Mathieson or Carlo Furletti.

**Hon. Kaye Darveniza** — Or the Premier.

**Hon. T. C. THEOPHANOUS** — Or the Premier. That was the situation under the previous government.

The Labor Party has always taken the view that the liberalisation of the liquor industry would not necessarily affect crime and alcoholism. That is why the former Labor government established a parallel mechanism to bring down the road toll, to address alcoholism, and to establish guidelines for the responsible serving of alcohol. Those initiatives of the previous Labor government were to provide a more liberal liquor licensing regime in Victoria. Many more restaurants were serving liquor for the first time; the annual road toll was brought down from an appalling figure of more than 1000 to around about 400; and mechanisms were put in place to protect young people from the effects of alcohol in the community.

When I pointed out in the debate on the Liquor Control Reform Bill that although Luxembourg, France and Switzerland had far higher liquor consumption levels than the United States of America, or even Australia, but ventured to say that the crime rates were not higher than the United States, I got the following response from Mr Hartigan, which is indicative of the contempt in which the former government dealt with debates in this house. It is a far cry from the reasoned way in which the current ministers deal with debates. Mr Hartigan's response was that they may be too drunk to do anything!

**Hon. W. I. Smith** — What about some substance?

**Hon. T. C. THEOPHANOUS** — That is exactly what I am pointing out, that there was no substance in those debates. Members of the then opposition raised substantive issues and we got that kind of contemptuous response from the then government. That is why the Liberal Party is in opposition! When the previous Labor opposition raised legitimate issues in this place — and the issues were legitimate! — the response from the then government was along those lines. Its replies were contemptuous and had nothing to do with the substance of the debate at hand.

The bill is important legislation. The response to the review was outlined by the minister on 19 January. The first response was to retain the 8 per cent rule until the end of 2003, after which a gradual phase-out would commence. The government is aware of the issues that have arisen as a result of national competition policy but is also determined to have an orderly transition period, and to take account of the needs of the industry and the community.

The second response was to amend the act to close loopholes that potentially enable the 8 per cent rule to be circumvented. That takes up a large part of the bill. I have outlined to the house the three loopholes the legislation will close.

The third response was to approach the commonwealth government so that the liquor industry would be able to access a national retail grocery code of conduct and ombudsman scheme, and to allow the industry to assume a code of conduct that would help it to operate efficiently in the future.

The final response of the government was to ask the coordinating council on the control of liquor abuse to examine whether recent changes in the market for packaged liquor may have had an impact on alcohol-related harm in the community.

I am especially pleased to be able to speak on the bill because it not only honours the government's commitment made before the election but also continues the strong traditions of the Labor Party in liberalising the availability of alcohol within a responsible framework while establishing a whole range of mechanisms associated with that liberalisation. As I said, those include ensuring that liquor abuse does not occur, establishing liquor education programs for young people, making sustained attacks on the road toll, and a host of other mechanisms that have helped educate the community while creating a massive new industry that Victoria did not previously have and contributing to the creation of a cosmopolitan, multicultural society that is able to consume alcohol responsibly.

**Hon. B. N. ATKINSON** (Koonung) — I support the opposition's position on the bill, which, as has been elaborated on by the Honourable Bill Forwood, is not to oppose the legislation. I will not go through the remarks made by the Honourable Theo Theophanous as his speech was something of a diatribe. One thing that puts paid to most of what he said is that in her second-reading speech the minister said Victoria's liquor licensing laws were among the most competitive in Australia and that its liquor industry is probably one of the best and most vigorous in the country in that it allows for a range of competitors and maintains a diverse market.

The national competition policy review of Victorian liquor laws has twice established that the state has arguably the most open and deregulated liquor licences in Australia. It is interesting to look at what the supermarket chains have been trying do in Victoria compared with the dilemma they face in Tasmania, for example, where Woolworths, through its subsidiary Purity Supermarkets, had to buy hotels to establish an involvement in the liquor industry because Tasmanian law does not allow the sale of any liquor through supermarkets.

Queensland has similar provisions. To expand its liquor licences in Queensland, Coles had to buy hotels rather than being able to develop markets through separate applications for retail bottle shops or through its supermarket licences.

As has been said by a number of speakers in the debate and by the minister in her second-reading speech, other liquor laws across Australia — in South Australia, Western Australia, Queensland and Tasmania — are not as competitive or as open as Victoria's. The state has progressively changed its laws over a number of years and under successive governments, particularly since the Nieuwenhuysen inquiry that was commissioned by a previous Labor government.

Victoria has arrived at a diverse and vigorous market for liquor that has allowed a high degree of competition and been of benefit to consumers. It has balanced accessibility and convenience with the need to be responsible in the serving and sale of alcohol.

The National Competition Council might therefore direct most of its inquiries about the liquor licensing requirements throughout Australia to the other states that have far more arcane liquor licensing laws than

Victoria's, particularly in the context of suggesting, with a big stick, that Victoria might lose its funding if it does not review its liquor laws. I found that objectionable, given the status of Victoria's laws compared with those of other states. Victoria has vigorous competition in the marketplace, which the National Competition Council ought to have given it credit for.

The 8 per cent cap has been in place for many years. Despite that, the growth in the licences held by chain operators has not been unduly impaired during that time. It has not stopped them from building significant market shares substantially in excess of the percentage of licences they hold. That is because many of the outlets they own and operate are larger size liquor outlets, often co-located with supermarkets or in high-traffic locations, which tend to generate higher volume sales.

In recent times the chains have acquired a number of well-known, well-established brands. Woolworths acquired the Dan Murphy and Harry Heath stores that came with the Liberty Liquor group, and Coles acquired the Philip Murphy and Porter's stores — and more recently, the Australian Liquor Group. As a result, those two chains have further increased their market share to close to 40 per cent, despite the 8 per cent cap.

The sell off of Franklins stores might also test the provisions of the legislation, because Franklins holds a number of liquor licences in Victoria. In indicating that it will buy a package of those stores, Woolworths has shown an enthusiasm for acquiring Franklins liquor operations as well as its supermarket operations. Woolworths already holds in excess of 8 per cent of licences — in fact, it is closer to 11 per cent with the Franklin stores added in.

Coles will go above the cap if it succeeds in purchasing the Australian Liquor Group. Coles is certainly seen as a corporation that respects the 8 per cent cap. It recognises that it must comply with the legislation. However, Woolworths has a different track record, which I do not support. If Woolworths wanted the cap removed, it ought to have both pursued national competition policy procedures and lobbied the state government, putting forward a reasoned argument for its removal or for an increase in the limit or some other change that might have applied to it and the other players in the market. That would have been preferable to some of the tactics that have been adopted during the past 12 months, which have included the bulk lodgment of liquor licence applications to exploit the technicality to do with applicants not exceeding the 8 per cent rule at the time their applications were lodged, given that the commissioner was unable to determine them one at a time until they got to the 8 per cent level. That is dealt with in this legislation, which is appropriate.

Woolworths also sought to convert an Ascot Vale establishment with a general liquor licence, which is normally associated with a hotel development, to a Dan Murphy retail store — again, something outside the process a retailer or established retail bottle shop operator was expected to follow. There was also a situation where although a chain of stores was purchased, in this case Liberty Liquor, no attempt was made to transfer the associated licences so the 8 per cent cap was not exceeded.

Like it or not, the 8 per cent rule is part of Victorian law. Woolworths knows the proper processes it must pursue — as do the other players — if it is unhappy with that cap and would like to see it changed. There is no doubt that caps are a crude mechanism to control markets, which both the minister and the industry recognise. The minister has indicated that she is keen to change the emphasis on cap enforcement as a way of trying to regulate the industry.

However, I am not sure that there is an alternative, given the concern about market share. Although the 8 per cent rule is a cap on the number of licences held, market share can be considerably greater than that, so I am not sure there is another mechanism to control that satisfactorily. It is important to maintain a diverse market and to support not only small retailers. However, as the Honourable Bill Forwood pointed out, it is also crucial to ensure the proper exposure of various products, particularly Australian wines, through retail distribution in Victoria and further afield.

Centralised buying by major retail chains — in this case, the non-food business of Coles Myer, which has sought to centralise the buying by Target, Kmart and Myer Grace Bros of footwear and manchester — means that in many cases bigger deals are done with a smaller number of suppliers. If the retail liquor outlets become more concentrated as a result of the removal of a cap, there is the possibility that the major retail chains will move to a centralised buying position and fewer Victorian products will get exposure in the marketplace.

Indeed Coles Supermarkets has already shown its clout in that market with no smaller player than Foster's Brewing Group. Foster's held a 25 per cent share in Wine Planet Holdings, a listed online retailer, and Coles Supermarkets and its associated business, Liquorland, refused to stock a number of wine products marketed by Foster's because they were unhappy about Foster's

running an online business. That was despite the fact that Coles Myer itself has a separate investment in a rival online retailer. It was apparently all right for the retailer to be involved in some other retail business but it was not all right for a major supplier, Foster's Brewing Group, to be involved.

Wine Planet was a struggling business that was losing quite a lot of money — although I notice the entrepreneur who started it suggested in a recent article that it was very close to profitability, but I am not sure how he was counting — and Foster's Brewing Group moved to take over full control and closed it down this month. I understand Foster's has now been able to renegotiate the distribution of a number of the wine products previously excluded from Coles retail stores. That is an indication of how, even for a very major player, a concentration of retail power can potentially work against the interests of the marketplace, suppliers and consumers.

There is a need for control of liquor, not just in market competition and diversity, which we have been talking about in this debate, but also in recognising alcohol as a product that needs to be distributed with a measure of responsibility because of its nature.

I will be following the opposition's position of not opposing this bill. It is timely legislation that I know has been a bit of a minefield for the minister. I am not as critical of the minister's trek through that minefield as was the Honourable Bill Forwood, as I believe the legislation at least brings some certainty to the industry and gives effect to a clear promise the government made at the last election.

Like my colleagues, I will be very interested to see what mechanism the minister is able to come up with when she phases out the cap in two years, obviously in consultation with the industry, and tries to replace it. I have talked to the industry for quite some time about how to replace the cap and have frankly not heard any bright ideas coming from them as to how to do it, and it is certainly beyond me!

**Hon. KAYE DARVENIZA** (Melbourne West) — I am pleased to have the opportunity to contribute to this debate and to speak in support of the bill. I am also pleased to hear that the opposition is not opposing the bill.

As has been said by speakers on both sides of the house, the bill will ensure there is an effective framework for the issuing of liquor licences in the state of Victoria. As has also been mentioned by honourable members on both sides of the house, we again see the Bracks government delivering on the promise it made during the last election campaign to retain the 8 per cent rule for this parliamentary term and to close loopholes that enable major chains to circumvent that rule. The government has announced the phasing out of the 8 per cent cap, which will commence from the end of 2003 — or even earlier, if the industry agrees to it.

Taking up the point raised by the Honourable Bruce Atkinson, the government is also very committed to working with the industry to develop appropriate long-term strategies that will promote the ongoing viability of independent liquor stores as well as the choice for consumers that having independent liquor stores offers.

