PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

15 November 2000

(extract from Book 6)

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By authority of the Victorian Government Printer

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CONTENTS

WEDNESDAY, 15 NOVEMBER 2000

Wednesday, 15 November 2000

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

DISTINGUISHED VISITORS

The PRESIDENT — Order! I would like to welcome to the gallery Mr Jose Ramos-Horta, Minister for Foreign Affairs for East Timor and joint winner of the Nobel Peace prize in 1996. Mr Ramos-Horta is accompanied by the Honourable Jean McLean. Welcome.

MELBOURNE CITY LINK (MISCELLANEOUS AMENDMENTS) BILL

Introduction and first reading

Received from Assembly.

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

GAMING ACTS (GAMING MACHINE LEVY) BILL

Introduction and first reading

Received from Assembly.

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

BUSINESS OF THE HOUSE

Sessional orders

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

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

Motion agreed to.

PAPERS

Laid on table by Clerk:

Alexandra and District Ambulance Service — Minister for Health's report of 13 November 2000 of receipt of the 1999–2000 report.

Interpretation of Legislation Act 1984 — Notice pursuant to section 32(3)(a)(iii) in relation to Statutory Rule No. 93/2000.

Podiatrists Registration Board — Minister for Health's report of 13 November 2000 of receipt of the 1999–2000 report.

Physiotherapists Registration Board — Minister for Health's report of 13 November 2000 of receipt of the 1999–2000 report.

Subordinate Legislation Act 1994 —

Ministers' exception certificates under section 8(4) in respect of Statutory Rules Nos. 53 to 56, 91 and 108.

CRIMES (FURTHER AMENDMENT) BILL

Second reading

Debate resumed from 25 October; motion of Hon. M. A. BIRRELL (East Yarra).

Hon. G. W. JENNINGS (Melbourne) — I enter the debate to discuss the very significant matter of justice being seen to be done and the Victorian community's expectation that the legislative framework applying in this state protects the rights of all citizens with respect to serious crimes.

Opposition members interjecting.

Hon. G. W. JENNINGS — I am happy to outline the government's position in relation to the private members bill before the house. The importance of the issue that should unite this chamber and the parliamentary parties is the desire to ensure that justice is done and seen to be done in the eyes of the families of those who have suffered at the hands of perpetrators of serious crime. That is the heart of the issue which gave rise to the introduction of the private members bill.

I reiterate the government's position that its response to the bill and its intention in dealing with laws relating to those in custody has as its first principle the necessity that justice be seen to be done and that it address the urgent heartfelt need in the community that justice be seen to be done.

The bill is the result of a concerted debate within the Victorian media about the appropriate measures to interview those in custody. It grew from a particular case, the extreme concern for the families of those who have suffered at the hands of violent criminals and the reasonable expectation those families may have that the law will be used to effectively get to the bottom of those crimes to achieve a just result.

On behalf of the government, I support the intention that underlies the private members bill. Although the government will oppose the bill in the vote that will take place today, that will not be done at the expense of recognising the validity of some of the principles and issues underlying it.

Honourable members interjecting.

Hon. G. W. JENNINGS — The bill that was introduced by the opposition on 25 October met with an immediate response from the government after it had sought the advice of the Victoria Police. That advice was gained in anticipation of the bill being introduced so people not just from the Victoria Police but also from the Law Institute of Victoria would be ready to provide advice. Upon the introduction of the bill the Attorney-General outlined the government's view that it was flawed in a number of respects and he set those out virtually from the first day — the bill is not confined to questioning people reasonably suspected of committing crimes; it targets vulnerable people with intellectual and physical disabilities and indigenous people; and it does not provide for the applicant to be heard by the magistrate determining whether an interview may proceed.

At that time the government indicated publicly and to the shadow Attorney-General that it was prepared to develop draft legislation to address the substantive issues raised in the bill but which provided a number of guarantees and safeguards in terms of its application. In fact, it called on the opposition to join the government in facilitating a bill that would address those significant issues but would not have the failings of the bill currently before the house.

Within a day or two of this legislation being introduced, the shadow Attorney-General indicated his intention to work with the government on achieving a result through an agreed piece of legislation. In an email to the Attorney-General on 25 October the shadow Attorney-General states:

> In response to comments of the Premier in Parliament today I offer my bipartisan support in ensuring that the Crimes Act is amended to effect the proposals sets out in the bill introduced today in the upper house.

That received some media commentary, and the *Age* of 26 October reported the Attorney-General as saying that while he did not agree that his bill was flawed, if it could be improved that would be fine. In fact, from 26 October the public pronouncement of the opposition was that it was prepared to work cooperatively with the government to establish a piece of legislation to address this significant issue.

In the interim the Attorney-General has prepared draft legislation, which he has circulated to the opposition with the intent of achieving a united position on this question. From 26 October until 14 November — last evening — the shadow Attorney-General in the other place exercised his clear right to silence, because no response was received to the government's initiative.

Hon. Bill Forwood interjected.

Hon. G. W. JENNINGS — In case I have inadvertently misled the house in this matter, I will clarify my remarks. The opposition has been provided on a confidential basis with the drafting instructions the government has prepared on this issue.

Hon. C. A. Furletti — It is not draft legislation.

Hon. G. W. JENNINGS — I am clarifying the issue at the earliest opportunity as a result of the interjection from the opposition so there can be no misapprehension about what I am saying. Drafting instructions have been circulated to the opposition and the Attorney-General has made it clear publicly and privately that it is the government's intention to address this significant issue.

During my contribution I will outline the scope of the issues to be covered by the Attorney-General, without pre-empting the amendments to be proposed by him, and the way the bill will be amended to achieve a satisfactory result. For those who currently may not be interviewed because they have denied consent the government wishes to provide circumstances where a magistrate may determine how an interview may proceed, and to provide safeguards about the categories of people in custody who may be required to attend an interview. Safeguards are required to protect the position of those who are vulnerable to the extent of being in custody. In particular the potential for the interview process may be misconstrued by those who are incarcerated as an opportunity to accuse others, as is possible under the bill.

The government is concerned that the current proposal contains no qualifications of reasonable grounds regarding the person the police seek to interview as a suspect for the crime being investigated. The government's concerns were made clear to the opposition and are the fundamental reasons for the government's interest in the bill. It is disappointing that despite public announcements and discussions in the media concerning a bipartisan position, no such position exists. In fact the media's exposure of the issue is based on the assumption there that a united position will be put before Parliament. It is the

Attorney-General's intention to reach a bipartisan agreement through dialogue with the opposition, but to date he has not been successful.

Following the debate I fear there will be the inevitable result. I fear this will be an opportunity lost by the Parliament for good governance.

Hon. Bill Forwood — Why?

Hon. G. W. JENNINGS — Because there has not been any successful negotiation or discussion to date.

Hon. Bill Forwood — You cannot blame us for that.

Hon. G. W. JENNINGS — I am not in the business of apportioning blame. I put on the record that the Attorney-General has made some attempt to achieve a bipartisan approach on this issue, but unfortunately there has been no result to date. I encourage the Attorney-General, the shadow Attorney-General and honourable members opposite to engage in constructive dialogue. It is not the first time I have encouraged honourable members opposite to enter into a dialogue that will be more significant than the theatre that may take place here this morning.

Given the speed with which the opposition seeks to deal with this matter, I refer to a letter from the Victoria Police in response to the proposed legislation.

Hon. B. C. Boardman — Make it public.

Hon. G. W. JENNINGS — The letter is from Neil O'Loughlin, acting chief commissioner, and is addressed to the Attorney-General.

Hon. Bill Forwood — Will you table that?

Hon. G. W. JENNINGS — I am happy to consider that request, but I require the Attorney-General's advice on whether I am at liberty to table it.

Hon. Bill Forwood — On a point of order, Mr President, Mr Jennings is about to quote from a letter that I have asked be tabled. I respectfully submit it is one of those occasions when such action would be to the benefit of the house.

Hon. G. W. JENNINGS — It may be for the benefit of the house. I have not referred to the letter yet, but I did have it in my hands. I have no difficulty about making the letter available. In fact, in assisting the progress of this matter it would be useful for both sides of the house to understand the position of the Victoria Police.

Honourable members interjecting.

Hon. G. W. JENNINGS — I am a defender of open and accountable government. I will read some extracts from and paraphrase some of the contents of the letter, which is dated 26 October. It states:

> … Victoria Police has undertaken preliminary analysis of the impact of section 464B on the ability of police to investigate serious offences and possible options for increasing the effectiveness of this provision.
>
> While further research is required and will be undertaken, the force has identified two areas where changes should be made to facilitate the successful investigation of offences, whilst retaining, or even increasing, adequate safeguards for persons in custody.

The letter further states:

> Section 464B allows police to interview a person in custody for other offences if police obtain a court order and the person in custody consents. As has been alluded to in recent media reports, it is not uncommon for police attempts to interview a person in custody to be frustrated by that person's refusal to consent to such an interview.
>
> Accordingly, Victoria Police advocates removing the requirement for the person to consent to the interview in the belief that this unreasonably hinders the investigation …

The letter then refers to a number of safeguards that should be in place should the opportunity be available under Victorian law to undertake such interviews at the direction of or following a decision of a magistrate when consent is not an absolute requirement. The letter goes on to state that the safeguards include:

> … the requirement for police to demonstrate to the court reasonable grounds for seeking to interview …
>
> the prisoner's right to remain silent during the interview;
>
> existing police procedures for conducting interviews, such as cautioning the person and tape recording the interview;
>
> the right of the prisoner to communicate with a friend, relative and/or legal practitioner prior to being interviewed.
>
> In addition, police clearly have an interest in ensuring that correct procedures are followed so as not to jeopardise their investigations and to obtain admissible evidence for presentation in court at a later date.

The letter concludes:

> Clearly, these proposals would require wide consultation with stakeholders and the wider community, particularly on the procedures that would need to be put in place and the limitations on their scope.

That is the significant issue I direct to the attention of the house. Those concluding marks reveal that in the view of the police it is essential that when the Victorian Parliament considers fundamental changes to the rights

of Victorian citizens careful consideration be undertaken with all stakeholders in an appropriate and considered fashion to ensure that those rights are not adversely prejudiced by Parliament acting too hastily. Even the police, who share the community's enthusiasm for their being able to interview suspects at the earliest opportunity, are expressing a degree of caution about how speedily the Parliament should act on the matter. The police want to ensure that the Parliament considers those issues properly.

Hon. Bill Forwood — On a point of order, Mr Deputy President, the opposition has an agreement with the Deputy Leader of the Government that he will make the letter available so it can be used in the debate. I am grateful to him for agreeing to our request. However, it is not much good his saying he will do it later because someone else will then be speaking. Now that the honourable member has finished using the letter, the opposition would like him to hand it to the attendant so that it can be photocopied and other honourable members can have the opportunity of reading and considering it in preparing their contributions. I ask the honourable member to hand the letter over, as he said he would.

The DEPUTY PRESIDENT — Order! I do not believe it is in the power of the Chair to enforce the handing over of the letter. The honourable member has offered the letter, and I am sure he will make it available.

Hon. G. W. JENNINGS — The issue is that I am on my feet in the middle of my contribution. I have one copy of the letter.

Hon. Bill Forwood — You would have it back in 2 minutes.

Hon. G. W. JENNINGS — I may need to refer to it at any time during my submission this morning. I have not placed any time limit on when I may hand over the letter, but I advise the house that I would prefer to finish my remarks prior to handing the letter over.

The DEPUTY PRESIDENT — Order! Proceed.