Mr Theophanous went into some detail about previous debates on liquor control reform legislation. I will mention one issue that relates to the government's wide consultation not only on the phasing out of the cap but also on the preparation of the bill.

In 1998 when the Liquor Control Reform Bill was being debated in the other place Mr Haermeyer, now the Minister for Police and Emergency Services, said there should have been a considerable period of discussion and debate within the community before the changes to the legislation were proposed by the then government. The former government wanted to have the bill brought to the house and passed within a very short period, and Mr Haermeyer was asking for a six-month period during which the industry and the community could at least be consulted. Unfortunately that recommendation — like other recommendations the then opposition put to the then government — was knocked off.

When the opposition was in government and wanted to make changes to trading hours, there was no consultation with the industry or the community. The bill was simply rammed through the Parliament — probably in the dead of night, like a lot of other legislation.

As has been said, Victoria has one of the most progressive liquor licensing arrangements in Australia. That means it has a very competitive market. I shall not go into a lot of detail on that because others who have spoken before me from both sides of the house have talked about the market. The state has a wide range of arrangements, offering shoppers a whole range of choices when making liquor purchases.

It is quite difficult to estimate the size of the market, but it is reasonable to estimate that the retail value of sales is approximately $1 billion per annum. Currently more

than 3200 outlets in Victoria — that is, 1330 packaged liquor licence-holders and some 1900 general or hotel licence-holders — can sell packaged liquor to the public. About 60 per cent of the packaged liquor stores are located in the metropolitan area, while the remainder are in rural and regional Victoria. Of the 1330 businesses that hold packaged liquor licences, approximately one-third are independent liquor stores and one-third are independent supermarkets; some 19 per cent of the licences are held by Coles Myer and Woolworths, and the remainder are held by a variety of general stores and other businesses. As I said, some 1900 hotels also have licences to sell packaged liquor. So people have wide variety and diverse choice when purchasing liquor.

As has already been pointed out by previous speakers — as I said, I will not go into any detail — in 2000 a comprehensive review was carried out by the Department of State and Regional Development. In examining the 8 per cent rule it was assisted by a reference group made up of experts in the area. In an extensive consultative process, a range of industry and community groups and individuals were consulted and forums were held. The Honourable Theo Theophanous also talked about the industry questionnaire that was distributed for public comment.

The review identified loopholes that potentially enabled major chains to circumvent the 8 per cent rule. They included the ability to obtain general licences and use them for selling packaged liquor and simultaneously submitting a large number of licence applications when the applicant's holdings were just below 8 per cent at the time of submitting those applications.

Although currently the 8 per cent rule captures the granting of new licences and the transfer of existing ones, it does not capture the acquisition of licences. Some examples are acquisitions by Woolworths, including Dan Murphy's chain and Liberty Liquor's 15 licences, which increased its holdings from 7.9 per cent to 9 per cent. Coles Myer, which includes Liquorland, Quaffers and Vintage Cellars, currently holds 98 licences, or 7.4 per cent. Coles Myer has also announced it will acquire the Australian Liquor Group, which trades as Philip Murphy Wine and Spirits in Victoria. That will increase its holdings to 8 per cent. Woolworths is clearly seeking to increase its holdings well above the 8 per cent limit by keeping the 15 acquired Liberty Liquor licences in three separate corporate entities. That clearly undermines the 8 per cent rule.

The bill reflects the government's determination to close the loopholes that enable the effectiveness of the 8 per cent rule to be undermined. It wants small businesses to have a period of regulatory certainty. The Honourable Bruce Atkinson said he believed the bill will provide that. The government certainly wants that certainty in the lead-up to any phasing out of the 8 per cent rule.

The bill will enable the industry to develop a long-term strategy on the 8 per cent rule. That is particularly important given the current retail environment, in which major supermarket chains are being quite aggressive in seeking to increase their market share of liquor licences. The bill seeks to prevent those major chains from getting around the 8 per cent rule and will close the loopholes that have been identified by the review and directed to the government's attention.

I shall quickly go through some of the provisions of the bill. Clause 5 is really a minor amendment to clarify that the predominant activity of the packaged liquor licence-holder applies not just to when the proprietor makes an application for a packaged liquor licence but for the life of the licence. Clause 6 provides that where a licensee obtains a general licence when their holdings are over the 8 per cent limit the predominant activity condition applies at any time they are above the 8 per cent limit. This means that if someone is granted a general licence while over the 8 per cent limit it is a condition of that general licence that their predominant activity is not the sale of packaged liquor. This is an important amendment as it stops people using the application for and issuing of a general licence to get around the 8 per cent rule.

Clause 7 strengthens and clarifies the current provisions that prohibit the licensing of petrol stations to sell liquor. This was mentioned in the contributions made by the Honourable Theo Theophanous and members of the opposition. This part of the bill seeks to clarify that the current prohibition applies to all premises situated within the confines of a petrol station. The fact that a licensed premises might be managed or operated separately to a petrol station will not allow people to get around the existing prohibition.

Clause 8(2) clarifies legal activity regarding when the 8 per cent rule is calculated. This clause makes it clear that the calculation occurs at the time of the deciding of an application for the granting of a licence and not at the time the application is made, as is the current situation under the act. Clause 8(3) is aimed at preventing major chains from using general licences. There has been quite a bit of discussion about that from both sides of the house. It will prevent the major chains from using general licences that are currently not taken into account when calculating the 8 per cent rule. The

clause will prevent major chains from using general licences as a means of circumventing the 8 per cent rule.

Proposed section 23(2) provides that if an applicant is above the 8 per cent limit they cannot receive a general licence if their predominant activity is the sale of packaged liquor. Proposed section 23(3) provides that if an applicant is below the 8 per cent limit they can obtain a general licence to operate a liquor store but that will count towards their 8 per cent limit. For example, if a major chain is at 7.5 per cent and applies for and gets a general licence, even if it is to operate what is in effect a packaged liquor store, this licence will count towards the 8 per cent limit.

Clause 9 closes the acquisition loophole. Until recently it was generally understood that section 23 of the principal act limited companies' holdings of packaged liquor licences to 8 per cent. That was the case until the recent acquisition of Liberty Liquor by Woolworths, which made it quite apparent that that is not the case. On 18 April the government announced it would introduce further amendments to ensure the 8 per cent limit applied to all packaged liquor licences in which the licensee had a controlling interest.

The key change being made is that a company which increases its holding above the 8 per cent limit will be required to comply with the cap, generally within 12 months. If the company does not adjust its holdings within 12 months, those licences that are above the 8 per cent limit will cease to exist. In addition, a company will not be permitted to relocate any of its licences while its holdings are above 8 per cent. This clause is aimed at closing the loophole that allows chains to get around the 8 per cent rule. The government believes this is important because it provides protection for smaller businesses in the industry — it protects them against some of the activities of the large chains.

The bill will prevent a company with holdings over the 8 per cent limit from relocating licences from regional and rural Victoria to the metropolitan area where it has the opportunity to make greater profits. This clause will also provide an incentive for companies that are over the 8 per cent limit to return to it. Companies that are not at the 8 per cent limit will need to think carefully about getting there and those that are at 8 per cent will not be looking at loopholes and ways to get around the law.

The last clause I wish to speak about is clause 11, which inserts a provision to amend section 85 of the Constitution Act to the effect that no compensation is payable to persons affected by these changes. The government believes this is a reasonable provision given that, firstly, the 8 per cent rule and the proposed amendments will affect only Woolworths and Coles Myer, so the section 85 provision limits the rights of only these two parties. Secondly, licences cease to have effect only if a company exceeds the 8 per cent limit and fails to comply with the 12-month provision. Thirdly, without the section 85 provision it would not be possible to close the loopholes at all. The Labor Party went to the election saying it wanted to close loopholes that allow businesses to circumvent the 8 per cent rule and the government has brought this bill before the house because it wants to close them. It would also expose the government to an unacceptable risk.

The bill contains a number of important changes that will ensure small businesses in the packaged liquor market are protected and customers have a choice of where they purchase their packaged liquor. The government does not want small businesses overrun by large supermarket chains, particularly when they are exploiting a loophole in the legislation. This is good legislation, and I commend it to the house.

**Hon. B. C. BOARDMAN** (Chelsea) — I join the debate to bring back some credibility and legitimacy to it, given that the past two government speakers have been misleading and reprehensible in their description of the attitude of the Kennett government to the 8 per cent rule. I am sure the Honourable Kaye Darveniza made a Freudian slip when she said the phasing out of the 8 per cent rule was immediate.

**Hon. M. R. Thomson** — No, she didn't.

**Hon. B. C. BOARDMAN** — The minister will have an opportunity to clarify that in summing up the second-reading debate. I would have let the honourable member off the hook had she not said it twice.

**Hon. M. R. Thomson** — No, she didn't.

**Hon. B. C. BOARDMAN** — I will check the *Hansard* report, because a number of honourable members on this side of the chamber heard her remarks. I am curious as to when the phasing out may occur, because the minister's second-reading speech states that the 8 per cent rule will be retained until the end of 2000, after which a gradual phasing out will commence. If I heard correctly I believe the Honourable Kaye Darveniza said that the phase-out of the 8 per cent rule would be immediate. I hope the minister will correct her colleague during the committee stage of the debate.

The Honourable Theo Theophanous in his usual manner trumpeted the supposed irresponsibility and lack of consultation of the Kennett government. He referred principally to the lack of consultation regarding the drafting of the original bill and the industry's involvement in the development of the Liquor Control Reform Act. I do not know how much more consultation and involvement there could be, when members from the appropriate industry bodies sat on the Storey committee, the review committee that had the task, given to it by the then Minister for Small Business, of developing the report which ultimately led to the framing of the Liquor Control Reform Act. The key people were involved in the process from day one. As a result of that involvement they returned to their various industry associations and consulted extensively with their members. They had first-hand knowledge and were able to report on the findings of the committee to their members, which meant there could be an accurate and reasonable response to government. When the bill went through Parliament it was supported unilaterally.

I was distressed that Mr Theophanous was able to get away with the statements he made during his contribution to the debate. I would have raised a point of order but I had to research the *Hansard* database to clarify the issue he was raising. He referred to a petition tabled by the Honourable Andrew Brideson in 1998 with 800 signatures he had obtained about a potential licence being granted to Liquorland Victoria in his electorate. I recall the matter because it generated considerable publicity, and it was an issue that the former government took very seriously. However, Mr Theophanous implied that the then Minister for Small Business, the Honourable Louise Asher, did nothing about it. He implied that one of her colleagues had raised an important issue and that she had neglected her ministerial responsibilities by failing to address the issue and taking appropriate action on the potential breach of the act.

Mr Theophanous was devious because he did not mention that the Honourable Andrew Brideson had asked a question without notice of the minister on 12 May 1999 regarding the petition he had previously tabled and making direct reference to what the minister would do to enforce the 8 per cent cap contained in the Liquor Control Reform Act. The honourable member, who had tabled the petition from his own constituents, as was his duty, brought the issue to the minister's attention, thus ensuring the minister would take appropriate and decisive action. In responding to that question the Minister for Small Business stated:

> As of today my advice is that Liquorland has made a bulk order of 71 applications for packaged liquor licences. At the moment Liquorland holds just under 8 per cent of the packaged liquor market — in fact, 7.52 per cent of the licences.

Conversely and unfortunately, which is probably why the bill is before the house, in 1999 there was a breach of the legislation. Safeway, which is an operating name of Woolworths Ltd, had just over 8 per cent of the market — in fact, 8.62 per cent of the total number of packaged liquor licences as of 12 May 1999.

I shall quote the concluding paragraph of the minister's answer, which demonstrates clearly that the previous government was strongly in favour of retaining the 8 per cent rule and demonstrates equally clearly that the minister was decisive and deliberate in enforcing the Liquor Control Act where any potential breaches occurred.

**Hon. R. M. Hallam** — You're not suggesting that the Honourable Theo Theophanous was misleading the house!

**Hon. B. C. BOARDMAN** — I would never suggest the Honourable Theo Theophanous would mislead the house, although we all know that that is all he ever does. It is so obvious that it does not need to be commented on by me. The minister's closing paragraph states:

> The government's intention on this issue is clear. No licensee is to hold more than 8 per cent of packaged liquor licences. The responsibility for the issue of licences resides with the director of liquor licensing. I am delighted to inform the house that the government expects the director and Liquor Licensing Victoria to enforce the law as passed by Parliament. The director of liquor licensing has sought legal advice on this matter. I am advised that he has determined, in accordance with the advice, that no further packaged liquor licences will be granted to a body that already holds 8 per cent of packaged liquor licences. I am delighted to inform the honourable member and other honourable members who are particularly concerned about small business in packaged liquor licensing that the law, as passed by Parliament, will be enforced.

That gives clear confirmation that the former minister and the previous government were clearly committed to the retention of the 8 per cent law and enforcing the provisions of the Liquor Control Act in the unfortunate circumstance of someone having breached the law. That is definite. It was a strong response, but unfortunately it was deliberately misinterpreted by the Honourable Theo Theophanous, and that demands correction on the record.

The bill is a curious way for the government to go about what it is doing. It is cynical, because we all

know that at the end of 2003 the 8 per cent rule will cease to exist. In the absence of a better model the 8 per cent rule is probably the best way of maintaining diversity in the packaged liquor market and encouraging small business development, particularly in rural and regional areas. It ensures that small businesses are not disadvantaged by larger, more powerful, financially stronger companies with big reputations that have the ability to buy out entities and increase their licences and market share.

A number of options have been discussed. I have had conversations with the Honourable Bill Forwood, the shadow minister in this area, who has done an exceptional job in liaising with people representing the industry and community concerns, about a suggestion put forward by the Australian Hotels Association. The association proposed a needs clause so that if the 8 per cent rule were abolished the responsibility to determine the appropriate licensee for a retail liquor licence would be the municipality in which the licence is located. That is one way of dealing with the issue. It may or may not be the most satisfactory way of dealing with it, but in the absence of other alternatives it is a response that should be further explored.

I place on the record and make it clear to the house that the government, to ensure diversity in the marketplace, particularly when small businesses are involved, has to encourage the industry through leadership and strong and definite regulation. I hope the minister at the table will take note of the concerns of honourable members that come 2003 when the 8 per cent rule is phased out there will be an alternative that will not disadvantage existing licensees and subsequently disadvantage small business.

I make a general comment concerning the industry in my capacity as chairman of the all-party Drugs and Crime Prevention Committee. The committee recently adopted a report — the Honourable Sang Nguyen, who is a member of the committee, will be speaking on this bill, and I hope he will refer to the report without quoting from it — and will be tabling its final report on its inquiry into public drunkenness in June. That report will make certain recommendations on the decriminalisation or otherwise of public drunkenness in Victoria.

The report has been extensively researched by the committee, which has consulted with all key stakeholders, including the liquor industry. The committee is of the opinion that it has produced a report that will not only provide a wonderful direction for the state of Victoria but potentially nationally and internationally. I encourage all honourable members, when the committee tables the report — I will have the honour and privilege of tabling it in this house — to read the report and its recommendations. I hope the government takes note of the recommendations and understands the severity and complexity of public drunkenness in this state. I urge it to ensure that any future government policy will be responsive and deliver an appropriate outcome for the community in the best interests of consumers and the industry.

**Hon. S. M. NGUYEN** (Melbourne West) — I join with other honourable members in supporting the Liquor Control Reform (Amendment) Bill. The bill ensures the public of Victoria will get the benefit of changes to the liquor industry. In its election promises the Bracks government said it would take care of small business, which is important because many small businesses are involved in selling liquor.

The purpose of the bill is to amend the Liquor Control Reform Act and to:

(a) to ensure that the 8 per cent limit on holders of packaged liquor licences is effective;

(b) to ensure that the predominant activity carried on under a packaged liquor licence is the retail sale of liquor for consumption off the licensed premises.

(c) strengthen the prohibition against granting a liquor licence in respect of premises situated within a petrol station.

I turn to the 8 per cent limit. Victoria has the most progressive liquor licensing arrangements in Australia, and the Victorian market is intensely competitive. Some 3200 outlets sell packaged liquor to the Victorian public. Of the 1300 businesses that hold packaged liquor licences approximately one-third are independent liquor stores, one-third are independent supermarkets, Coles Myer and Woolworths hold 19 per cent of licences, and general stores and a variety of other businesses make up the remainder. Approximately 1900 hotels that are permitted to sell packaged liquor operate under a general licence. The government's position on the 8 per cent rule is that it is critical to achieving the maintenance of a healthy and vibrant small business segment in the industry.

Many important issues raised in the second-reading speech concern the aim of tightening up the loopholes around the 8 per cent rule. On 19 January the government announced its response to the review, and the key elements as stated in the second-reading speech are:

retaining the 8 per cent rule until the end of 2003, after which a gradual phase-out will commence;

amending the act to close loopholes that potentially enable the 8 per cent rule to be circumvented;

approaching the commonwealth government to seek its support to ensure that the packaged liquor industry can access the recently established national retail grocery industry code of conduct and ombudsman scheme; and

asking the coordinating council on the control of liquor abuse, an expert advisory body, to examine whether recent changes in the market for packaged liquor may have had any impact on alcohol-related harm in the community.

Provisions in the bill aim to stop the selling of alcohol at service stations. That is important because many young people under 18 years of age may go to service stations to buy alcohol. Like Mr Boardman, I am a member of the Drugs and Crime Prevention Committee, which visited many states to discover what initiatives could be adopted by Victoria. A study conducted by Taylor and Carroll found that only a small percentage of males aged between 15 and 17 and 11 per cent of females in the same age range reported they had never had an alcoholic drink, so it is known that many young people drink alcohol. The committee looked at road safety issues and ways of ensuring that people respect the interests of other members of the community and do not drink and drive.

I believe it is important to ensure that people who sell alcohol have a licence. It also important to ensure that loopholes in the legislation are closed. I am pleased to support the bill.

**Hon. M. T. LUCKINS** (Waverley) — The opposition does not oppose the bill, but as has been outlined in the debate, opposition members have significant concerns.

The 8 per cent rule, as it is known, has been in section 23 of the principal act since 1983. Its retention was supported by the former coalition government, which in 1998 ordered a review of the Liquor Control Reform Act. The executive summary of the review report states:

Regardless of any restrictive effect on the 8 per cent, the office has found that the Victorian market for packaged liquor is intensely competitive and offers consumers a diverse range of shopping experiences since the changes were introduced by the Liquor Control Reform Act 1998.

There is no significant barrier to entry for businesses to obtain a packaged liquor licence.

A comparison of interstate regulatory arrangements of packaged liquor licences revealed that the Victorian regulatory framework is clearly the most progressive in Australia.

The bill has three aims: to ensure that the 8 per cent limit on holders of packaged liquor licences is effective; to ensure that the predominant activity carried on under a packaged liquor licence is the retail sale of liquor for off-premises consumption; and to strengthen the prohibition against granting a liquor licence for premises in a petrol station.

The bill has been introduced because of a flaw in the drafting of the previous act, which has come to light with the purchase by Woolworths of Liberty Liquor. By proceeding with that sale Woolworths openly flouted the intent of the act. Liberty Liquor has within its holdings 16 liquor licences in Victoria; they trade as Harry's or Big Bomber. I have been raising this issue locally for some time — certainly for most of this year — because of concerns about the conduct of both the Woolworths chain and Coles Myer and the threat they are posing to the viability of smaller independent liquor outlets — for example, in Glen Waverley there were two Safeway stores; one store has now been closed and the Woolworths corporation is planning to open a Dan Murphy's on that site. The existing liquor licence from that store has now been transferred to another Safeway store in the Glen shopping centre, some 50 metres away, where a Harry's liquor store is also located. For the local retailers in the area — and I will name a few: Shultz of Syndal, Finest Drop Cellars, Tally Ho Cellars, Highbury Cellars, and Jells Park Cellars — this move by the major corporation poses quite a threat to their continued viability. They are small, mainly family-run businesses. While they are doing well cornering niche markets and providing a very good range of liquor through their stores, they cannot compete, even with their arrangements for buying in conjunction with other stores, with the bigger operators in the market.

Prior to the last election the ALP pledged that it would retain the 8 per cent cap. The fact is that the previous coalition government conducted a review, which I referred to earlier, and concluded that the 8 per cent cap was not really affecting competition in this state. Notwithstanding that, the National Competition Council threatened to withhold $11 million in competition payments owing to Victoria for maintaining the 8 per cent cap, and in the interests of protecting small liquor operators the previous coalition government thought that $11 million threatened cost was worth while.

After the Bracks government was elected we discovered it would phase out the 8 per cent cap it said in its policy it would retain. It was interesting to hear the Honourable Theo Theophanous basically saying in his contribution that this bill fulfils the government's promise to maintain an 8 per cent cap, and then the next government speaker, the Honourable Kaye Darveniza,

basically gazumping Mr Theophanous by coming out with the true direction of the government, which is to phase out the 8 per cent cap on packaged liquor licences in Victoria by 2003.

**Hon. M. R. Thomson** — No, beginning at the end of 2003.

**Hon. M. T. LUCKINS** — I stand corrected. Opposition members are used to Mr Theophanous misleading the house, which is why none of us jumped to our feet at the time. The fact is that this government is now committed to phasing out the 8 per cent cap, and there are real concerns in the independent liquor retailing industry about the effects of the government's decision. The president of the Liquor Stores Association of Victoria, Peter Wilkinson, has also voiced his concerns to me about the direction of the government.

In her second-reading speech the minister spoke about developing new innovative strategies that enhance the capacity of small liquor retailers to compete in a changing environment. The fact is that 40 per cent of liquor sales in Victoria are already made through the big corporations, Coles Myer and Safeway. In addition to the sale of Liberty Liquor, the liquor licences of Franklins supermarkets are now being sold — which will potentially be picked up by these corporations — and other bigger, independent liquor stores, such as Bedelis Liquor Emporium in my electorate, are being purchased by Philip Murphy, which is owned predominantly by South African interests.