Hon. G. W. JENNINGS — Other responses in the popular domain — in the media — at the time exposed significant community concerns about the way the legislation should be applied in Victoria, about due consideration being given to the matters I referred to and the appropriate safeguards being enshrined in legislation to ensure that people in custody are not adversely affected, and about fundamental civil rights with regard to the right to silence not being abrogated.

A letter by Roy Punshon, the chairman of the Criminal Bar Association, published at page 19 of the *Age* of 26 October, states in part:

> The proposal to force prisoners to be interrogated by police is an attack on the right to silence.
>
> In 1998, a bipartisan committee of Parliament held a full and detailed inquiry and voted unanimously to retain it.
>
> One aspect of the right to silence is that we will not accept a confession unless it is voluntary. Apart from not wanting to create a system based on people being forced to confess to crimes, history is full of examples of how unreliable unwilling confessions are.
>
> TV footage of the confession of aid worker Steve Pratt … while in the custody of security forces provided a chilling reminder of this.

The letter concludes:

> Prisoners do not have more rights than ordinary citizens. We all rely on the same right to silence, and if you change it for one group, you change it for all of us.

A letter dated 27 October from David Grace of the Law Institute of Victoria addressed to the Attorney-General reveals the institute's concerns about the bill. The letter, which I will be happy to make available, states in part:

> We refer to the bill presented to the Legislative Council this week. We are opposed fundamentally to the proposed changes.

The letter further states:

> The bill is not confined to questioning people who are reasonably suspected of committing a crime. Rather it applies to people who the police reasonably believe possess relevant information about the commission of any crime.
>
> The ordinary citizen cannot be taken into police custody for interrogation because the police have information that the person knows something about a crime. The proposed powers are the hallmark of police states and totalitarian regimes and would not be permissible at common law.
>
> …
>
> Despite the debate being conducted in the papers that it is hardened criminals who are being targeted the bill will catch the vulnerable, the socially and economically deprived and the intellectually disabled.
>
> Aborigines are disproportionately represented in our jails — due to 200 years of social and economic abuse. The bill will impact on these people.
>
> It specifically applies to people with intellectual and mental disabilities.

Opposition members interjecting.

The DEPUTY PRESIDENT — Order! Mr Furletti will have an opportunity to contribute to the debate later, as will Mr Boardman.

Hon. G. W. JENNINGS — Clearly, the view of the Law Institute of Victoria is that the current drafting of the bill will mean that the most hardened criminals in custody in Victoria will not be put under scrutiny or under the microscope, but those who are less likely to be able to defend themselves, particularly people in Victorian mental health institutions, will be roped into the scope of the bill. The law institute is clearly flagging that it has severe reservations about who would be roped into being interrogated under the legislation if it were to be enacted. It is cautioning the government and the Victorian community to ensure there are a number of clear criteria relating to the custody regime to apply to certain categories of patients in mental institutions. By its letter to the Attorney-General the institute is providing Victorians with a clear warning that the Parliament should not give open slather access to some of the most vulnerable members of the Victorian community who are currently receiving treatment for mental illness or intellectual disabilities.

It is extraordinary that the opposition, judging by its interjections, does not appear to have any qualms about protecting those who are in mental institutions or those with mental illness or intellectual disabilities. The bill is an attempt to introduce broad-sweeping powers that would change the fundamental civil rights of any number of Victorian citizens.

I will specifically run through a check list of issues in the opposition's bill and indicate what the government sees as an appropriate remedy after considering the bill and receiving advice from the police, the Law Institute of Victoria and others. The remedies I will suggest for the bill have been clearly outlined in the drafting instructions that I mentioned had been distributed to the opposition by the Attorney-General in an attempt to seek the opposition's support for the introduction of substantive legislation that would address those matters properly.

The first set of issues relates to the intent of the bill, which is to create a proposed section that will operate alongside section 464 and would apply to a broader group, people who are held in custody who possess information about a crime, and would remove consent as a prerequisite to police questioning. It would apply to all prisoners and not just those who are reasonably suspected of having committed an offence.

The government considers that those powers would be far too broad in application and would lead to abuses within the criminal justice system, including custodial arrangements, and make vulnerable any number of prisoners who are interviewed under those circumstances. The critical test that should apply is whether there are reasonable grounds to suspect that a prisoner has committed that offence. It is an essential part of the government's argument that the first issue a magistrate should have to consider in granting a right for police to interview is whether there are reasonable grounds to suspect the person of having committed the specific crime being investigated by the police.

The second set of issues that the government is concerned about relate to the current proposal, which will extend the application of the act beyond prisoners, beyond persons held in prisons or police jails, to persons held in custody. It therefore will apply to security residents under the terms of the Intellectually Disabled Persons' Services Act or to involuntary or security patients under the Mental Health Act.

The government is concerned that a number of people may be living within a secure environment under the terms of the Mental Health Act who may not have committed an offence and may be there for their own protection, or may be being held in custody for the community's sake but have not actually committed an offence. Clearer categories need to be created to apply to those living in mental health institutions and institutions for the intellectually disabled who may be roped in under the scope of the legislation. The government is considering proposals that would extend the right for a magistrate to make such a determination to create four classes of persons only under the regime. The classes would be: forensic or security patients under the Mental Health Act; forensic or security patients under the Crimes (Mental Impairment and Unfitness to be Tried) Act; security residents under the Intellectually Disabled Persons' Services Act; and persons on hospital orders under the Sentencing Act.

The government's intention is to provide safeguards that are not in the bill by providing for an independent third person to be present at the interviews of all people who fall into those categories. An additional requirement is that before granting an order the court must be satisfied on the balance of probabilities that the person is fit to be interviewed.

The government recognises that patients who are in custody and who fall within the scope of those four acts may be within one or more of those categories so that they are not necessarily mutually exclusive, but it also recognises the need for the courts to be clear about the limits of those who would fall under the application of such an amendment to the act. The government believes the broad-brush approach to this issue will mean that those who will be interviewed will have come in contact with the criminal jurisdiction.

Similarly, the government has a concern about how the current proposal applies to all classes of crimes and offences, no matter how minor. The government intends to limit the application of the roping-in clause under the Crimes Act on persons under the age of 17 to serious offences — most likely indictable offences — rather than giving it open slather. That will limit as much as possible undue pressure being placed on those held in younger person's facilities or their being subject to undue isolation and will protect their rights by narrowing the scope of offences to which the proposed amendments will apply.

The government is also concerned about the way in which a court will deal with the issue leading up to and during the course of a hearing. The amendments proposed by the private members bill provide that an investigating official can make an application to the Magistrates Court for access to be granted to a person held in custody if the official believes on reasonable grounds that the person held in custody possesses relevant information about the commission of a crime.

As I have said, the government is of the view that although the access may be the same an important criterion that must be added to the scope of the current legislation is that it applies to those who are suspected of committing a crime, and under the current proposal — this is a concern the Victorian Law Institute has put on the public record — a prisoner may be brought before a magistrate merely because he or she may have evidence or information about a crime. The government contends that if the requirement of consent to an interview is removed it should be compulsory for potential interviewees to appear before magistrates at application hearings.

The bill contains no guidance for magistrates about what criteria should be used for the granting of an application for interview. While the government supports the notion of the discretion of magistrates being the determining factor, it also believes that magistrates need some assistance and guidance in making such determinations. The government suggests the criteria should be that the grounds for the application are reasonable and/or that the order is necessary in the interests of justice.

The opposition's proposal is that magistrates will ensure that suspects have legal representation if they request it. The government believes that is inadequate and that the legislation should ensure that suspects are given the opportunity to obtain legal advice. It believes the legislation should provide that if and when a suspect seeks legal advice a magistrate cannot make an order until legal advice has been provided.

Under the bill a court will order a suspect to be advised that he or she has the right to silence. In the government's view that requirement is in some ways narrower than the current requirement. Not only should the court be required to tell a suspect of his or her right to silence, but also the investigating official should be required to inform the suspect of that right before questioning commences. The current legal provisions are stronger in that regard.

The government is also concerned about the setting of time limits during which inquiries may continue once the right to interview has been obtained. The government is concerned that the bill does not impose a time limit on questioning or on gaining an extension of time. Once consent has been removed from the process, a series of tests should apply as the basis on which interview periods can be extended. It is the government's view that magistrates should consider in each case whether there is a reasonable prospect that further questioning will assist the investigation, and that there be an obligation on investigating officials to demonstrate that progress is being made in the interview process and that its continuation is likely to lead to some success. No reasonable society would envisage that questioning would continue ad infinitum if the right to silence is being maintained.

The bill does not allow for an appropriate environment in which interviews can take place. The government is clearly of the view that when evidence is to be obtained through an interview process in an environment in which consent of the interviewee has not been obtained, the proceedings should be videotaped. The Law Institute of Victoria was adamant that those recording such interviews should go beyond audio taping and extend it to videotaping and that they should ensure that the videotaping is a continuous process with no disjointed or off-the-record sections.

The government believes that a number of other aspects of the bill narrow the rights of persons who may be interviewed and that it should be amended to ensure that interviewees have legal representation, that interpreters be a compulsory requirement when appropriate, and that an independent third person be in attendance for interviewees who are under 17 years of age.

As I said at the beginning of my contribution, it is disappointing that we as a Parliament do not have an agreed approach to deal with those substantive issues. The government will oppose the bill and proceed to divide on it later today, having made a clear offer to the opposition to reach a united position on it. The Attorney-General has expressed his clear intention to

introduce a bill that will not only incorporate many of the elements of the opposition's bill but also build on it.

Hon. Bill Forwood — On Monday.

Hon. G. W. JENNINGS — Mr Forwood interjects that there was communication between the Attorney-General and the shadow Attorney-General on Monday. I will refer to the letter of the Attorney-General.

Hon. C. A. Furletti — Will you table it?

Hon. G. W. JENNINGS — I am happy to make it available. The letter states:

> I refer to my previous correspondence, forwarded to you on 27 October 2000, and write to advise the Department of Justice is currently preparing a submission on proposed amendments to section 464B of the Crimes Act. It is expected that this submission will be considered by cabinet shortly.
>
> I refer also to your email of 26 October 2000, in which you offer your bipartisan support in ensuring that the Crimes Act is amended in terms similar to those set out in the Crimes (Further Amendment) Bill which was introduced into the Legislative Council.
>
> Enclosed, on a confidential basis, is a copy of the draft drafting instructions for the intended amendments to the Crimes Act. The proposed amendments deal centrally with the issue of permitting a magistrate the discretion to allow a prisoner to be questioned in relation to criminal matters for which he or she is a suspect. Importantly, the bill will set out the basis on which a magistrate can make such a decision, together with safeguards to ensure that the interview process protects the rights of all parties concerned.
>
> A draft bill will be available for further consultation with you this week.
>
> In consideration of the above, I request that you withdraw the Crimes (Further Amendment) Bill from Parliament.

Hon. C. A. Furletti — Ah! So that is the bipartisan approach — withdraw your bill!

Hon. G. W. JENNINGS — The interjection of Mr Furletti does not take account of whether due recognition has been given to the safeguards of the government in its consideration of what it believes are essential parts of the legislation.

Hon. C. A. Furletti — Which you could effect by taking up the counter offer to amend the bill before the house!

Hon. G. W. JENNINGS — It needs to be dealt with in a timely fashion — as has been requested by the Victoria Police — that addresses all the concerns of the various stakeholders and protects the rights of Victorians. The correspondence from the police to which I referred earlier shows that they are concerned to ensure that their practices do not run beyond the scope of Victorian statute as they are developed, and that we are mindful of protecting the rights of Victorians. That is important. The other place is currently debating the way the opposition seeks to deal with the Fair Employment Bill — a piece of legislation that has been developed following a year of consultation. An inquiry travelled the state — —

Hon. R. M. Hallam — A year of consultation?