So the industry is undergoing significant challenges. I hope the government continues to consult with the Liquor Stores Association of Victoria and other independent players in the marketplace. I also hope it does more than just consult and actually listens to the plight of small family-owned businesses. This measure poses significant risks to the viability of businesses not only in electorates such as mine in Waverley Province in the metropolitan area but also to businesses in regional and rural Victoria, as outlined by National Party speakers.

On a final note I indicate that the Liquor Stores Association of Victoria has proposed to the minister an industry-initiated code of conduct for the responsible serving of alcohol for off-premises consumption of liquor. I hope the minister will take its views into account and treat the independent liquor retailers with sincerity. I commend the bill to the house.

**The PRESIDENT** — Order! As I am of the opinion that the second reading requires to be passed by an absolute majority of the house, I ask the Clerk to ring the bells.

**Bells rung.**

**Members having assembled in chamber:**

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

**Required number of members having risen:**

**Motion agreed to by absolute majority.**

**Read second time.**

**Committed.**

*Committee*

**Clause 1 agreed to.**

**Clause 2**

**Hon. M. R. THOMSON** (Minister for Small Business) — This is an opportunity to meet our commitment to maintain a true and effective 8 per cent cap — a commitment we gave prior to the election. We hope this will see the closing of the loopholes; certainly it sends the signal to the industry that the government is serious about maintaining the 8 per cent cap and working with the liquor industry to ensure the long-term viability of small businesses in the industry.

**Clause agreed to; clauses 3 to 8 agreed to.**

**Clause 9**

**Hon. BILL FORWOOD** (Templestowe) — Like the minister, we support diversity in the liquor industry and look forward to having mechanisms to ensure that the diversity is maintained, noting that despite the minister's assertion that she is strengthening the 8 per cent rule, in fact she is phasing it out in the years ahead.

I thank the minister's advisers, which I neglected to do during the second-reading debate, for their contribution in helping us to get around issues in the bill.

The first issue I wish to raise with the minister is that we know that between the introduction of the bill and now, the bill has doubled in size as we grappled with the Liberty Liquor issue. The first question I have under clause 9 concerns the definition of packaged liquor licence. Given the existing clause 11 of the Liquor Control Reform Act and the changes made in this bill in

relation to general liquor licences, why do we now have a definition of packaged liquor licence?

**Hon. M. R. THOMSON** (Minister for Small Business) — My understanding is that we are clarifying that the sale of packaged liquor will remain the activity of the licence-holder for the life of the licence. At the moment that is its activity at the time of application, but this provision maintains it for the life of the licence, so if the predominant activity of that licensed premises is changed the actual licence would also have to be changed to meet the change in predominant activity.

**Hon. BILL FORWOOD** (Templestowe) — I understand that. That was the purpose of the changes that were made in the bill. My question is, now we are inserting proposed division 3A in part 2, why are we having a separate definition in this clause?

**Hon. M. R. THOMSON** (Minister for Small Business) — This refers to those general licences that will be defined as packaged liquor licences, and therefore the definition of packaged liquor licences will be for those general licences. General licences in these calculations will be counted as packaged liquor licences if they have been obtained from 23 January this year, so the definition of the predominant activity which determines the packaged liquor licence status has been put back into the bill.

**Hon. BILL FORWOOD** (Templestowe) — So I am right in saying that the definition of packaged liquor licence in clause 9 with the insertion of proposed division 3A relates only to events after 23 April this year?

**Hon. M. R. THOMSON** (Minister for Small Business) — It affects those licences granted after 23 April when we made the public statement.

**Hon. BILL FORWOOD** (Templestowe) — Continuing on with clause 9, in the second-reading speech the minister indicated that until recently no-one knew that Woolworths had the capacity to use the clause in this way. Firstly, did the minister have any inkling that this loophole was available?

**Hon. M. R. THOMSON** (Minister for Small Business) — I had no inkling.

**Hon. BILL FORWOOD** (Templestowe) — In relation to mechanisms for solving this matter, the legislation puts in place a regime whereby licences that have been acquired and take Woolworths over 8 per cent must be divested over the next 12 months, apart from exceptional circumstances, where the director of liquor licensing may grant a one-off extension of up to 90 days. Can the minister explain to the house what she envisages to be an exceptional circumstance?

**Hon. M. R. THOMSON** (Minister for Small Business) — In areas where a commitment to divest of those licences has been shown and divestment of the remaining licences may be imminent but will not quite meet the 12-month limitation, if that divestment is to on-sell and that process is taking place, or where obviously the majority of a number of licences have been dispensed with and they are just awaiting the finalisation of the remainder, it will give some discretion to the director to allow for an extension to ensure that their transition is smooth, if that is what is required.

**Hon. BILL FORWOOD** (Templestowe) — Is the minister confident that after the clause has been included, the legislation will not allow for this exceptional circumstance clause to be manipulated?

**Hon. M. R. THOMSON** (Minister for Small Business) — We are fairly confident that the mechanisms we have put in place to protect this clause from manipulation, which are in parts of the bill that we may get to, will ensure that this clause will be utilised only for finalising divestment of licences.

**Hon. BILL FORWOOD** (Templestowe) — Proposed section 26I(7) states:

> The Director, by giving written notice to the body corporate before the day that would otherwise be the relevant day, may extend the relevant day once for a period not exceeding 90 days, if the Director is satisfied …

And it goes on. So far as I am aware no process requires them to come to the director first. Is the intention that they will seek the director to do that?

**Hon. M. R. THOMSON** (Minister for Small Business) — Yes, they must notify the director in advance of the 12-month period that they would require an extension.

**Hon. BILL FORWOOD** (Templestowe) — Will the minister point out where that is?

**Hon. M. R. THOMSON** (Minister for Small Business) — There is no provision in the bill for the timing of the lodging of a request to extend, but if they do not lodge before the 12-month period then the director will automatically seek to divest licences that are over.

**Hon. BILL FORWOOD** (Templestowe) — I thank the minister for that; it is certain to focus the mind.

Proposed section 26J is headed, 'Restriction on relocation of licences'. I am comfortable with a requirement to divest licences in the 12-month period, plus the 90 days if necessary. My understanding is that Woolworths has relocated only one licence in the past 12 months from one location to another. In those circumstances why does the government feel it necessary to put a restriction on the relocation of licences? It has been put to me that this is a punitive exercise that does nothing for the protection of the 8 per cent rule but that it is a punishment.

**Hon. M. R. THOMSON** (Minister for Small Business) — No. There has been more than one; five or six licences have been relocated. The provision that licences cannot be moved is to act as an incentive to try to stop the use of the 12-month rule as an opportunity to hold on to licences for as long as possible while waiting for the market share to grow. The restriction on moving licences is to avoid the incentive of trying to acquire licences and hold on to them for 12 months. This is not about Woolworths now, but about how the mechanism will work. It acts as a 'I don't think I will bother to use this clause' provision.

Another aspect is that if they have licences exceeding 8 per cent and they relocate and other licences proceed in the places where those licences were, by doing that — holding on to those licences and moving them and allowing other licences to take their place — they have increased the pool. Therefore by using this mechanism they are artificially increasing the pool and the calculation will change for them.

I will try again. Licences cannot be relocated. Therefore the 8 per cent calculation is based on what is happening around you and not what you manufacture to happen around you. The non-transfer of licences means it is not an attractive option for either Coles Myer or Woolworths to take themselves over 8 per cent to utilise that 12 months to relocate licences and gain that entry into a market that they have not had an entry into before, but would take advantage of the 12 months to do that.

**Hon. BILL FORWOOD** (Templestowe) — I understand that the location of a licence makes no difference to the finite number of licences available for the calculation.

**Hon. M. R. THOMSON** (Minister for Small Business) — What has happened is that other licence applications have gone into the same premises they were at, and they have opened new ones in new locations. We are conscious of what the moving of licences may mean for regional Victoria. They are taking advantage of the fact that they are over the 8 per cent limit. They are manufacturing an increase in the pool and utilising it to their advantage.

We are saying that they should not benefit from taking themselves over the 8 per cent limit. What we are trying to do is take away any incentive in going over 8 per cent. By saying they cannot relocate their licences if they are over 8 per cent, we are saying there is no advantage to Coles Myer or Woolworths in going over 8 per cent.

At the moment, the advantage for a company in going over 8 per cent is that it enables the company to play around with where the licence may be and to manipulate the 12-month grace period — if we were not to have the restriction — within the parameters and use it to set a new agenda. We are trying to say no, that nobody will take advantage of the 8 per cent rule.

**Hon. W. R. Baxter** — That is based on the fact that the one you are shifting from becomes a new licence for somebody else?

**Hon. M. R. THOMSON** — Yes.

**Hon. BILL FORWOOD** (Templestowe) — It is based on an independent third party taking up the vacant space — —

**Hon. M. R. Thomson** — Yes.

**Hon. BILL FORWOOD** — And increasing the size of the pool? But there is no capacity for anybody other than Woolworths that is over the 8 per cent to get over the 8 per cent once the bill is passed, is there?

**Hon. M. R. THOMSON** (Minister for Small Business) — There is nothing that stops a company — Coles Myer, for example — from going over the 8 per cent unless we have in the act a provision that makes the company think, 'It is not worth my while to go over 8 per cent because I will not be able to relocate my licences and I will lose them if I hold them for more than 12 months'.

**Hon. BILL FORWOOD** (Templestowe) — My understanding is that the whole purpose of the clauses associated with packaged liquor licences was to prevent that happening.

**Hon. M. R. THOMSON** (Minister for Small Business) — That is in relation to what is included in the calculation of the 8 per cent. That is not about using the general licence loophole to get yourself over the 8 per cent. Now we are saying, 'There is no incentive for you to get over the 8 per cent because we will not let

you relocate your licences, and we intend to take licences off you if you are over 8 per cent'. You may say, 'Is 12 months enough incentive not to go over 8 per cent?'. We are saying it is not necessarily the case.

There may be time reasons. As is happening now, the retail sector is going through massive change. During that shake-up you may want to get yourself over the 8 per cent if there is no incentive to stop you. We are saying we are putting in place an incentive to stop Coles Myer and Woolworths from even attempting to get over the 8 per cent.

**Hon. BILL FORWOOD** (Templestowe) — Section 31 of the Liquor Control Reform Act deals with an application for the relocation of a licence. Why would the government not use that provision to prevent the relocation of licences? Section 31(2) states:

> An application for relocation must —
>
> (a) be in a form approved by the Director; and
>
> (b) include the prescribed particulars; and
>
> (c) be accompanied by —
>
> (i) the prescribed information (if any); and
>
> (ii) the prescribed relocation fee.

There is already a capacity for the director to do so. Why would the director of liquor licensing not deal with an application for relocation?

**Hon. M. R. THOMSON** (Minister for Small Business) — If I understand the question — I am not sure that I have it quite right — the reason it is in this provision is that it relates only to the 8 per cent, whereas relocations under the act are about general relocations. This is about how the director will deal with relocations relating to going over the 8 per cent.

**Hon. T. C. THEOPHANOUS** (Jika Jika) — My understanding it that where a company acquires another body and through that acquisition is able to get new licences — perhaps not directly — it is not illegal under the act. But as the minister has said, this puts in place a set of arrangements that will dissuade a company from doing that in the first place. It is different when a company is applying for a new licence whereby it could not get over the 8 per cent under the legislation. The Honourable Bill Forwood is confusing a number of issues. The minister has outlined how the legislation will dissuade rather than disallow companies from getting more than 8 per cent through acquisitions, and that is what it is all about.

**Hon. BILL FORWOOD** (Templestowe) — The minister and I thank the Honourable Theo Theophanous for his assistance! The issue is simple: the bill stops relocations completely until we are back below the 8 per cent. There is another clause that says compensation cannot be sought for any effect; it is the section 85 provision, with which I will deal in a minute. It seems to me that the existing act gives the director of liquor licensing power over applications for relocations of licences in section 31, which appears at page 29 of the act. If he already has that capacity, why is the new provision necessary now? Application can be made to the director, who may put the application in the drawer or say no.

**Hon. M. R. THOMSON** (Minister for Small Business) — My understanding of the act as it currently stands is that the director can grant the application and it has to go through a process where things such as public consultation have to occur. The government says that if you are over 8 per cent the director can direct that you cannot relocate at all. As the act currently stands he is not able to do that; he has to go through certain public consultation processes, and there are set reasons as to why a relocation or a licence application cannot be granted.

**Hon. W. R. Baxter** — It removes his discretion.

**Hon. M. R. THOMSON** — Yes, it removes his discretion.

**Hon. BILL FORWOOD** (Templestowe) — Will the minister explain to the committee why the government has decided no compensation will be paid under proposed section 26K?

**Hon. M. R. THOMSON** (Minister for Small Business) — The government has been very open in its commitment to maintain the 8 per cent. It has been quite public about that, and the industry was made aware very early that this was our intention. It was our policy on coming to government and is certainly what we said we would do.

The proposed section went to the Scrutiny of Acts and Regulations Committee, which indicated in the *Alert Digest* of 15 May:

> The committee has examined the proposed section 85 statement and notes the minister's statement in the second-reading speech and accepts that the provisions are consistent with the purposes of the bill.

**Hon. BILL FORWOOD** (Templestowe) — I understand the minister does not want any compensation to be paid. Will she explain to the

committee why she believes the Supreme Court should not deal with this rather than Parliament itself?

**Hon. M. R. THOMSON** (Minister for Small Business) — The problem we face with legal action is that injunctions under other parts of the act might enable licences to be moved in the interim and ensure that those who hold licences over 8 per cent could continue to hold licences. We all know these matters can drag out in the courts for a number of years. In effect we would be making the 8 per cent uncertain if the result were to be constant court action rather than having it dealt with by legislation. We are therefore trying to ensure that when the legislation receives royal assent it will be in force from that date, rather than having the issue fought out in the courts and having the 8 per cent diminished over that time.

**Hon. BILL FORWOOD** (Templestowe) — I therefore take it that the minister believes proposed section 26K is appropriate to require the use of the section 85 provision?

**Hon. M. R. THOMSON** (Minister for Small Business) — Yes.

**Clause agreed to; clauses 10 to 13 agreed to.**

**Reported to house without amendment.**

**Report adopted.**

*Third reading*

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

That this bill be now read a third time.

I thank the Honourables Bill Forwood, Theo Theophanous, Bruce Atkinson, Kaye Darveniza, Cameron Boardman, Sang Nguyen and Maree Luckins for their contributions. I would also like to thank my personal staff and the officers of the department, particularly David Latina, who has put in many hours ensuring that the legislation will do the task we have set for it.

**The PRESIDENT** — Order! The question is that the bill be read a third time. I ask the Clerk to ring the bells.

**Bells rung.**

**Members having assembled in chamber:**

**The PRESIDENT** — Order! An absolute majority is required for the passage of the third reading. I ask honourable members who support the third reading to stand in their places.

**Required number of members having risen:**

**Motion agreed to by absolute majority.**

**Read third time.**

*Remaining stages*

**Passed remaining stages.**

## BUSINESS OF THE HOUSE

### Adjournment

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

That the Council, at its rising, adjourn until Tuesday, 5 June.

**Motion agreed to.**

## ADJOURNMENT

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

That the house do now adjourn.

### State Library of Victoria: newspapers

**Hon. ANDREA COOTE** (Monash) — I raise with the Minister for Industrial Relations, representing the Minister for the Arts in another place, another matter relating to the State Library of Victoria. Yesterday I mentioned that I was very concerned about the library's newspaper collection. I am particularly concerned about its storage at the Maribyrnong storage centre and the problem of mildew and mould. I ask the minister to advise what program has been put in place to rectify the problem of damage caused to the stored newspapers by mildew and mould, how much that program will cost and how long into the future it will go.

### Geelong Arena

**Hon. E. C. CARBINES** (Geelong) — I raise a matter with the Minister for Sport and Recreation. The Geelong community appreciates and wishes to thank the minister for the interest he has taken in relation to the pending sale of the Geelong Arena, home of the Supercats, amateur basketball and gymnastics teams. The minister's prompt response in providing funding for a feasibility study to be undertaken by the City of Greater Geelong will allow exploration of issues

surrounding the possible acquisition of this important facility for the people of Geelong.

I ask the minister to advise the house of any further actions he has taken to assist Geelong in this matter.

## Rural Victoria: relocation incentives

**Hon. R. M. HALLAM** (Western) — I raise with the Minister for Industrial Relations, who I presume will act as a representative of the Minister for State and Regional Development in the other place in the absence of the Minister for Energy and Resources, a concern relating to government support for regional employment.

I have a constituent who operates a large enterprise in my home town of Hamilton who has recently been trying to fill a senior specialised vacancy on his staff. After advertising widely and employing a headhunter he has now located a suitable person in Melbourne. He reports that he has convinced that person to sell up and relocate his family to Hamilton.

Obviously there are substantial costs involved in that relocation and he has asked me to inquire whether there is any government support available for such relocations. He insists that he received some government support some time ago under the previous government. I know him very well and I know not to challenge his memory or his integrity.

My office has inquired with Minister Brumby's office and was informed that there is no such program available. I am assuming that that advice is correct and that somehow there has been a program change. However, given that this would appear to be a very good opportunity for the Bracks government to demonstrate that its professed care for country Victoria is more than rhetoric, I ask that my appeal on behalf of my constituent be faithfully referred to the minister.

## Berwick Primary School

**Hon. N. B. LUCAS** (Eumemmerring) — I raise with the Minister for Sport and Recreation a matter that comes under the responsibility of the Minister for Education. I refer again to the debacle over the relocation of the Berwick Primary School. As a result of Premier Bracks's very poor effort today in responding to the issue, I am raising it again. At the school 710 children are crammed onto a site suitable for 300 children. At recess and lunchtime the only grassed playing space is divided into three — one-third for small children, one-third for higher grade children, and the remaining third is taken up by portable classrooms. There are only 6 toilets for 350 boys.

The Premier is now trying to divert blame to the owner of the land. The Minister for Education cannot avoid the fact that the school council of the Berwick Primary School has passed a vote of no confidence in her handling of the relocation. The reason for the delay is that the minister chose a cheaper site for the school on swampland on the highway on the fringe of the town. Since she announced the new site 18 months ago nothing has happened. The minister's site will cost Victorians an additional $1 million for extra drainage and roadworks.

The editorial at page 4 of the local newspaper, the *Pakenham–Berwick Gazette*, of 23 May states:

> Many people feel that blatant politics and egos have become involved in the failed project to relocate the Berwick Primary School.
>
> Unfortunately, there is ample evidence to support this theory.
>
> There is little doubt that the Berwick Primary School has been left in a total mess because of bureaucratic and political bungling over the relocation.

One wonders what the Berwick community needs to do to get off this Labor government's backburner. Another day has passed, to add to the 19 months of Labor procrastination.

**Hon. T. C. Theophanous** — On a point of order, Mr President, I direct your attention to the guidelines for the adjournment debate, which state that a member may not raise a matter previously discussed in the same session. Mr Lucas raised virtually the same issue — I have been listening carefully to what he has had to say — in virtually the same terms as he did the other night on the adjournment and I ask you, Sir, to rule it out of order on the basis of those guidelines.

**The PRESIDENT** — Order! Many issues have incremental developments. How many times have we heard about Waverley Park? That is because the issues develop. What made it different is that today Mr Lucas referred to the intervention of the Premier. In other words, it is a progressive issue. That does not mean to say we have to rule it out completely because it has been raised in one form on one occasion.

**Hon. N. B. LUCAS** — You need to go back to school, Mr Theophanous.

My question to the minister is: please, please, please will you make a decision, finalise a site and have the relocation commence as soon as possible?

## Children: protection services

**Hon. D. G. HADDEN** (Ballarat) — I raise a matter for the attention of the Minister for Industrial Relations, who is the representative in this place of the Minister for Community Services. I attended a RAGE against child abuse family benefit day in March held at Victoria Park in Daylesford. The event was organised by A Shared Vision and its public officer, Mr Tony Lock, in conjunction with Australians against Child Abuse.

The family benefit day was sponsored by many local organisations and businesses. The children's entertainment included puppet shows and making a large bird. The Dja Dja Wurrung Dance Company, Koori workshops and the Goolum Goolum Cultural Dreamtime were a prominent part of the children's events.

The entertainment program for the teenagers included live bands and groups and individual singers, among them Archie Roach and Ruby Hunter, Linda and Vika Bull, Broderick Smith and Warrick Harwood, all of whom dedicated their time and talents to this good cause. I therefore ask the minister to advise what progress has been made in the Grampians region to assist children and families at risk.

## Lower Goulburn: flood mitigation

**Hon. W. R. BAXTER** (North Eastern) — I raise with the Minister for Industrial Relations, for reference to the Minister for Environment and Conservation in another place, the conservation minister's announcement on Tuesday that the government was endorsing and intending to go ahead with the Lower Goulburn flood mitigation scheme. I applaud that decision because the land-holders in that particular location in the Shire of Moira have been in limbo for quite some years now and it is very good indeed to get some certainty into their lives.

I note in passing that the media release refers to restoring a 'natural wetland regime' which I believe should probably be a 'natural regime'. It has never been a wetland and I do not believe it is the intention to turn it into a wetland in the usual sense of that term.

My request tonight is for the minister to give consideration to communicating in writing with the affected landowners outlining the process of land acquisition and the like. People who have owned property for many years have a great deal of sentimental attachment to that land. They are open to all sorts of conspiracy theories and believing the rumours that get around about how the acquisition price is to be assessed. I think it would be most useful if they were all communicated with directly by either the minister or the secretary of the department outlining exactly what process will be followed to bring this project to fruition.

## Building industry: indemnity insurance

**Hon. P. A. KATSAMBANIS** (Monash) — I raise an issue with the Minister for Sport and Recreation either in his capacity as Minister assisting the Minister for Planning or as the representative in this place of the Minister for Planning. Either way it is an issue relating to the Building Act and the requirement for builders in Victoria to have indemnity insurance prior to being registered as builders.