Hon. G. W. JENNINGS — It was the best part of a year. It has been a very long time in its preparation and consideration. It followed an inquiry that travelled the state.

The bill the opposition seeks to pass today fundamentally changes the rights of many Victorians in a way that concerns the government, the Law Institute of Victoria and the police. They believe various safeguards need to be put in place to protect the rights of all citizens so that it is seen to be done in a fair and reasonable manner.

The test of whether the interview should proceed would be assessed by a magistrate. The proposal lacks safeguards and the clarity of defining those who fall within its scope, particularly when applied to those who are currently retained in mental health facilities throughout Victoria.

It needs to be clearly established who will be roped into the scope of the bill. Clear protections must be produced to ensure that at every stage of the process the suspect has the right to legal representation and the process is open to scrutiny by an independent person.

Hon. M. T. Luckins — Like a magistrate?

Hon. G. W. JENNINGS — Indeed, and I take up the interjection. In fact it is an essential part of the process.

Hon. R. M. Hallam — It is already provided for in the bill!

Hon. G. W. JENNINGS — A series of safeguards will exist within the government's proposal, and the government has sought to obtain the opposition's support for them. The bill has been hastily drafted. To use a contribution that I often hear from Mr Furletti, the bill is populist in construction, was hastily drafted, is riddled with holes, and was pummelled through the Scrutiny of Acts and Regulations Committee earlier this week where any number of clauses were identified as redundant.

I am sure Mr Furletti will defend the bill to the hilt and not apply the standard that he applies to government legislation, but there is a double standard there because the government is prepared to fill in the holes in the legislation. It believes the best way of doing that is within a discrete, coherent piece of legislation, and that is the clear offer the government has made and continues to make to the opposition and to the people of Victoria.

Clearly that intention was reiterated in the Attorney-General's letter to the shadow Attorney-General earlier this week, and I encourage the opposition to take up that opportunity because once the bill leaves this place and heads to the other side, a different political regime will apply, affecting the dialogue, negotiation and resolution of this matter. A better piece of legislation for Victoria would be best achieved by passing the bill the government intends to introduce. When that bill is debated in this place, I look forward to the opposition's support.

Hon. C. A. FURLETTI (Templestowe) — I commence my contribution to debate on the Crimes (Further Amendment) Bill by taking up where the Honourable Gavin Jennings left off and assure him he was certainly right on one thing: I support the bill strongly, as do members on all sides of the conservative opposition.

It would be of great assistance to Mr Jennings were he not only to read the bill but also make an effort to understand it, because many of his comments were wrong simply as a result of his misunderstanding and inability to correlate the various provisions of the bill with the existing legislation.

I refer to the honourable member's reference to the government's desire for a bipartisan and uniform approach to the bill. That is the greatest example of hypocrisy a government member could put to the house. I thought Mr Jennings had more integrity than to seek to mislead in the way he did. The government's approach to bipartisanship is, 'Withdraw your bill and accept ours'.

I am advised that the bill was prepared and the Attorney-General in the other place was requested to comment on it. He was asked if he wanted to amend the opposition's bill. Notwithstanding the Honourable Gavin Jennings's comments, I am proud to have played a significant part in the early drafting of the bill because only after a long time was it vetted and approved by parliamentary counsel. In that regard the opposition is grateful for the Premier's intervention in allowing it the use of parliamentary counsel — in the early hours of the morning, I might add — to finalise the bill. The Honourable Gavin Jennings's interpretation of the bill led him to allege it had been sloppily drafted.

The government's demand for the bill to be withdrawn has been rejected by the opposition. However, in the interests of bipartisanship an offer was made in a letter dated 14 November — yesterday — to the Attorney-General suggesting that he propose amendments rather than incur the expense of introducing a separate bill. I ask Mr Jennings why the government did not accept the offer to deal with the bill in the same way the bulk of legislation introduced here is dealt with. Why does the government insist upon the withdrawal of the bill if not simply for political gain? Throughout Mr Jennings's contribution he made numerous references to the politics involved without regard to community and the public interest, which is the reason the opposition introduced this private members bill.

The argument and debate on the ills that the bill seeks to redress began in August this year after the conviction of Dupas. At that time the government, and particularly the Attorney-General, were confused. I could refer the house to press releases to illustrate that the Attorney-General was going to do something about it; a few weeks later he was not going to do anything; yet a few weeks later again he received advice that if he did something about it, it would not be effective and could lead to aborted trials.

Eventually the opposition saw the delay caused by government uncertainty as going beyond the pale in that members of the community, victims of crime and their relatives and families were suffering. The opposition grasped the nettle and, of its own initiative, introduced the bill. I reinforce my point about delays by referring to an article by Felicity Dargan in the *Herald Sun* of 13 October, at the time of sentencing of Dupas. She states:

> Mr Hulls said at the time that if magistrates did not have the power to order suspects to submit to questioning he would 'fix it up'. 'If there is an anomaly, I'll have it amended', he said at the time.
>
> But Mr Hulls told the *Herald Sun* yesterday there was nothing to be gained from changing the law.
>
> 'I received advice that even if legislation was amended to force a person to submit to questioning, any admissions obtained could be inadmissible in court and force a trial to be aborted', he said.
>
> 'On that basis I am reluctant to change the law. I am very keen to maintain a person's right to silence which is a fundamental aspect of a criminal justice system'.
>
> Mr Hulls said he told Mr Comrie —

the Chief Commissioner of Police —

> … that the police had substantial powers in relation to prisoners in custody, including requiring them to submit to DNA testing and fingerprints.
>
> Mr Hulls said his legal advice from Victoria Legal Aid, the Office of Public Prosecutions, the Criminal Bar Association and the Department of Justice.

Given that information, one must ask not whether the advice was correct but what question was put to the persons from whom the Attorney-General sought the advice. That goes to the nub of the bill because if you are not entitled or able to ask the question, you cannot understand the reaction you may get to the question. In this case the Attorney-General has gone to the various experts and said, 'If we acquire any sort of material — a confession, admission or statement — under duress, can it be used?'. A first-year law student would say, 'Of course it cannot be used'. Why did the Attorney-General need to ask that question, if not to politicise the issue? It is of grave concern to the opposition that the Attorney-General acted in a confused manner, to put it lightly.

The Honourable Gavin Jennings referred to material provided to the opposition, and in an unbelievable attitude of hypocrisy said the government supports the intention of the bill but opposes it. He says the government recognises the validity of the underlying principles but opposes the bill. I thought there was a sense of irony in Mr Jennings's contribution. He used legal adages that reflect the government's position not only on this bill but generally in its current operating format.

On a number of occasions Mr Jennings said justice must be seen to be done. That reminded me of another adage: a little knowledge is a dangerous thing. The most important adage in this context is that justice must not only be done but must be seen to be done. If the government were more interested in making sure that justice was done than in creating the perception that it is being done, as it does with so much of its legislation in this place, it would support the bill wholeheartedly, and if it had concerns it would be contributing whatever it considered appropriate in an effort to reach a compromise in the interests of all concerned.

The government is far more interested in seeing that justice is done than ensuring that justice is done. It has provided parliamentary counsel with instructions for the preparation of its own bill. The shadow Attorney-General in the other place has written to the Attorney-General seeking cooperation of the government in negotiating amendments to the bill for the express purpose of ensuring its swift passage through this place so that victims of crime and the families who are or could be affected or who are in expectation of a resolution to a matter, in many cases for years, have some finality and resolution. It is essential that the bill is passed quickly. I trust the government will come to its senses in accepting and acknowledging this bill. I am led to believe from the draft instructions I have seen that it encompasses almost all of the principal elements of the private members bill.

The Honourable Gavin Jennings alleged earlier that the opposition had seen a draft of the government's bill. I then said by interjection that the opposition had not seen a copy of the draft legislation. *Hansard* will prove me correct. Mr Jennings then went on to explain that the opposition had been provided with copies of the drafting instructions. However, during the past half hour I have been advised that it appears he was right. In an effort to achieve bipartisanship and unity on this sensitive issue to the community, the government provided the shadow Attorney-General with a copy of its draft legislation an hour ago. That would have been when this house was already debating the bill.

Hon. G. W. Jennings — You know that is clearly not true.

Hon. C. A. FURLETTI — That is the information I received. It shows the hypocrisy of the government. The drafting instructions, which were alleged to have been provided to the shadow Attorney-General some time ago, arrived by fax at his office late on Monday evening. That is the manner in which the government approaches bipartisanship and unity on issues of great significance to the community and to particular families who are emotionally distressed and awaiting resolution so they can put to rest issues that have caused havoc.

Honourable members interjecting.

The ACTING PRESIDENT (Hon. C. A. Strong) — Order! There is excessive cross-chatter in the chamber. I would appreciate it if the level could be kept down.

Hon. C. A. FURLETTI — I am grateful for your assistance, Mr Acting President, because I am losing my voice. The government referred to the speed with which the opposition seeks to have the legislation passed. Speed is the essence in this instance. The circumstances have been widely publicised in the newspapers, particularly the *Herald Sun*, which has taken up the issue strongly. It is significant that these matters be put to rest as quickly as possible so that those who are affected can put those emotionally

distressing elements behind them and get on with their lives.

The opposition wants to have the bill passed quickly. That is why it put the alternative proposal to the government. It did not want new legislation to be introduced. Given the legislative program before Parliament a new bill would not be dealt with until next year The opposition wants the bill passed in this house today, and it wants it to be passed in the other place before the end of the current sittings.

I apologise to the house for the lengthy discussion of the factors that led to the introduction of the bill. Currently the only basis upon which a person in detention can be questioned is under section 464B of the Crimes Act, which provides that an investigating official may apply to the Magistrates Court or Children's Court in respect of an order allowing the investigating officer to interview a person held in detention. However, in subsection (5) there appears no doubt that that can occur only if the person being held consents.

It should be pointed out — Mr Jennings took issue with this, but he did not fully understand it — that under that section the interview can take place only outside custody. In other words it is an application for transferring the custody of the person outside of the jail, which is significant in its terms.

The other provision that could allow a person in custody to be interviewed — the barrier section — is section 41 of the Corrections Act. That section deals with visits by the police to prisoners. It has been referred to in the second-reading speech. Subsection (3) states:

> A prisoner may refuse a visit from a member of the police force under this section.

That follows on from the requirement for the police to seek the consent from the Governor. The current procedure is that the police go to the Governor, the Governor asks the prisoner if he or she wants to talk to the police and if the prisoner says no that is the end of a matter. Literally the police do not get past first base. The creation of the barrier in section 41 of the Corrections Act to protect prisoners from investigating officials from even asking a question has nothing to do with the right of a prisoner to maintain his or her silence.

I will address that issue later when I analyse the bill. However, I stress that the bill has nothing to do with and will not interfere with the right to silence of prisoners; in fact it reinforces that right in a particular way.

I also direct the attention of the house to another matter of interest. Section 41(4) of the Corrections Act provides that:

> A prisoner is not required to answer questions asked by a member of the police force during a visit authorised by this section.

Even if consent is given for an investigating officer to see a prisoner, that prisoner is not required to answer any questions asked by a member of the police force. There is a double barrier. That combination of sections puts somebody in detention in a preferred or privileged position vis-a-vis an ordinary citizen. I am sure other honourable members have seen a police car stopped at the side of the road and the police talking to and presumably asking questions of people walking down a footpath. They may be louts loitering around the street, persons who appear to be drug users or traffickers or possibly suspected missing persons.