I have received correspondence from a Mr John Rodgers, a reputable builder of 25 years experience who has been known to me for some time. He highlights the fact that partly as a result of the HIH crisis and partly as a result of other issues in the building trade many reputable builders are finding it practically impossible to obtain insurance without putting up significant collateral. As a result they are finding it very difficult to maintain their registration as builders.

We all know how much Victoria relies on the building industry, the jobs it creates and the growth and prosperity it generates for our state. It is quite clear from what I have heard not only from Mr Rodgers but also from many other builders that this is a crisis. Dozens of builders are unable to get or retain insurance and are therefore in danger of losing their registration.

In his correspondence with me Mr Rodgers has made a number of good suggestions that could possibly be followed up. One of them is to look at the Queensland system, where not only builders but also subcontractors of all types must have what is called a gold card in order to perform building work. This means that the liability for insurance and warranting building work lies not only with the builder who takes on the contract but also the subcontractors who perform the work. That is one suggestion.

Clearly it is up to the government and the minister responsible for the Building Act to look at this area and ensure that builders are able to obtain insurance and be registered. In his correspondence Mr Rodgers makes the point by saying:

> Would any person in their right mind who has 25 years of experience in their field put up their family home or personal assets as collateral in order to qualify for insurance so they can do a day's work? Well, this is the reality in 2001. Let's go fishing.

None of us in this place wants the building industry to go fishing. I ask the minister to look into this critical issue as a matter of urgency and ensure that reputable builders who have been in the industry for a long time are not unfairly denied insurance and registration.

## Youth: employment line and web site

**Hon. E. J. POWELL** (North Eastern) — I raise a matter for the attention of the Minister for Youth Affairs. During question time today the Honourable Peter Hall asked the minister if he had established a youth employment line and a web site for youth, a Labor election promise, but which was also mentioned in the ministerial statement of April 2000. I have checked whether the line is connected or the web site is online, and I do not believe they are. If the line number is 1800 123456 it is not connected. The web site should be www.yell.vic.gov.au, and if it is, it is not online. When will the youth employment line and the web site be available for young people in Victoria?

## Freeza program

**Hon. A. P. OLEXANDER** (Silvan) — I raise with the Minister for Sport and Recreation the predicament of young people in the outer eastern suburbs of Melbourne, which I represent, insofar as drug and alcohol-free entertainment is concerned. In the municipalities of Maroondah, Yarra Ranges and Knox a large number of youth entertainment venues, which are private sector operations, have closed down in the past two or three years, leaving youth with few viable alternatives for entertainment in the area. A group known as Pulse in the Maroondah municipality is having enormous difficulties setting up a blue light disco-type function because of council difficulties and issues relating to cost.

Given that the minister said that despite the funding shortfall of $1 million for the Freeza program he would extend the program across Victoria, I ask him to provide funding within the municipalities of Maroondah, Yarra Ranges and Knox for extra Freeza events.

## CFA: Nulla Vale brigade

**Hon. E. G. STONEY** (Central Highlands) — I raise a matter with the Minister for Sport and Recreation as the representative in this place of the Minister for Police and Emergency Services. I have received a letter from Roslyn Paterson, secretary of the rural fire brigade at Nulla Vale, a small community near Lancefield, requesting a small amount of money, up to about $10 000, for assistance in helping the small community to fund a meeting room cum hall attached to the new CFA shed.

The fire brigade has sent two letters and made two phone calls to Mr Hardman, the honourable member for Seymour in the other place. After a long wait he finally forwarded the letter to the Minister for Police and Emergency Services, who acknowledged the letter but, to quote Mr Lucas, 'That was three months ago'.

**Hon. C. A. Furletti** — Say that again.

**Hon. E. G. STONEY** — At least three months ago. The fire brigade has heard nothing since. I ask the minister to look kindly on the request by the small close-knit community for a facility in a remote area.

## Geelong Hospital

**Hon. I. J. COVER** (Geelong) — I direct a matter to the attention of the Minister for Industrial Relations as the representative in this house of the Minister for Health. I am concerned about pressure on the Andrew Love Cancer Centre at the Geelong Hospital. It is a fine institution with dedicated people who provide excellent care for patients, not just from Geelong but from other areas of regional Victoria.

Earlier today it was reported that patients requiring cancer treatment at the hospital were experiencing considerable delays. Today a stop-work action was called by the Health Services Union of Australia. Its secretary, Kathy Jackson, was reported in the *Geelong Advertiser* this morning as saying that the centre was under enormous strain and that at least 26 radiation technicians were needed in Geelong.

I am aware that new radiation therapy centres are being built in Bendigo and Ballarat, which will take some pressure off Geelong in the long term. I ask the minister to ask the Minister for Health when the new radiation centres will be completed and in use, which will obviously ease the pressure on Geelong Hospital. In the meantime, will she ask the minister whether any assistance is available to Geelong to ease the burden on the Andrew Love Cancer Centre?

## SRO: relocation

**Hon. B. C. BOARDMAN** (Chelsea) — I raise a matter for the attention of the Minister for Industrial Relations. I refer the minister to her previous response regarding the proposal to create 200 positions in the State Revenue Office at Ballarat. The minister has confirmed that the positions to be created at Ballarat will be at the expense of 200 existing positions at the Melbourne office. Furthermore, in the minister's own

words existing employees at the Melbourne office will be offered redeployment, relocation or retrenchment, voluntary of course, as a result of this decision.

Will the minister confirm exactly how many of the 200 new positions at Ballarat will be offered to existing employees?

## SRO: relocation

**Hon. M. T. LUCKINS** (Waverley) — I raise a matter with the Minister for Industrial Relations. I again refer her to the proposed relocation of the State Revenue Office from Melbourne to Ballarat. I noted that the minister did not use the word 'voluntary' in reference to redundancy in her answer to my question earlier today. Indeed, I note that the minister failed to answer my question at all.

Will the minister now confirm what the Community and Public Sector Union has told me: that employees who do not wish to relocate to Ballarat are being offered involuntary targeted separation packages that will result in positions ceasing to exist and under the Public Sector Management and Employment Act will prohibit the government from recruiting workers from Ballarat?

## Cardinia: infrastructure planning

**Hon. G. K. RICH-PHILLIPS** (Eumemmerring) — I raise with the Minister for Sport and Recreation, as the representative of the Minister for Planning in the other place, a matter about the Shire of Cardinia. Honourable members may have heard my colleague Mr Lucas speak about the shire, which is an interface council in the outer south-eastern suburbs and therefore has a number of infrastructure needs, such as roads and other public infrastructure.

In 1998 the Kennett government assisted the City of Casey, another council that has a rapidly growing population and a great demand for infrastructure, with the development of a strategic infrastructure planning study (SIPS). The document was put together jointly by the City of Casey, the Department of Infrastructure and Vicroads to map out the city's infrastructure needs over the next period so that the government and the municipality could address the issues.

Given the demand for infrastructure in the Shire of Cardinia it is appropriate that a SIPS also be prepared for it. The difficulty is that when the shire went to the Department of Infrastructure seeking funding for a SIPS to be prepared it was told it would have to wait two years before it would be made available.

The population in Cardinia shire is growing rapidly and infrastructure is needed immediately, not two years down the road. The study should begin now. I ask that the Minister for Planning support the shire's application for funding for a SIPS to ensure that it is delivered this year.

## Responses

**Hon. M. M. GOULD** (Minister for Industrial Relations) — The Honourable Andrea Coote raised a matter for the Minister for the Arts with respect to the control of mildew and mould on newspapers at the State Library of Victoria. I will ask the minister to respond accordingly.

The Honourable Roger Hallam raised a matter for the attention of the Minister for State and Regional Development about a relocation program. I will pass that on to the minister and ask him to respond in the usual manner.

The Honourable Dianne Hadden raised a matter for the attention of the Minister for Community Services about children and families at risk and survivors of child abuse in her region. I will ask the minister to respond in the usual manner.

The Honourable Bill Baxter raised a matter for the attention of the Minister for Environment and Conservation about flood mitigation and affected residents. I will ask the minister to respond in the usual manner.

The Honourable Ian Cover raised the matter of the Andrew Love Cancer Centre at the Geelong Hospital, following reports of an information meeting being held today. I believe the budget addresses a number of the issues raised and will resolve the shortages in the radiology area. In particular the honourable member was asking about the radiology centre in Geelong. I will ask the Minister for Health to respond to the honourable member.

The Honourable Cameron Boardman raised the issue of the State Revenue Office (SRO) and asked how many of the employees had been offered jobs in Ballarat. The proposal is that if the government makes a decision to refer people to Ballarat following the feasibility study, all staff will be offered positions and will have the opportunity to relocate, be redeployed or retrenched.

The Honourable Maree Luckins also raised a matter with respect to SRO. I have already stated the government's position. Following a feasibility study that has been circulated to the union, to all affected

employees and to the public, staff will be offered relocation, redeployment or retrenchment.

**Hon. M. T. Luckins** — On a point of order, Mr President, I do not believe the minister's answer was responsive to my question. It is the second time I have posed a similar question. I ask the minister to confirm what union representatives have told me — —

*Honourable members interjecting.*

**Hon. M. T. Luckins** — They were very cooperative. The workers are being offered involuntary targeted separation packages. If the government were to offer to recruit people in Ballarat, it would be contrary to the provisions of the Public Sector Management and Employment Act. I ask the minister to answer my question.

**The PRESIDENT** — Order! I am surprised I have to repeat this guideline to the house — this is not question time. The guidelines make it clear that during the adjournment debate ministers have a great deal more latitude in dealing with these issues than in question time, where there is considerable latitude as well. The minister's response disposes of the matter. There are other forms of the house available to the honourable member.

**Hon. J. M. MADDEN** (Minister for Sport and Recreation) — The Honourable Elaine Carbines raised the issue of the Geelong Arena. I commend the honourable member for her fine work in supporting the maintenance of the arena as a venue for sport in North Geelong. At my request officers of my department will write to the owners of the arena asking them to consider deferring the decision to sell the building until the City of Geelong has had the opportunity to consider the outcome of the study I have previously mentioned in the house, for which government funding was provided to the City of Geelong.

The Honourable Neil Lucas raised an issue with regard to the Berwick Primary School. I will refer the matter to the Minister for Education.

The Honourable Peter Katsambanis raised the issue of indemnity insurance for builders, and I will refer that to the Minister for Planning.

The Honourable Jeanette Powell asked about the youth employment line and web site. The web site to which I referred earlier was the web site of the Office for Youth, which is also being developed into a portal for other services across government. With regard to the youth employment line, I believe that is being established at this time, as mentioned earlier today. The web site linked to the employment line is also being established.

The web youth site, which I have referred to in this house today, will also be linked to the youth portal. I will now give that address, which is different from the one that has been discussed: www.youth.vic.gov.au. I put on the record that when I was giving that web site address no opposition members were taking it down in writing.

**An Opposition Member** — It will be in *Hansard*; why would we write it down?

*Opposition members interjecting.*

**Hon. J. M. MADDEN** — No doubt they will be here in the morning to collect copies of their pinks and take the address back to their electorate offices because — —

*Honourable members interjecting.*

**The PRESIDENT** — Order!

**Hon. J. M. MADDEN** — Mr President, there is no doubt that if they wanted it so urgently they would have taken it down in freehand at this very moment.

*Honourable members interjecting.*

**The PRESIDENT** — Order! For the information of all members, *Hansard* is of course on the Internet and will be available at 10.00 a.m.

**Hon. J. M. MADDEN** — Thank you for the clarification, Mr President.

The Honourable Andrew Olexander raised the issue of music opportunities for young people in the outer eastern suburbs. I am very conscious of those issues and only recently I went to the City of Knox where I discussed a range of those issues with a number of stakeholders. I also recently went out to the City of Maroondah to discuss with representatives of the youth sector and other young people the opportunities for music in those areas.

As I said, I am very conscious of the issues. When the government extends and develops the program no doubt there will be opportunities for representative organisations to seek funding for the programs in those areas. I am conscious also of the good work that is done in those areas and I want to maintain that and develop and enhance it in the future.

The Honourable Graeme Stoney raised an issue concerning the Nulla Vale Rural Fire Brigade. I will

refer that matter to the Minister for Police and Emergency Services in the other place.

The Honourable Gordon Rich-Phillips raised the issue of planning studies having been requested by the Shire of Cardinia. I will refer the matter to the Minister for Planning in the other place.

**Motion agreed to.**

**House adjourned 5.59 p.m. until Tuesday, 5 June.**

# QUESTIONS ON NOTICE

***Answers to the following questions on notice were circulated on the date shown.***
***Questions have been incorporated from the notice paper of the Legislative Council.***
***Answers have been incorporated in the form supplied by the departments on behalf of the appropriate ministers.***
***The portfolio of the minister answering the question on notice starts each heading.***

## Tuesday, 22 May 2001

### Corrections: drugs in prisons

**1441. THE HON. B. C. BOARDMAN** — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Corrections): In relation to HM Prison Ararat, HM Prison Barwon, HM Prison Beechworth, HM Prison Bendigo, HM Prison Dhurringile, HM Prison Langi Kal Kal, HM Prison Loddon, HM Melbourne Assessment Prison, HM Prison Tarrengower, HM Prison Won Wron, Fulham Correctional Centre, Metropolitan Women's Correctional Centre and Port Phillip Prison, respectively —

(a) What was the total number of prisoners that tested positive for illicit drug use for each of the years ended 30 June 1999 and 30 June 2000.

(b) What percentage of the total prison population has tested positive for illicit drugs for each of the years ended 30 June 1999 and 30 June 2000.

(c) What was the performance benchmark as a percentage of total prison population allowable for illicit drug use as agreed in the Service Agreement for Public Prisons and the Contract Agreement for Private Prisons for each of the years ended 30 June 1999 and 30 June 2000.

(d) What was the total cost of drug treatment programs for the years ended 30 June 1999 and 30 June 2000.

(e) What was the total number of prisoners treated for illicit drug use for each of the years ended 30 June 1999 and 30 June 2000.

(f) What was the maximum number of prisoners who could access drug treatment programs in each of the years ended 30 June 1999 and 30 June 2000.

(g) What is the maximum number of prisoners who can access drug treatment programs for the year ending 30 June 2001.

(h) What was the total number of prisoners who accessed drug awareness programs for each of the years ended 30 June 1999 and 30 June 2000.

(i) What was the total number of prisoners who accessed drug treatment programs of three weeks duration for each of the years ended 30 June 1999 and 30 June 2000.

(j) What was the total number of prisoners who accessed drug treatment programs of twelve weeks duration or more for each of the years ended 30 June 1999 and 30 June 2000.

**ANSWER:**

I am advised that:

1. (a) The total number of all tests taken for the year ended 30 June 1999 was 21,694; and for the year ended 30 June 2000 was 23,816.

(b) The percentage of positive random drug tests for each prison location for the year ended 30 June 1999 is documented in the report *Statistical Profile: The Victorian Prison System 1995-96 to 1998-99* (prepared by the Office of the Correctional Services Commissioner). This report had to cover four statistical years due

to the fact that the Kennett Government refused to provide such statistical detail or publish such reports beyond the 1994-95.

The percentage of positive random drug tests for each prison location for the year ended 30 June 2000 will be documented in the report *Statistical Profile: The Victorian Prison System 1999-2000.*

2. The performance benchmark allowable for illicit drug use as agreed in the Service Agreement for Public Prisons and Contract Agreement for Private Prisons for the year ended 30 June 1999 is documented in the report *Statistical Profile: The Victorian Prison System 1995-96 to 1998-99*.

   The benchmarks for the year ended 30 June 2000 are the same as the 1998/99 financial year.

3. The private prisons are required to deliver a range of drug and alcohol programs as part of base contract obligations. This includes intensive treatment programs at Fulham and MWCC, as well as a range of lower intensity programs including substance awareness and education. These programs are included in the original base contracts and are not able to be costed separately.

4. A review of the Victorian Prison Drug Strategy by KPMG in 1999 found that up to one in three prisoners attend a Substance Education Program with a similar number attending a semi-intensive or intensive treatment program *(Review of the Victorian Prison Drug Strategy, KPMG 2000).*

   Private prisons deliver a number of programs as part of the base contract, plus additional programs funded through *Turning the Tide*. All programs in public prisons are funded through Turning the Tide. The current reporting requirements are for *Turning the Tide* programs only.

The table below refers to prisoners enrolled in drug treatment by prison location. For CORE prisons drug treatment encompasses a range of programs including drug awareness, individual counselling and intensive residential treatment. The number of enrolments for private prisons refer only to those programs funded through Turning the Tide (base contract obligations including intensive residential treatment at MWCC and Fulham, and a range of education programs are not included as reporting requirements are for Turning the Tide funded activities only).

| Prison | Number of Enrolments Year Ended 30/6/99 | Number of Enrolments Year Ended 30/6/2000 |
|---|---|---|
| **CORE Prisons** | | |
| Ararat Prison | 490 | 496 |
| Barwon Prison | 892 | 1215 |
| Beechworth Prison | 741 | 880 |
| Bendigo Prison | 797 | 919 |
| Dhurringile Prison | 604 | 816 |
| Langi Kal Kal Prison | 276 | 401 |
| Loddon Prison | 819 | 1343 |
| Melbourne Assessment Prison | 1990 | 5053 |
| Tarrengower Prison | 168 | 72 |
| Won Wron Prison | 447 | The program components have been changed from a drug treatment program to a pre-release preparation program. |
| **Private Prisons – TTT funded services only** | | |
| MWCC* | 777 | 692 |
| Port Phillip Prison** | 919 | 2659 (range of new programs introduced to meet changing needs of prisoners) |
| Fulham *** | 1722 | 1805 |

*MWCC= count includes individual and group treatment for protection and management prisoners, and individual counselling - excludes substance awareness, education and intensive treatment (base contract obligations).

**Port Phillip Prison = count includes relapse prevention programs, substance education, semi-intensive treatment and individually tailored intensive programs – excludes substance awareness and a proportion of education (base contract obligations).

***Fulham= count includes relapse prevention, substance awareness, substance education and intensive programs – excludes proportion of awareness and education (base contract obligations).

5. All prisoners with drug problems are eligible to access drug and alcohol treatment programs. A range of programs are offered at every prison location. The capacity of these programs is determined by prisoner demographics and need at a specified time.

6. The places available in intensive residential treatment for the year ending 30 June 2001 are determined by prisoner demographics and need at a specified time.

7. Drug awareness is a mandatory program for all new prison receptions and transfers and is offered at all prison locations. The following number of prisoners accessed substance awareness at each prison location in the years ended 30 June 1999 and 30 June 2000:

| Prison | Substance Awareness Enrolments Year Ended 30/6/99 | Substance Awareness Enrolments Year Ended 30/6/2000 |
|---|---|---|
| CORE Prisons | | |
| Ararat Prison | 311 | 302 |
| Barwon Prison | 375 | 344 |
| Beechworth Prison | 291 | 266 |
| Bendigo Prison | 207 | 245 |
| Dhurringile Prison | 391 | 364 |
| Langi Kal Kal Prison | 180 | 124 |
| Loddon Prison | 373 | 413 |
| Melbourne Assessment Prison | 1360 | 4295 |
| Tarrengower Prison | 71 | 63 |
| Won Wron Prison | 368 | The program components have been altered from a drug treatment program to a pre-release preparation program. |
| Private Prisons | | |
| MWCC | 435 | 541 |
| Port Phillip Prison | 903 | 1105 |
| Fulham | 942 | 1102 |

8. (a) A three-week program is not applicable to the current treatment framework. Whilst some programs may run over a three-week duration, the reality is that programs are run over 12, 16, 24 and 120 hours. These programs are delivered on schedules that suit the prisons needs.

(b) Programs run over a duration of twelve weeks are the intensive treatment programs. There are three prisons which provide intensive treatment programs – Bendigo, Fulham and MWCC. In the year ended 30 June 1999 64 prisoners participated in intensive treatment at Bendigo; 289 at Fulham and 32 at MWCC. In the year ended 30 June 2000 99 prisoners participated in intensive treatment at Bendigo; 273 at Fulham and 35 at MWCC.

## Corrections: community based orders

**1442. THE HON. B. C. BOARDMAN** — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Corrections):

(a) How many offenders were sentenced to a Community-Based Order (CBO) between 1 January 2000 and 31 December 2000.

(b) What was the age and gender of offenders sentenced to a CBO over this period.

(c) How many offenders sentenced to a CBO over t his period breached the provisions of their CBO by committing additional offences.

**ANSWER:**

I am advised

(a) Between 1 January 2000 and 31 December 2000 a total of 5746 separate offenders commenced Community Based Orders. Excluded from this count are offenders who commenced a CBO in Default of Payment of Fine as these offenders are not sentenced to a CBO; their orders arise as a consequence of the conversion of a monetary penalty into community work hours.

(b) The ages of the 5746 offenders spread out over a range between 17 and 81 with the vast majority being under 35. 4532 were males and 1214 were females.

(c) As at 27 March 2001 a total of 330 offenders who commenced a CBO between 1 January 2000 and 31 December 2000 had breached their order by being found guilty at court of the commission of a further offence. There were an additional 109 offenders whose alleged further offences have not been determined at court.

## Corrections: prisoners in cells

**1443. THE HON. B. C. BOARDMAN** — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Corrections): How many prison cells designed for one person have contained two or more prisoners on average at HM Prison Ararat, HM Prison Barwon, HM Prison Beechworth, HM Prison Bendigo, HM Prison Dhurringile, HM Prison Langi Kal Kal, HM Prison Loddon, HM Melbourne Assessment Prison, HM Prison Tarrengower, HM Prison Won Wron, Fulham Correctional Centre, Metropolitan Women's Correctional Centre, and Port Phillip Prison respectively, for each of the years ended 30 June 1999 and 30 June 2000.