Hon. R. M. Hallam — They might be only looking for directions.

Hon. C. A. FURLETTI — As Mr Hallam says, they might be only looking for directions. Nevertheless, a question is being asked. However, under section 41 of the Corrections Act the policeman could not even get to the prisoner to ask those directions. That is the irony and anomaly in the legislation that the bill seeks to address.

It is important that honourable members understand the purpose of this significant bill. I direct the attention of the house to the extraordinary lengths to which the opposition has gone to ensure that the right to silence, which has been one of the main concerns of those opposing the bill, is maintained.

Perhaps I should put the whole issue in context. I put on record some information I found in my research in the final report of the Scrutiny of Acts and Regulations Committee of its inquiry into the right to silence, which was tabled in March 1999. At page 42 of the report a comment in 1975 by the Australian Law Reform Commission is repeated and I put that on that record:

> No-one can be heard to say that if a person questioned declines to answer he should be compelled by force to do so. The right to silence in this basic sense is not, and never has been, in issue in our society.

I stress that the bill proposes nothing to change that view. The right to silence is significant. It is created at common law and held sacrosanct by anybody involved

with the law, whether they be lawyers, other practitioners or even legislators. I also refer to one of the statistics I found in the course of my inquiry. Paragraph 2.3.1 of the report states:

> … very few suspects actually exercise the right to silence. Australian studies on the incidence of the exercise of the right to silence by suspects have arrived at figures ranging from 4 per cent to 9 per cent.

The bill therefore is dealing with a small fraction of suspects. That does not — nor is it intended to — in any way, shape or form minimise the significance the opposition places on that fundamental right.

I refer to the comments made by the Honourable Gavin Jennings. I direct the attention of the government to the fact that the draft bill proposed by the government is a rehash of section 464B of the Crimes Act. The opposition considered tinkering with that section but decided for a number of reasons, which are quite obvious and have been alluded to by Mr Jennings, that the objectives and desired outcomes of the opposition would be better achieved by introducing a new section.

As I said, the reasons for arriving at that decision were numerous but not the least was that section 464B of the Crimes Act now applies to children. The opposition made a policy decision that the bill should not apply to minors. Therefore minors will not be affected in any way, shape or form by the proposed legislation; yet the government has the gall to say that the bill will expose vulnerable people to unnecessary trauma. The fact is that the opposition has excluded minors from the bill. I am informed and verily believe that the government's draft bill would include minors as part of its operation.

Yes, it is true — and we do not shy away from the fact — that section 464B applies only to persons suspected of having committed an offence. The bill is broader because it covers not only suspects but anyone who can assist an investigating officer in solving a crime. That is a good objective because the purpose of this legislation is not to compel any prisoner or anyone in detention to make a statement; it is intended to allow investigating officers to present themselves and ask prisoners whether they are willing to answer questions. If the prisoner agrees, from the moment that right is given the normal processes of investigation and interview take effect, as detailed in the Crimes Act. We are all conscious of the fact that, irrespective of whether answers are given or what types of answers are given, a person's conduct, demeanour, responses and other elements can be taken into account and can be fruitful in solving cases.

The issue of interviewing and judging reaction is something of a science. 'Body language' is a term that has been used in this regard. Those who have been in the police force would perhaps have more detailed knowledge of it than I, but I have been involved at various times during my profession with some of the outcomes.

Hon. B. C. Boardman — Only in an advisory capacity.

Hon. C. A. FURLETTI — Only in an advisory capacity, Mr Boardman, yes. I have listened to many tape recordings and viewed many video recordings. Although I stopped practising criminal law after a few years, that part of my practice was one of the most exciting times of my life. We talk of hardened criminals, and I use the word 'hardened' in inverted commas. I recall when I was a young lawyer — —

A Government Member — Many years ago!

Hon. C. A. FURLETTI — Just a couple of years ago! I was retained by a person who had had some contact with the criminal world, and I remember doing research and getting an opinion. I then sought to explain to my client how the law operated. Let me assure you that he knew far more about the criminal law than I ever learnt in the whole of my career.

It is true that those who have dealings with and those who are professional criminals learn the law as it relates to them just as a carpenter or plumber learns his trade. This bill is about facilitating access to persons like that, not about compulsion or forcing people to make statements that they do not want to make, or indeed seeking to in any way influence the existing law as it relates to interviews.

The bill goes to great lengths to protect existing rights. I put on record the significance of eye-to-eye contact, if you like, by referring to a copy of an article in the October 2000 *Monash News*, volume 3, no. 9 edition. The opening statement is:

> Liars are easy to spot. They give themselves away physically, can sound confused, change their story halfway through.

And the next line is:

> Or do they?

It refers to Monash University linguist Ms Georgina Heydon, who is completing a doctorate on the myth of the linguistic lie detector and the interreaction of this type of police interviewing technique. The article further states:

> When a suspect enters the interview room, police are confronted by conflicting pressures: the community's search for truth, respect for civil liberties, and the demand that law and order be maintained. On a practical level, they must also produce certain evidentiary material for a future court case.

That sums up very clearly the purpose of a police interview, and of course the police need to be able to conduct an interview of that nature eye to eye.

I will now take the house briefly through the bill. I think the bill's purpose as defined in clause 1 is extremely succinct and precise. It is to enable investigating officials to question persons in detention in respect of offences and, more significantly — and I should have thought this provision would allay any fears of the government and would attract its support — to ensure that there are appropriate safeguards to protect the legal rights of a person being so questioned, including his or her right to silence.

The purpose clause is clear. The opposition has gone over the top to ensure a person's current rights are safeguarded. It has added additional safeguards to ensure miscarriages of justice will be avoided. The bill applies only to persons in detention who are aged 18 years or older — that is, someone sentenced to a term of imprisonment — or to a prisoner within the meaning of section 56 of the Corrections Act — that is, someone who is in detention but who has been transferred to another institution as defined in that section of the act.

I take issue with the suggestion of the Honourable Gavin Jennings that the bill could apply to persons held under the Mental Health Act who had not committed crimes. That is nonsense. By definition the only persons who can be dealt with are prisoners in institutions within the meaning of section 56 of the Corrections Act, which refers to prisoners who have been transferred to other institutions as defined — in other words, someone who has been convicted or sentenced to imprisonment and transferred to another special detention centre. It is clearly not intended to apply to someone who is not a prisoner under section 56 of the Corrections Act, and I have difficulty understanding how the scenario proposed by Mr Jennings could occur.

The provisions about obtaining leave to have access to a person in detention set out clearly and precisely the matters that need to be referred to in an application to the Magistrates Court. That application must be in writing, so from the beginning it would contain the grounds on which it was made, including the grounds for the belief or suspicion referred to in proposed section 464BA(3). The application must contain details of the belief or suspicion of the investigating officer, which is unusual because a copy of that document must be served on the person in detention. The person in detention is aware from the time the application is made of the belief or suspicion that gives rise to the application.

If the government were serious it would understand that the provision is outside the norm in terms of investigation and interrogation. Normally the police do not tell a person the alleged offence for which he or she has been arrested or is being interviewed until the person is charged, but in this case the person to whom access is being sort is notified of the issues. It is for the magistrate to determine the facts. It is always in the hands of the magistrate whether the grounds are adequate. It is nonsense for the Honourable Gavin Jennings to say the bill does not contain enough detail about what the magistrate should do. It is not necessary to identify in every piece of legislation what a magistrate should do. Magistrates are given discretion, which they exercise every day of the week. The government's objections to this provision are unfounded.

The bill provides that at any time after the filing of an application, the Magistrates Court may order the person in detention to be brought before the court for a hearing of the application. That is not a case of saying the magistrate may make the order if the magistrate sees fit to do so, because in this instance the fact an application is served on the person in detention entitles that person to be heard at the hearing of that application. The purpose of the provision is if the person chooses not to attend the hearing but the magistrate believes it is necessary that he or she attend, the magistrate can order that the person be brought before the court. The provision adds to the protection of the individual to whom access is being sought.

Proposed section 464BA(5) provides that where the person in detention is taken away from the legal custody of the institution he or she is deemed to be in the custody of the person to whom the order is granted. The powers given to the magistrate in this provision are broad and are focused on the protection of the person who is in detention.

Proposed section 464BA(6) provides that the Magistrates Court can order that the applicant have access to the person in detention in the place where he or she is being detained. That is significantly different from the provisions of section 464B. There is no need for the person to be removed from detention and for the dysfunctionality that goes with that to occur. The proposed section provides that the magistrate shall set the maximum period in which the access is to take

place and may include any condition that the court thinks fit to ensure that the person in detention is fully informed of his or her right to silence.

In respect of the comment of the Honourable Gavin Jennings about the need for the person to be informed twice, the bill provides that the court is bound to ensure that the person is fully informed of his or her rights to silence. Proposed section 464BA(7) refers to the communication to that person of his or her right to silence and right to communicate with a legal practitioner. That is a condition the magistrate can impose on the granting of access. Furthermore, the Magistrates Court has the right to determine the environment — the surroundings — in which the questioning can occur to ensure it is conducted in fair and reasonable circumstances, having regard to all surrounding elements.

The Magistrates Court has the ultimate discretion in determining the basis on which this questioning is to take place. Proposed section 464BA(7) states:

> If an order is made under sub-section (6), before any questioning commences, the investigating official must inform the person in detention …

So the Magistrates Court has the power to ensure that those rights are explained. Before questioning takes place the investigating official must inform the person in detention that he or she does not have to say anything but that anything he or she does say will be taken in evidence and that he or she may communicate with or attempt to communicate with a legal practitioner — matters that currently take place on a daily basis before any interviewing can be admitted in evidence against a person.

Proposed section 464BA(8) provides that if a person wishes to communicate with a legal practitioner nothing can happen until the communication has taken place. It is nonsense for the government to propose it should be compulsory that that take place. If a prisoner does not want to obtain legal advice it is nonsense to compel that prisoner to do so. However, the opportunity must be afforded to persons in this position to seek legal advice if they want it, and of course at the instigation of the investigating official.

There are provisions to allow the time to be extended and for subsequent applications to be made. Again, all factors are taken into account by the Magistrates Court, and it is for the court not the investigating officials to be convinced by the applicant that it is appropriate to extend the time or to return for further access.

Subclause (11) reaffirms that sections 464D and 464F to 464J also apply to any questioning of persons in detention in accordance with any orders made. Those provisions protect a person's rights with regard to an interview. Without unnecessarily delaying the conclusion of my contribution I add that they include, for example, the right of a person to have an interpreter, the right of a foreign national to have communication with a consular office, the provision for tape recording, which now includes video recording, of persons in custody, and of confessions and admissions. Most significantly, included in section 464J is a provision that the right of a person to remain silent is not affected, so if the bill does anything it reaffirms beyond doubt that it does not affect a person's right to remain silent.

Subclause (12) retains in operation the provisions of section 464B, to which I referred earlier, and the intention is to ensure there is no confusion that this bill is intended to override it. The two run concurrently and obviously relate to prisoners in detention under different circumstances. For further clarification and avoidance of doubt, subclause (13) is a declaratory section, which provides that:

> … without limiting or affecting the current law as outlined in section 464J —
>
> (a) nothing in this section affects the application of the rules of evidence to any admission or confession made by a person in detention …
>
> (b) an admission or confession referred to in paragraph (a) is not to be regarded as having been made involuntarily only because it was made in the course of questioning in accordance with an order made under sub-section (6).