**ANSWER:**

I am advised that:

While daily data on prisoner numbers is maintained, it is not retained in a form that enables the calculation of the number of cells designed for one person that are actually occupied by two or more persons. This will vary on a daily basis.

## Finance: Winning Government Business program

**1450. THE HON. BILL FORWOOD —** To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Finance): In relation to the Winning Government Business program:

(a) What is the total cost of the program.

(b) How many people attended each of the workshops.

(c) Will this program be repeated in 2001.

(d) What percentage of Victorian public sector expenditure involved purchases from regional Victorian suppliers in 1999-2000.

**ANSWER:**

I am informed that:

(a) Approximately $57,400 to date.

(b) Approximately 450 participants have attended workshops so far.

(c) Yes.

(d) Approximately 13%.

## Environment and Conservation: Renaissance of the Regions

**1460. THE HON. BILL FORWOOD —** To ask the Honourable the Minister for Energy and Resources (for the Honourable the Minister for Environment and Conservation): With regard to the Renaissance of the Regions symposium in Melbourne held by the Institute of Public Administration Australia:

(a) What financial support was given by the Department of Natural Resources and Energy to this event.

(b) What financial support was given directly to the Institute of Public Administration Australia.

(c) Did the Department of Natural Resources and Energy share any of the costs of the events.

(d) Will the Department of Natural Resources and Energy support these forums in 2001; if so, will it be at the same level of funding.

**ANSWER:**

I am informed that:

(a) Financial support to the *Renaissance of the Regions* Symposium comprised attendance by Department of Natural Resources and Environment staff at a cost of $13,981.

(b) Sponsorship of $22,000 including GST was provided to the Institute of Public Administration Australia.

(c) The Department's contribution was limited to the above sponsorship.

(d) Support in 2001 for the program has been and will be limited to staff attendance at forums.

## Ports: Renaissance of the Regions

**1461. THE HON. BILL FORWOOD —** To ask the Honourable the Minister for Ports: With regard to the Renaissance of the Regions symposium in Melbourne held by the Institute of Public Administration Australia:

(a) What financial support was given by the Department of Infrastructure to this event.

(b) What financial support was given directly to the Institute of Public Administration Australia.

(c) Did the Department of Infrastructure share any of the costs of the events.

(d) Will the Department of Infrastructure support these forums in 2001; if so, will it be at the same level of funding.

**ANSWER:**

(a) The Department of Infrastructure paid $4873 for staff to attend the Symposium.

(b) The $4873 was paid to the Institute of Public Administration Australia.

(c) No.

(d) The Department will consider any request from the Institute of Public Administration Australia for funding to conduct appropriate symposium events in 2001.

## Arts: departmental staff salaries

**1635. THE HON. P. A. KATSAMBANIS** — To ask the Honourable the Minister for Industrial Relations (for the Honourable the Minister for Arts): As at 31 December 2000:

(a) What was the median base salary across the Minister's Department in the VPS 1, VPS 2, VPS 3, VPS 4, VPS 5 and "other" broadband classifications, respectively, according to — (i) gender; and (ii) for all employees.

(b) How many equivalent full-time staff were employed in each classification.

(c) What proportion of total equivalent full-time staff were employed in each classification.

(d) What was the median length of service for females and males, respectively, in each classification.

(e) How many executives were employed that were in receipt of a total annual remuneration package of — (i) less than $90,000; (ii) $90,000 to $100,000; (iii) $100,001 to $110,000; (iv) $110,001 to $120,000; (v) $120,001 to $130,000; (vi) $130,001 to $140,000; (vii) $140,001 to $150,000; (viii) $150,001 to $160,000; (ix) $160,001 to $170,000; (x) $170,001 to $180,000; (xi) $180,001 to $190,000; (xii) $190,001 to $200,000; (xiii) $200,001 to $210,000; (xiv) $210,001 to $220,000; (xv) $220,001 to $230,000 (xvi) $230,001 to $240,000; (xvii) $240,001 to $250,000; (xviii) $250,001 to $260,000; (xix) $260,001 to $270,000; (xx) $270,001 to $280,000; (xxi) $280,001 to $290,000; (xxii) $290,001 to $300,000; and (xxiii) $300,001 and above, and how does this compare with the number of executives employed in each level as at 30 June 2000.

**ANSWER:**

The information requested would require an inordinate amount of time and resources which are not available.

Comprehensive information on the composition of public service employment within my Department will be contained in the 2000/2001 annual report of the Department of Premier and Cabinet, scheduled to be tabled in the Spring 2001 Parliamentary Session.

## Treasurer: departmental staff salaries

**1639. THE HON. P. A. KATSAMBANIS** — To ask the Honourable the Minister for Energy and Resources (for the Honourable the Treasurer): As at 31 December 2000:

(a) What was the median base salary across the Treasurer's Department in the VPS 1, VPS 2, VPS 3, VPS 4, VPS 5 and "other" broadband classifications, respectively, according to — (i) gender; and (ii) for all employees.

(b) How many equivalent full-time staff were employed in each classification.

(c) What proportion of total equivalent full-time staff were employed in each classification.

(d) What was the median length of service for females and males, respectively, in each classification.

(e) How many executives were employed that were in receipt of a total annual remuneration package of — (i) less than $90,000; (ii) $90,000 to $100,000; (iii) $100,001 to $110,000; (iv) $110,001 to $120,000; (v) $120,001 to $130,000; (vi) $130,001 to $140,000; (vii) $140,001 to $150,000; (viii) $150,001 to $160,000; (ix) $160,001 to $170,000; (x) $170,001 to $180,000; (xi) $180,001 to $190,000; (xii) $190,001 to $200,000; (xiii) $200,001 to $210,000; (xiv) $210,001 to $220,000; (xv) $220,001 to $230,000 (xvi) $230,001 to $240,000; (xvii) $240,001 to $250,000; (xviii) $250,001 to $260,000; (xix) $260,001 to $270,000; (xx) $270,001 to $280,000; (xxi) $280,001 to $290,000; (xxii) $290,001 to $300,000; and (xxiii) $300,001 and above, and how does this compare with the number of executives employed in each level as at 30 June 2000.

**ANSWER:**

I am informed that:

The information requested would require an inordinate amount of time and resources which are not available.

Comprehensive information on the composition of public service employment within my Department will be contained in the 2000/2001 annual report of the Department of Treasury and Finance, scheduled to be tabled in the Spring 2001 Parliamentary Session.

## Transport: departmental staff salaries

**1643. THE HON. P. A. KATSAMBANIS** — To ask the Honourable the Minister for Energy and Resources (for the Honourable the Minister for Transport): As at 31 December 2000:

(a) What was the median base salary across the Minister's Department in the VPS 1, VPS 2, VPS 3, VPS 4, VPS 5 and "other" broadband classifications, respectively, according to — (i) gender; and (ii) for all employees.

(b) How many equivalent full-time staff were employed in each classification.

(c) What proportion of total equivalent full-time staff were employed in each classification.

(d) What was the median length of service for females and males, respectively, in each classification.

(e) How many executives were employed that were in receipt of a total annual remuneration package of — (i) less than $90,000; (ii) $90,000 to $100,000; (iii) $100,001 to $110,000; (iv) $110,001 to $120,000; (v) $120,001 to $130,000; (vi) $130,001 to $140,000; (vii) $140,001 to $150,000; (viii) $150,001 to $160,000; (ix) $160,001 to $170,000; (x) $170,001 to $180,000; (xi) $180,001 to $190,000; (xii) $190,001 to $200,000; (xiii) $200,001 to $210,000; (xiv) $210,001 to $220,000; (xv) $220,001 to $230,000 (xvi) $230,001 to $240,000; (xvii) $240,001 to $250,000; (xviii) $250,001 to $260,000; (xix) $260,001 to $270,000; (xx) $270,001 to $280,000; (xxi) $280,001 to $290,000; (xxii) $290,001 to $300,000; and (xxiii) $300,001 and above, and how does this compare with the number of executives employed in each level as at 30 June 2000.

**ANSWER:**

The information requested would require an inordinate amount of time and resources which are not available.

Comprehensive information on the composition of public service employment within my Department will be contained in the 2000/2001 annual report of the Department of infrastructure, scheduled to be tabled in the Spring 2001 Parliamentary Session.

## Corrections: prisoners' weekly pay

**1702**. **THE HON. B. C. BOARDMAN** — To ask the Honourable the Minister for Sport and Recreation (for the Honourable the Minister for Corrections): In relation to prisoners' weekly pay:

(a) How many "spend" accounts is the Department of Corrections currently running on behalf of prisoners as at 31 March 2001.

(b) What is the total amount of money in the "spend" accounts as at 31 March 2001.

(c) How many "spend" accounts had a deficit balance as at 31 March 2001.

(d) What is the total amount of deficit in the "spend" accounts as at 31 March 2001.

**ANSWER:**

In response to the Members question, I am advised the answers are as follows:

(a) CORE – the Public Correctional Enterprise, an agency of the Department of Justice manages one bank account on behalf of prisoners.

(b) Closing balance of $1,210,403.18

(c) Nil

(d) Nil

# QUESTIONS ON NOTICE

***Answers to the following questions on notice were circulated on the date shown.***
***Questions have been incorporated from the notice paper of the Legislative Council.***
***Answers have been incorporated in the form supplied by the departments on behalf of the appropriate ministers.***
***The portfolio of the minister answering the question on notice starts each heading.***

## Thursday, 24 May 2001

### State and Regional Development: *Victorian Major Projects 2000 and Beyond*

**1451. THE HON. BILL FORWOOD—** To ask the Honourable the Minister for Energy and Resources (for the Honourable the Minister for State and Regional Development): In relation to the document *Victorian Major Projects 2000 and Beyond*:

(a) What was the total cost of the document.

(b) To who was the document distributed.

(c) How are projects chosen to appear in the document.

(d) What level of support (financial or otherwise) is the Government giving to the Marine Terminal Facility at Barry Point, as noted on page 11.

(e) What level of support (financial or otherwise) is the Government giving to ADI for its production of 341 Bushmaster vehicles, as noted on page 28.

(f) What level of support (financial or otherwise) is the Government giving to the Codrington Wind Farm, as noted on page 30.

(g) What level of support (financial or otherwise) is the Government giving to the Toora Wind Farm, as noted on page 32.

(h) What level of support (financial or otherwise) is the Government giving to Iluka Resources-Mineral Sands, as noted on page 32.

(i) What level of support (financial or otherwise) is the Government giving to Energy Ridge-Theme Park & Tourism Attraction, as noted on page 32.

(j) What level of support (financial or otherwise) is the Government giving to the Arisa-Straw Pulp Plant, as noted on page 32.

**ANSWER:**

*Victorian Major Projects 2000 and Beyond* cost $30,000 (+GST) and was distributed to the 1000 attendees at the Major Projects Forums held in Melbourne, Traralgon and Bendigo; sent to companies that contacted the Industrial Supplies Office (ISO) requesting a copy; and was available for attendees at various ISO presentations, seminars and similar functions. Approximately 3000 copies of the booklet have been distributed to industry.

ISO chose the projects to appear in the booklet after canvassing industry, the Office of Major Projects and other Government Departments.