Significantly, continued emphasis is placed on the intention of the bill not to interfere with the current law or to restrict its operation. The intention is to break down the barrier that currently precludes investigating officials from being able to eyeball a person who may have some information about an offence and to ask questions, regardless of whether answers are provided.

Subclause (14) provides that the bill applies to any person in detention at the time of royal assent, notwithstanding that the offence for which the person is detained may have occurred earlier. I listened with some interest to criticism of the bill by the Honourable Gavin Jennings. The alternative proposed by the government is to further complicate rather than facilitate the processes whereby these matters are to be achieved.

There is no great assistance in the bill proposed by the government. The restriction only to suspects would simply have been a partial remedy of the matters that I

understand the police are anxious to pursue. The protection of vulnerable persons who could be affected under the legislation is left, as is the case in so many instances, with the Magistrates Court. Access is not available unless an order is made by the Magistrates Court. The conditions upon which that access is to be undertaken, down to the environment, is to be determined by the Magistrates Court. The court is there to protect the rights of the person in custody, and I have the utmost confidence in the magistracy that those powers will be appropriately exercised in a fair-handed manner.

I have great pleasure in urging members of the government and all honourable members to strongly support the bill, and I wish it a speedy passage.

Hon. R. M. HALLAM (Western) — The National Party supports the Crimes (Further Amendment) Bill and I am pleased to have the opportunity to report on the basis of the recent decision made by my party. At the outset I congratulate the Liberal Party on introducing the private members bill, and I particularly commend the honourable member for Berwick in another place, who was its principal architect. I also congratulate the Honourable Carlo Furletti on his involvement in framing the bill and for the learned dissertation he just rendered to the chamber. Anybody who wants to understand what the bill is about could do no better than read the contribution Mr Furletti made today.

It is obvious that the bill has been carefully constructed. It demonstrates a great deal of thought and an extraordinary level of detail. In outlining the National Party's position I begin in an unusual way. I want to discuss a factor that was not persuasive when the bill came before the National Party table. At the time the Liberal Party reported its intention to pursue a private member's bill with this intent, there was a great deal of press speculation about a particular prisoner who had been convicted of murder. There was speculation whether he may have been connected with two other horrific unsolved killings in the community that apparently demonstrated some similarity to the crime for which he was convicted.

I say at the outset that the hearts of National Party members go out to the families of the two young women who were brutally murdered. We do not claim to understand the level of tragedy that must have been visited upon those families as a result of those terrible experiences. We can understand the feeling that having the crime solved would at least allow them to close one chapter on that terrible ordeal and allow them to commence the grieving process for their loved ones. The National Party does not believe the bill is an automatic avenue to an admission of guilt.

Indeed, and I am sure Mr Furletti would support me in this, the bill might change only one thing in a specific case, and that is the expectations of those directly involved. In a roundabout way it might add to the difficulties. I want it on the record that the National Party was not driven by the specifics of a particular case or speculation that surrounded the announcement that the Liberal Party was intending to frame the bill along those lines.

It is critical to understand that the bill does not abolish the basic rights of prisoners. As Mr Furletti has reinforced, the right to silence is still there. A prisoner only attends an interview if the magistrate can be persuaded to make an order to that effect. Even then he or she is entitled to sit there in absolute silence. In other words, the prisoner can be questioned but does not have to answer. That is reinforced again and again, both by the law and by the private members bill before the chamber.

One has to ask, why would prisoners want to answer, particularly if they thought that the answer might further incriminate them? They are already in jail; why would they volunteer to answer questions in those circumstances? The only prospect they might face is that their sentence could be extended. There is not much for the prisoner in those circumstances. What possible incentive could there be for a prisoner doing life for murder to confess — or what possible incentive could there be based on logic?

The National Party starts from the premise that no-one in the community is advocating the return of the rack or the thumb screws or the suggestion that an admission gained under any form of duress would be admissible at law. Mr Furletti has gone to great lengths to demonstrate that the concept that underpins our law — he described it as sacrosanct, and I agree with him — is further protected in the bill. The government's suggestion that this is somehow winding back some hard-won right of a prisoner is quite misleading and mischievous. We do not want to think about the only alternative that would apply in circumstances where, as an incentive to answer a question, a prisoner might be offered the prospect of a reduced sentence. Surely no-one in the community is suggesting we go down that track.

From the National Party's perspective this is certainly not a panacea. Why would a prisoner be persuaded to answer a question or a series of questions in those circumstances? It may be to gain peace of mind.

However, even if we accept that the prisoner is pursuing peace of mind, that suggests remorse, and we are talking about the hardened criminal as referred to by Mr Furletti. Even to suggest that he or she in those circumstances would be pursuing peace of mind draws something of a long bow, given we are talking about convicted felons.

The National Party is concerned on one hand that the bill may increase the level of expectation or build up false hopes. On the other hand, there is ample room to argue strenuously in favour of the bill in a general sense because, as all honourable members would understand, there are two fundamental yet conflicting principles involved here. The first of those is the right of the community to expect that crimes not go unsolved and that the perpetrators of crime are brought to justice. In the context of the debate honourable members might try to finesse that, but it is pretty basic and simple. It is a fair expectation of the community.

Against that is the tenet of law, that sacrosanct aspect that says it is the right of the accused to remain silent and that the onus is on the accuser to prove guilt rather than on the person charged to prove innocence. All honourable members understand that, but to some degree that can be seen to conflict with the right of the community to expect that no crimes go unsolved. Those rights are fundamental. They are at the centre of a civilised culture. They are well understood and are generally well accepted.

In that context I refer to the letter from the then Acting Chief Commissioner of Police, Neil O'Loughlin, to the Attorney-General in another place, Rob Hulls. This is the same letter, dated 26 October, that was relied on so heavily by the Honourable Gavin Jennings in presenting the government's reaction to the bill.

A number of things concern me about the way in which the letter has been used. I am disappointed in the way the honourable member sought to use the letter. It is clear that his quotations were very selective and do him no credit at all. In addition, if he, as the lead speaker for the government, is prepared to demonstrate that he is relying on a document as an authoritative reference, at best it is poor manners not to provide the document in time for the lead speaker of the opposition to respond.

Hon. W. R. Baxter — Poor show.

Hon. R. M. HALLAM — Poor manners and not within the spirit of the chamber. I repeat: it does not do the honourable member any credit at all.

I will use the letter to demonstrate that the police force understands the way those two opposing principles have to be managed. It becomes clear because the letter reinforces people's rights, and I quote directly:

> Victoria Police supports every person's right to refuse to answer questions. However, the force questions the prohibition on the ability of the court to draw an adverse inference from a defendant's failure to indicate an alibi or other defence at the time of interview which is subsequently relied on at trial.

That is a clear recognition of the fundamental right of the person charged, but a classic illustration of why Victoria Police thinks the bill goes to the heart of the problem. Further, the letter states:

> … police clearly have an interest in ensuring that correct procedures are followed so as not to jeopardise their investigations and to obtain admissible evidence for presentation in court at a later date.

Mr Jennings suggested that the adoption of the provisions in the bill would put at risk evidence that would be otherwise admissible in a court of law. That is a facile argument and hardly worth the time of the chamber to consider it, because the question of putting admissibility at risk is understood by the Victoria Police.

The letter also reinforces the fact that:

> … the force has identified two areas where changes should be made to facilitate the successful investigation of offences, whilst retaining, or even increasing, adequate safeguards for persons in custody.

It is a bit hard to recognise this as the same letter relied on by Mr Jennings. The letter also states:

> … it is not uncommon for police attempts to interview a person in custody to be frustrated by that person's refusal to consent to such an interview.
>
> Accordingly, Victoria Police advocates removing the requirement for the person to consent to the interview in the belief that this unreasonably hinders the investigation of serious crimes and that sufficient safeguards exist to protect the rights of the prisoner.

Hon. B. C. Boardman — They would not be supporting it, would they?

Hon. R. M. HALLAM — That is a fair conclusion. This does not sound like the letter Mr Jennings relied on. His quotations from the letter — —

Hon. Jenny Mikakos — You are quoting selectively also, aren't you?

Hon. R. M. HALLAM — Thank you, I am pleased to have reinforced — —

Hon. Jenny Mikakos — What about the reference to safeguards?

Honourable members interjecting.

Hon. R. M. HALLAM — I thank the honourable member for her interjection because she has surreptitiously and unwittingly reinforced that she thinks Mr Jennings was selective in his quotations.

All I was trying to do was — thank you for your assistance — was demonstrate that other aspects of the letter clearly reinforce the importance of the issues currently before the chamber. The case of the Honourable Gavin Jennings is hardly supported by selective quotations taken very carefully from a three-page letter.

Hon. Jenny Mikakos — Why don't you go on to read page 2?

Hon. R. M. HALLAM — I am happy to read the whole letter and would be delighted to have it on the record. In fact, I am tempted to move that it be incorporated.

Hon. Bill Forwood — Read the last sentence!

Hon. B. C. Boardman — The concluding remark is the killer!

Hon. D. G. Hadden — The first sentence on the third page is the appropriate one.

Hon. R. M. HALLAM — We will have a lovely debate about what paragraph of the letter is the most apposite to the debate! I suggest that the entire letter is pivotal to the debate, and in particular to the way the Honourable Gavin Jennings sought to represent the views of the Bracks government. The final sentence of the letter reads:

> Nonetheless, I urge you to consider the benefits that these proposals would have for the investigation of serious crimes and the prosecution of repeat offenders.

Hon. C. A. Furletti — The proposals are our proposals.

Hon. R. M. HALLAM — The proposals have been brought to the chamber by the Liberal Party in opposition via a private member's bill. I would have said that that fact undermines completely the proposition being put to the chamber by the Honourable Gavin Jennings on behalf of the government.

The bill highlights an anomaly. The National Party reinforces the concept that prisoners should not lose their legal rights. However, under the current provisions they have greater rights than others because they are in prison. How can the government ignore the clear anomaly that arises as a result of those circumstances? It is a fact that because a prisoner is incarcerated he or she has the right to decline to be interviewed, and that that right is not available to anyone else in the community. We in the National Party say that is a fundamental anomaly. To the extent that the bill addresses that anomaly, it is deserving of our support.

I turn to the facts surrounding the current circumstances. Section 41(3) of the Corrections Act provides that any request from a member of the police force to the governor of a prison to visit a prisoner in that establishment, irrespective of the purpose for such a visit, will be refused if the prisoner advises the governor that he or she does not desire to be visited. It is pretty crazy that a member of the police force can be denied access to a prisoner if that prisoner says to the governor, 'No, I don't want to be visited'. That means that the police cannot directly request the prisoner to answer questions, or even set foot in the prison for that purpose.

Under section 464B of the Crimes Act the police may apply to a magistrate for an order that a prisoner be delivered into their custody for the purpose of questioning, but such an order may not be made without the prisoner's consent. The prisoner has the right to simply refuse to be interviewed, not the right to silence. I make the point, as did Mr Furletti, that no-one else in the community has that right or expects to have that right. It goes entirely against the mores of the community. In that sense prisoners have a greater right than others in the community, and National Party members believe that to be an anomaly that should be remedied. In that context it is incongruous that the law currently allows prisoners to refuse to be interviewed but does not allow them the same right in respect of DNA sampling. We highlight the crazy anomaly that prisoners can say no to interviews but cannot say no to a forensic procedure to collect DNA. The law is an ass, and the bill addresses the extent to which it is an ass.

National Party members believe, having looked very carefully at the bill, that all the safeguards they would want are there. I will not go through them in detail because Mr Furletti has already done that. We took into account that the bill will apply only to adult prisoners and that it will ensure that an application for interview is served on the prisoner himself or herself at the same time as it is made to the courts, thereby removing any element of surprise. The officer seeking the interview has to tell the prisoner in advance what the basis of the interview will be and has to convince the magistrate

there is an appropriate basis on which the prisoner is reasonably suspected.

The safeguard in the bill is even stronger than the safeguard contained in the current law. Under section 464B as it currently stands a magistrate must be satisfied as to the reasonableness of an application, but under proposed section 464BA a magistrate has to be convinced not only that the suspicion is reasonable but that there are reasonable grounds for holding that belief. That is an even tougher test. For the government to say that the bill should be discarded because of some dilution or retraction of prisoner rights simply means it is playing politics or has not read the bill.

It is important to remember that we are not talking about removing the prisoner from the prison, so there is no question of physical force. That is irrelevant. All the safeguards for the recording of an interview are retained: the magistrate must ensure that the place and procedure are fair and reasonable; the prisoner must be informed of his or her rights and the magistrate must be satisfied that the prisoner has been given that information; the bill still clearly requires legal representation to be provided; and the magistrate sets the maximum time in respect of interviews and only the magistrate can extend that time. In all of that the prisoner still has the right to silence.

The basis of the National Party's support is that under the bill a member of the police force who has reasonable grounds for believing a prisoner has been involved in or has knowledge about a crime and can convince a magistrate as to the reasonableness of that belief will be able to interview that prisoner. The National Party says that is absolutely appropriate. It is clear that the police understand and confirm the right to silence. They work with that right every day and expect prisoners to know their rights. That is how it is in the real world, as the Honourable Carlo Furletti demonstrated to the chamber. Prisoners know their rights better than others do, and of course they must be cautioned before any evidence can become admissible.

It is surprising what can be established and achieved in the circumstances of an interview. The police will tell you that the power of the eyeball to a skilled investigator is very important, particularly if the police have at their disposal established facts about a particular set of circumstances. Physical confrontation can be very important indeed.

We often hear that certain people are helping police with their inquiries. All those people have the right to silence.

Yet National Party members are proud to report that the vast majority of crimes in this state still are solved in the normal course of events. Therefore, although we say this bill is no panacea, it does help to balance the rights of the individual with the collective rights of the community and addresses a particular anomaly in the law that deserves to be corrected. It is on that basis that we are pleased to offer our support to the bill.

Hon. JENNY MIKAKOS (Jika Jika) — I am pleased to contribute to the debate on the bill, and to indicate the reasons the government will oppose it. I regard it as unfortunate that Mr Furletti referred to the Dupas matter and indicated that 'speed and haste' — I think his words were — were necessary in introducing the legislation. He said the opposition's view on the legislation is that the bill is aimed to get one particular individual.

Hon. C. A. Furletti — Not at all!

Hon. JENNY MIKAKOS — I am pleased that the National Party has taken a far more enlightened approach to the legislation. Mr Hallam indicated that the National Party did not regard the Dupas matter as being the motivating factor for supporting the bill, and I echo his sentiments in expressing his support and sympathy for the families of Mersina Halvagis and Margaret Maher, and the tragic circumstances relating to the murders of both those women. However, it is important that we do not overly deal with those two murders in great detail as I would not like to see this debate prejudice any trial that may take place against any particular individual in the future.

The Law Institute of Victoria, in its correspondence to the Attorney-General dated 27 October, set out in considerable detail — as indicated admirably by Mr Jennings in his contribution — the problems it has with the proposed legislation and the fact that:

> These provisions will have no effect on the position of people like Peter Dupas who by all accounts is intelligent and particularly capable of looking after himself.

It is unfortunate that the Liberal Party — I will confine it to the Liberal Party because the National Party has taken a more enlightened view on the bill — has not been prepared to correct the misinformation that has been peddled in the media. For example, it has not corrected a headline in the *Herald Sun* entitled:

> We'll make them talk.

Members of the opposition suggest the proposed legislation is not intended to make particular prisoners or individuals talk to the police; nevertheless that is the impression given to members of the public — that this

bill is intended to make individuals talk to the police, even though they may not wish to do so.

It is unfortunate that the opposition has not been prepared to correct a perception that has been quite deliberately put about in the media in the lead-up to what is going to be a law and order campaign by the opposition at the next election. That is evident by the announcement of the Liberal Party leader that his party will oppose the government's entire home detention legislation in the forthcoming debate on that bill.

I regard it as extremely disappointing that the opposition has not been prepared to examine that legislation on its merits and has again proceeded to peddle a lot of misinformation in the public about putting dangerous criminals into the streets and endangering the public through home detention.

I support the comments made by Roger Hallam that the National Party did not take the view that silence was an admission of guilt. I also support his comments on plea bargaining and his party's opposition to its being introduced as a result of these types of measures. I agree with him. It is unfortunate that despite the National Party's position on the issue, it is prepared to support the bill, because despite Mr Hallam's and Mr Furletti's protestations that the bill does not impeach the right to silence, it does exactly that. The bill impeaches the sacred principle of the legal system which is the right to silence.

I commend the Honourable Gavin Jennings for comprehensively setting out the government's concerns about the bill and also indicating the types of measures and safeguards that the government will introduce in its legislation. It is disappointing that the opposition has not been prepared to work with the government to develop a bipartisan approach to this difficult issue. It is difficult because it goes to the heart of some of the fundamental rights of the justice system. Those rights are the presumption of innocence and the right to silence, which have served the country very well in the past and should not be tampered with in an ill-considered way.

The opposition said that because the bill had been before Parliament for 20 days adequate time had been allowed for the community to come to terms with the issues. However, the issues are extremely difficult. Submissions to the Attorney-General from the Law Institute of Victoria and other organisations have pointed out a great number of drafting problems with the bill. They said a much longer period is necessary to develop a proper framework for dealing with them. Nevertheless, the government is prepared to take up the challenge and address those difficult issues. As the Honourable Gavin Jennings said, the Attorney-General provided a copy of the drafting instructions of parliamentary counsel to the shadow Attorney-General, Robert Dean. However, the house is yet to hear the opposition's response to the government's proposed legislation.

An article in the *Herald Sun* of 26 October discloses that the shadow Attorney-General in the other place had emailed the Attorney-General to suggest he would work with the government on the legislation. It states:

> He said he would support legislation that improved his plan.

I look forward to the honourable member in the other place putting his words into practice and working cooperatively with the government to arrive at a more workable justice system, thereby ensuring cases are not aborted and the interests of justice are served.

I said at the outset of my contribution that the Liberal Party has been peddling misinformation to the media about, for example, prisoners having more rights than ordinary citizens, but that is not the case. I refer the house to the Scrutiny of Acts and Regulations Committee *Alert Digest* No. 11 of 2000, which sets out at page 16 part of the submission from the Victorian Council of Civil Liberties to the committee's inquiry that states:

> A prisoner is not subject to the ordinary power of arrest because he or she is already in custody. The police must therefore make an application to the court to have the prisoner removed to their custody for the purpose of questioning. The requirement for consent to the interview is nothing more than the prisoner exercising his or her right to silence. If a prisoner exercises that right, and declines to give consent, there can be no justification for releasing them into police custody. Once this is understood, it becomes clear that prisoners do not have greater rights than other citizens.

The reason I read that quote into *Hansard* is that it sheds light on the way section 464B of the Crimes Act operates. The argument that prisoners have more rights than ordinary citizens is false. Ordinary citizens — that is, people not under custodial sentences — must either give consent to the police in anticipation of police questioning or they must be arrested. As that quote demonstrates, a prisoner cannot be arrested simply because he or she is in the custody of the state. The police must apply under section 464B of the Crimes Act to conduct such questioning with the prisoner's consent. The requirement for a prisoner's consent in that section is no more than a prisoner exercising his or her right to silence.

There is a need for careful drafting to ensure trials are not aborted because of defendants arguing that evidence was not voluntarily given. I refer to a letter from Neil O'Loughlin, Acting Chief Commissioner of Victoria Police, dated 26 October 2000, which has already been referred to extensively in the debate. On page 2 of the letter it is clear that the Acting Chief Commissioner believes:

> … police clearly have an interest in ensuring that correct procedures are followed so as not to jeopardise their investigations and to obtain admissible evidence for presentation in court at a later date.

That sentence is the most pertinent part of the letter from Victoria Police to the Attorney-General because it demonstrates that Victoria Police supports the introduction of a proper framework into legislation that will not jeopardise trials simply because evidence has become tainted through having been given under duress. The Acting Chief Commissioner indicates in four dot points on page 2 of his letter the types of safeguards Victoria Police regard as necessary to ensure a proper framework is established.

Hon. M. T. Luckins — They are all covered in the bill.

Hon. JENNY MIKAKOS — Those matters are not adequately covered in the bill, Mrs Luckins. During my contribution I will tell the house why that situation applies.

It is important that the questioning of suspects by the police be done in a way that does not diminish a person's right to remain silent regardless of whether the person is in custody. I refer the house to the report of the Scrutiny of Acts and Regulations Committee of March 1999 entitled *Inquiry into the Right to Silence*. I refer in particular to recommendation 1, which indicated the unanimous view of that committee:

> … that no changes be made to the law relating to pretrial silence.

I note that the Honourables Peter Katsambanis and Maree Luckins were members of that committee at the time the report was made. I look forward to hearing their views on whether the bill should be supported, given their unanimous support for the retention of the pretrial right to silence. If they support the bill they must have changed their views since March 1999 because the bill impacts on a prisoner's right to plead the right to silence.

The Honourable Gavin Jennings adequately covered details on why the government is concerned about the bill. As I said at the outset, the bill is badly drafted and lacks adequate safeguards to ensure a right to silence remains, particularly for the intellectually disabled. The opposition's bill proposes to extend the application of the Crimes Act not only to prisoners but to any person held in custody. That provision would apply to security residents under the Intellectually Disabled Persons' Act and to voluntary patients under the Mental Health Act.

The government firmly believes in the need for further safeguards for the intellectually disabled before they can be questioned by the police. It may be that they are simply not fit to be interviewed by the police and, without pre-empting the government's legislative approach to the issue, the government believes an independent person should be present at a police interview of people who fall into those categories.

I also note the need for an independent third party to assist people who attend police questioning, as is the case under section 464C of the Crimes Act. There is no replication of that provision in the opposition's bill as it relates to friends or relatives of a person being taken into police custody for questioning.

Hon. C. A. Furletti — It is incorporated.

Hon. JENNY MIKAKOS — It is not incorporated. That may have been the intention of the opposition, but it is clearly not the case in practice.

The other difficulty with the legislation is that an application for a prisoner to be released into police custody for questioning must not go before a Magistrates Court. Opposition members have indicated that there is a safeguard and procedure where all such matters will go before a magistrate. However, the bill uses the word 'may', not 'must'. It is clear there is no compulsory requirement for such an appearance to take place, nor is there any indication to magistrates about what types of circumstances they should take into consideration in either granting an application or granting an extension of time for interviewing, as is currently the case for ordinary citizens under section 464A(4) of the Crimes Act.

That provision gives clear guidance to magistrates about the types of matters that should be taken into consideration in granting a police application that a person be taken into police custody.

Proposed section 464BA(11) of the bill does not replicate the provisions in section 464G and 464H of the Crimes Act that relate to video recording of evidence.

I refer to Acting Chief Commissioner Neil O'Loughlin's letter of 26 October in which he indicates

in his third dot point that there is a need for tape recording of interviews and that:

> existing police procedures for conducting interviews …

be retained under this procedure.

In addition to those matters there is a difficulty with the right of a person to be legally represented at a hearing. There is currently no automatic right under the proposed legislation. The government is of the firm view that a person should be legally represented at such a hearing. There is also a problem with legal representation at the interview itself. In some circumstances a defence lawyer may be called as a witness for the prosecution, and those matters will have to be adequately addressed in the government's legislation.

Other difficulties with the bill relate to the deferral of questioning by police to allow a lawyer to be present. Under proposed section 464BA(8) of the bill it is up to the police and not the court to defer such a period to ensure a lawyer is present, and proposed subsection (7) provides that it is the police and not the court that will provide prisoners with their caution that anything they may say may be held against them.

The other major problem the government has with the bill is that it extends beyond suspects to all prisoners who may have information about the commission of a crime. I refer specifically to proposed section 464BA(2) and its wide scope, which the government opposes. Without pre-empting the government's response in that respect, I point out that it is important that honourable members be referred to the Scrutiny of Acts and Regulations Committee's *Alert Digest* No. 11 of 2000, which states:

> In this respect the committee notes that a prisoner may be treated differently to that of any other person in respect to an investigation of an offence.

It is clear that persons who may have some information about an offence but are not suspects should have the safeguards afforded to them that currently exist under the Crimes Act.

In conclusion, the Honourable Gavin Jennings indicated the measures the government believes will constitute adequate safeguards of people's right to silence and to ensure that trials are not aborted in the future. Such safeguards will feature in the government's response to this issue. I urge honourable members to think long and hard before they support the legislation because it is tampering with an important right under our justice system in an ill-conceived manner. I urge the opposition to work in a constructive and cooperative manner to develop a proper and well-considered approach to this issue.

Hon. M. T. LUCKINS (Waverley) — I support the Crimes (Further Amendment) Bill, which deals with an anomaly in the act which the Attorney-General has agreed to amend and which deserves his attention. A number of claims have been made in the debate. According to Victoria Police crime statistics for 1997–98, 25.5 per cent of all crimes in Victoria are not solved, and of that percentage 16.8 per cent are homicides that have not been solved.

The legislation provides for a magistrate to determine whether it is fair and reasonable for a person under detention to be interviewed by police. It does not attack the right to silence — it has nothing to do with it.

The Honourable Jenny Mikakos referred extensively to the Scrutiny of Acts and Regulations Committee, of which I am the deputy chair. It is a bipartisan committee, but when the committee sat last Monday matters were fought along political lines, which was inappropriate.

Hon. Jenny Mikakos — On a point of order, Mr Deputy President, I raise for the attention of the honourable member the fact that parliamentary privilege extends to discussions before the Scrutiny of Acts and Regulations Committee, as before any parliamentary committee, and she should tread carefully with what she is about to say.

Hon. Bill Forwood — On the point of order, Mr Deputy President, I am reluctant to say this, but because only 7 minutes are left to debate this bill before a division is called, it is outrageous that Ms Mikakos raises a frivolous point of order to use up another member's time. Why doesn't the honourable member get her facts right?

The DEPUTY PRESIDENT — Order! There is no point of order. I am sure Mrs Luckins will be careful about what she says.

Hon. M. T. LUCKINS — Unfortunately it was a political debate in a bipartisan committee that has an obligation to report to Parliament. Page 16 of *Alert Digest* No. 11 refers to the right to silence and refers members to the final report tabled in March 1999, *Inquiry into the Right to Silence*. I shall not repeat the recommendation because it has been entered into *Hansard* by the Honourable Jenny Mikakos. Page 5 of the final report states:

> Australian studies on the incidence of the exercise of the right to silence by suspects have arrived at figures ranging from 4 per cent to 9 per cent.

That is not a huge issue. Criminals know the system much better than any other citizens in Victoria who have never been charged with a crime, or are being charged for the first time. Criminals have been through the interview process and the trial process and have been sentenced to jail. They are not vulnerable in any way, shape or form. The bill allows a magistrate to determine fairly and reasonably whether the police have adequate information to enable them to interview a suspect at the prison so there can be no accusation of manhandling in police custody.

That individual detainee or prisoner is still able to exercise the right to silence at the interview. The very point that the right to silence will still be available to anyone under police questioning whether in or outside jail has been noted in correspondence. It is totally inconsistent to require that prisoners provide samples for DNA testing for a police database so that they can be cross-checked in the investigation of other crimes when the police are not allowed to ask a prisoner face-to-face questions, which the prisoner still has the right to refuse to answer.

The right to silence provided by section 464J of the Crimes Act is not only protected but enhanced. It is referred to three times in a very short bill, which honourable members opposite obviously have not bothered to read. Proposed section 464BA(6) provides that a magistrate will set conditions:

> … to ensure that:
>
> (a) the person in detention is fully informed of his or her right to silence and is given the information required to be given to him or her by sub-section 7(a) and (b) …

Proposed subsection (7) states:

> If an order is made under sub-section (6), before any questioning commences, the investigating official must inform the person … that he or she —
>
> (a) does not have to do or say anything
>
> …
>
> (b) may communicate with … a legal practitioner.

Proposed subsection (9)(a) provides that the person must be afforded reasonable facilities to enable him or her to communicate with a legal practitioner, and so on.

Proposed subsection (11) refers to sections on the right to silence. It states:

> Sections 464D and 464F to 464J also apply to any questioning of a person in detention in accordance with an order make under sub-section (6).

That is an order made by a magistrate. Further on the right to silence, proposed subsection (13) states:

> For the avoidance of doubt it is declared that, without limiting or affecting section 464J —
>
> (a) nothing in this section affects the application of the rules of evidence to any admission or confession made by a person in detention in the course of questioning in accordance with an order …

It is quite clear. I also have correspondence from the Public Advocate, Julian Gardner, who has assessed the bill and said that the proposed amendments will not interfere with the fundamental right of a person to remain silent on questioning or that — —

Hon. Jenny Mikakos — Are you sure you are not quoting from something that is subject to parliamentary privilege?

Hon. M. T. LUCKINS — I am paraphrasing. In the very limited time available to me, I point out that for all the scaremongering by the government the bill will affect only adults. It is not aimed at minors, including indigenous minors; they are excluded from the bill. As for the intellectually disabled, the provisions of the bill are limited to people who have already been convicted of an offence and who are serving a sentence in a custodial facility.

A magistrate must be satisfied that the police have sufficient reasonable suspicions to pursue a line of questioning with any individual. Importantly, a magistrate will be able to set the conditions, time, duration and venue for all the questioning. If there is a concern about an individual being mentally incapacitated or needing an interpreter, a magistrate can order that that person be afforded the protection needed. I commend the bill to the house and wish it a speedy passage.

House divided on motion:

Ayes, 25

Ashman, Mr	Hall, Mr
Atkinson, Mr	Hallam, Mr
Baxter, Mr	Katsambanis, Mr
Best, Mr (*Teller*)	Lucas, Mr
Boardman, Mr	Luckins, Mrs
Brideson, Mr (*Teller*)	Olexander, Mr
Coote, Mrs	Powell, Mrs
Cover, Mr	Rich-Phillips, Mr
Craige, Mr	Ross, Dr
Davis, Mr D. McL.	Smith, Mr K. M.
Davis, Mr P. R.	Stoney, Mr
Forwood, Mr	Strong, Mr

Furletti, Mr

Noes, 11

Broad, Ms
Carbines, Mrs (*Teller*)
Darveniza, Ms
Gould, Ms
Hadden, Ms
Jennings, Mr
McQuilten, Mr (*Teller*)
Madden, Mr
Mikakos, Ms
Romanes, Ms
Thomson, Ms

Pairs

Birrell, Mr
Bowden, Mr
Smith, Ms
Nguyen, Mr
Smith, Mr R. F.
Theophanous, Mr

Motion agreed to.

Read second time.

Third reading

For **Hon. M. A. BIRRELL** (East Yarra), Hon. Bill Forwood (Templestowe) — By leave, I move:

That this bill be now read a third time.

I thank honourable members on both sides for their contributions and make the point that this is an important piece of legislation that in no way affects the right to silence but goes down the path that I am sure the people of Victoria desire.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

Sitting suspended 1.03 p.m. until 2.07 p.m.

QUESTIONS WITHOUT NOTICE

Electricity: supply

Hon. PHILIP DAVIS (Gippsland) — Regarding the risk to Victoria's electricity supplies as a result of industrial action in the Latrobe Valley, I ask the Minister for Energy and Resources whether the government will proclaim an emergency under the provisions of the Essential Services Act if there is any further threat to supply?

Hon. C. C. BROAD (Minister for Energy and Resources) — The government has indicated that the Electricity Industry Act remains in force. The provisions of that act are capable of dealing with any further matters that may arise in terms of threats made or actions taken relating to the security of Victoria's electricity supplies. The government believes the emergency powers provided in the Electricity Industry Act are more than adequate and were proved to be adequate last Thursday week in getting the exact result the government wanted — a resumption of work in the Latrobe Valley.

Industrial relations: reforms

Hon. E. C. CARBINES (Geelong) — I refer the Minister for Industrial Relations to yesterday's decision by the Liberal Party to delay passage of the Fair Employment Bill on the basis that it has not been the subject of enough community consultation. Will the minister compare the approach of the Bracks government to community consultation on the Fair Employment Bill with that taken by the previous government on the Employee Relations Act.

Hon. M. M. GOULD (Minister for Industrial Relations) — On the issue of protecting the most disadvantaged workers in the community, anyone would think the government could appeal to the conscience, sense of justice and fairness of members of the Liberal Party to look after the most vulnerable workers in the state — outworkers who earn less than $2 an hour.

It shows that opposition members do not care about fairness and do not have a sense of justice. They have no sense of fairness for owner-drivers who work in poor contracting conditions that could result in the loss of their trucks or houses. The opposition wants to kick these workers in the guts and turn its back on the most vulnerable workers rather than looking after them.

On 3 October 1992, when the Kennett government came into office, over a bottle of Scotch the then industrial relations minister, Phil Gude, concocted what was to become the Employee Relations Act. What great policy and legislation that was! On 28 October 1992, without any community consultation or discussion, the Employee Relations Bill was introduced into Parliament. Some 200 000 Victorian workers protested on the front steps of Parliament House about what the government was doing. Did the government take any notice of the protestors? No. That bill stripped away conciliation and arbitration processes that had been in place in Victoria for nearly 100 years. On 12 November 1992, two weeks after the bill was introduced, it was passed by both houses of Parliament. Royal assent was given shortly thereafter and the act commenced substantive operation on 1 March 1993. It was a very short period of time.

One can compare that lack of consultation with what the Bracks government has done with the Fair Employment Bill. Extensive consultation has taken place with the community through the industrial relations task force, which travelled around country Victoria and took an enormous number of submissions. I asked the Leader of the Opposition and the Leader of the National Party to put in submissions, but they were not prepared to do so.

The legislation has been carefully and deliberately drafted to ensure the protection of workers. The government has consulted with the community and with legal firms such as Clayton Utz and Corrs Chambers Westgarth, who have independently examined the legislation. An economic study has also been undertaken. I have visited Mildura, Shepparton, Bendigo, Ballarat and Geelong to report back to the community. An issues paper was released and sent to all members of Parliament to enable them to distribute it to their constituents. One can contrast that broad consultation process with the processes of the opposition when in government.

The major proportion of the bill will not come into operation until 1 July next year, so there is plenty of time for preparation. The former government introduced legislation and rammed it through both houses of Parliament. The original bill received royal assent and stripped away nearly 100 years of conciliation and arbitration.

One can ask: what more could the government do? We have consulted with the community and with businesses. One can contrast that situation with what occurred when the opposition was in government. It is outrageous for the opposition to say there has been no consultation.

Victorian workers urgently need protection. If the legislation is not passed to allow the tribunal to mediate industrial disputes, whenever there is any form of industrial dispute I will direct all media inquiries to the Honourable Mark Birrell in this place and the Leader of the Opposition in the other place. It is an outrage for the opposition to claim no consultation has taken place, and it ought to support the bill to protect vulnerable workers.

Industrial relations: reforms

Hon. P. A. KATSAMBANIS (Monash) — I refer the Minister for Industrial Relations to the government's proposed new industrial relations system and the comments of the executive director of the Housing Industry Association, who said:

> The ultimate effect for home buyers would be a rise in housing costs — on a conservative estimate — of 30 per cent.

Given those comments, will the minister now concede that her ideologically driven bill will have catastrophic consequences for Victorian home buyers and the house building industry?

Hon. M. M. GOULD (Minister for Industrial Relations) — The claim made by the honourable member is not accurate. I have spoken with and written to the organisation Mr Katsambanis referred to and I have set aside a number of the concerns that were raised.

In the other place the government announced that there will be amendments to the legislation, and I have circulated them to the Leader of the Opposition and the spokesperson for the National Party. They will clarify the inaccurate claims made in the letter.

Boating: facility grants

Hon. JENNY MIKAKOS (Jika Jika) — I address my question to the Minister for Ports. Volunteer rescue groups provide valuable assistance to the boating community and rely on funding support to maintain and upgrade their boats. Could the minister advise what action is being taken to support those groups?

Hon. C. C. BROAD (Minister for Ports) — I thank the honourable member for her question about this important issue. Volunteer marine rescue groups provide essential search and rescue assistance to the water police, often providing the first rescue response. Members of these groups, who are volunteers, are dedicated to their task and are often exposed to significant dangers. Unfortunately their dedication has often been overlooked in the past. Improving the state's search and rescue capability is critical. In the past 12 months there have been more than 850 reported boating incidents, unfortunately involving 10 fatalities and 22 serious injuries. These accidents are often the result of poor or unsafe boat-handling skills and inadequate knowledge of what are safe water conditions in which to go boating.

Last week I announced a new $390 000 package of boating safety grants with a strong focus on supporting volunteer search and rescue groups. Without the existence of these groups the safety of Victorians would be severely compromised, and this support is very much needed.

Under a five-year program $250 000 will be provided each year for volunteer marine search and rescue organisations to purchase rescue boats and equipment.

For the first time $180 000 of that sum will be directed specifically towards the replacement of search and rescue vessels.

Under the initiative, major search and rescue boats will need to be constructed to commercial vessel standards with operators holding appropriate commercial qualifications. The Marine Board of Victoria will work with the groups on those standards to ensure the progressive introduction of operator qualifications. Fortunately, many rescue boat operators are commercial operators and have undertaken training.

I have also announced that in the first year $180 000 has been allocated to the coastguard for the purchase of two major new rescue boats and two ex-police boats. I acknowledge the assistance of a patron of the coastguard, the Honourable Ron Bowden, a member for South Eastern Province, for his efforts in representing the coastguard. It has been possible to give support to the coastguard that has not been forthcoming in the past. The two ex-police boats will be provided to Lake Hume and Lake Eppalock coastguards representing an investment of $20 000 each. The two new commercial boats will be constructed for the Carrum and Queenscliff coastguards representing an investment of $140 000.

In addition to the grants for the search and rescue boats, it is important to also note that a further $140 000 is available for education and training programs, regional boat safety initiatives and for the provision of boating opportunities for people with disabilities. The government has increased the total package by $150 000 to take it up to $390 000, which represents long overdue support for such important volunteer contributions.

Questions interrupted.

DISTINGUISHED VISITOR

The PRESIDENT — Order! I welcome to the chamber the Honourable Stellios Papathemalis, member of the Parliament of Greece and a former Minister for Public Works in Macedonia. Welcome to our Parliament.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Stawell: goldmining

Hon. P. R. HALL (Gippsland) — I refer the Minister for Energy and Resources to the recommendation of the Minister for Planning that no approval be granted for the proposed Big Hill open-cut goldmine in Stawell. Given that the mining company is prepared to meet all the conditions set down by the environment effects statement panel, and given that refusal to grant a permit puts in jeopardy the existing multimillion dollar operation and jobs in the Stawell community, will the minister demonstrate her support for mining and for rural communities by having cabinet reconsider that decision?

Hon. C. C. BROAD (Minister for Energy and Resources) — Stawell Gold Mines Pty Ltd is the largest producer of gold in the state and makes an important contribution to Victoria's mining industry and also to the local economy of Stawell. The Big Hill project referred to by the honourable member was rejected by the Minister for Planning because in his view it did not represent an acceptable balance of economic, social and environmental outcomes.

Prior to and since being elected to government the government has made it clear that in responding to projects of that nature it will take account of the environmental effects assessments that are made on significant projects and that its decision making will be guided by those assessments. That is what occurred in this case.

That position was reiterated in my ministerial statement on minerals and petroleum, which was delivered in this house. The government made it clear that it will deal with proposals on a case-by-case basis. The government is committed to developing a minerals and petroleum industry that contributes to the wealth and wellbeing of all Victorians, while meeting contemporary community expectations for social and environmental outcomes.

The government recognises that the current operation at Stawell makes an important contribution to the state's economy and to the local economy. I met with the company after the assessment by the Minister for Planning and spoke with the local council to reiterate the government's support for mining in this state.

Victorian Young Farmers city guide

Hon. KAYE DARVENIZA (Melbourne West) — Will the Minister for Youth Affairs inform the house of any new information resources of which he is aware

that are available to young Victorians from rural and regional Victoria?

Hon. J. M. MADDEN (Minister for Youth Affairs) — Opposition members would probably appreciate the publication I had the good fortune to launch last Friday at the Shire of Strathbogie offices in Euroa, the Victorian Young Farmers city guide. It is a fantastic resource for young people in rural and regional Victoria who have to make the transition to living in or visiting Melbourne either short term or long term and the range of issues they have to confront.

The resource addresses issues such as finding a place to stay, health, Centrelink services, employment, legal services, entertainment, recreation, getting around, transport, and cheap eats in Melbourne. The guide represents a collaborative arrangement between a number of organisations: the Department of Natural Resources and Environment, the Office for Youth, Centrelink, the Victorian Association of Youth in Communities, the Centre, and the Victorian Young Farmers.

It is fantastic that Victorian Young Farmers was able to produce the publication because it shows that that organisation is prepared to encourage leadership in its communities not only for its own members but for young people to be a little bit adventurous before returning to regional and rural Victoria with more life skills.

Industrial relations: reforms

Hon. B. C. BOARDMAN (Chelsea) — I refer the Minister for Small Business to the following comments from the Restaurant and Catering Association on the Fair Employment Bill:

> The government is trying to push this legislation through without allowing the opportunity for everyone to fully understand the implications of the bill, and the economic study undertaken by the government has clearly not identified all of its possible impacts.

As members of the Restaurant and Catering Association are predominantly small businesses, I ask the minister if she shares the concerns of the association. What has she done to alleviate those concerns?

Hon. M. R. THOMSON (Minister for Small Business) — Again the government hears more about the concerns of the opposition. It is not prepared to address the issues of employers pitting themselves against other employers to exploit workers and not treat them well. The concerns of the Restaurant and Catering Association on the fair employment legislation have been discussed with the Minister for Industrial Relations. Meetings have been held between — —

Honourable members interjecting.

The PRESIDENT — Order! The house is not getting very far. I can hardly hear the minister's response over the clatter. The Honourable Cameron Boardman has asked his question and he will wait for the answer.

Hon. M. R. THOMSON — The provisions that will immediately come into effect when the bill is passed relate to entitlements such as bereavement leave, which I am sure the Restaurant and Catering Association of Victoria would have no difficulty with whatever. Under the proposed legislation employers will be able to put their cases to the tribunal and have them considered on their merits and on the basis of their business needs. It is important that the state has balanced legislation that deals with the needs of business and employees, and that is what the proposed legislation does.

I remind honourable members opposite that Victoria is the only state that does not have jurisdiction over industrial relations. The preferred option would have been to have had in place a national scheme but that was not able to be achieved. It is also the case that no other state has given up its industrial relations jurisdiction.

It is important that employers have access to accurate information. A number of employers have come to me saying they cannot get access to information about what they should be paying their employees. Because they cannot get hold of Wageline they do not have access to that service. The bill will increase the capacity of employers to access accurate information that will ensure they can be confident of paying their employees the appropriate amounts.

Small business: service delivery

Hon. T. C. THEOPHANOUS (Jika Jika) — I also have a question for the Minister for Small Business.

Hon. R. A. Best — Is it: 'Can I have your job.'?

Hon. T. C. THEOPHANOUS — I am very happy where I am.

Given that there are synergies between the minister's two portfolios, what has the minister done to provide more efficient service delivery for both consumers and small business?

Hon. M. R. THOMSON (Minister for Small Business) — Unfortunately in its time in government the opposition did not see fit to try to make it easier for businesses to deal with government departments. Consumer and Business Affairs Victoria and the Department of State and Regional Development have been having discussions about how they can improve access to information that is vital to small business.

In 1999–2000 publications from Small Business Victoria on how to start a business and what one needs to know before starting a business have been displayed in the public areas of Consumer and Business Affairs Victoria so that when people go to register a business name — —

Hon. Bill Forwood interjected.

Hon. M. R. THOMSON — Yes, it is a great initiative because a number of businesses out there have started up without access to information that would ensure they do not make mistakes. Those businesses now have access to a guide about how they can get assistance and information before they even start on the path of making those mistakes.

Information from Consumer and Business Affairs Victoria is also being displayed in the Collins Street office of the Department of State and Regional Development to ensure that businesses are also aware of their obligations to their customer base.

Arrangements have also been made for the transfer of inquiries between the consumer affairs and small business offices to ensure that people with additional inquiries or requests can be directed to the appropriate person without having to ring another line and wait yet again.

The Mildura business office of the Department of State and Regional Development is trialling a fast-track system to ensure a faster turnaround time for business name registrations. Some people were waiting up to two weeks or more for business name registrations. The Mildura office has been able to cut that period down to 48 hours. That system will be extended to other offices of the Department of State and Regional Development.

What is termed a ‘hot link’ has also been established between the Business Channel and the business names database, and Internet linkages have been established between the sites of Consumer and Business Affairs Victoria and Small Business Victoria. In 2000–01 the government will continue that initiative by assessing the feasibility and benefits of electronically connecting the regional offices of the Department of State and Regional Development to the Consumer and Business Affairs Victoria computer system to at least enable business name searches to be done.

Consumer and Business Affairs Victoria will be exploring with the Department of State and Regional Development the placement of publications in the department’s regional offices to ensure that businesses have access to additional information about their rights and obligations and that consumers have access to information about their rights.

To ensure there is recognition of the contribution of small business to both customer service and innovation the departments will be working cooperatively with small business and consumers on an award and incentive program. It will also be working closely with those sectors in giving advice to the government and promoting educational activities. For example, Trade Measurement Victoria has been working very closely with Consumer and Business Affairs Victoria on the vital policy initiative of fuel temperature. The department will be working closely with those organisations on policy initiatives of interest to both consumers and business.

Tertiary education and training: public sector

Hon. A. P. OLEXANDER (Silvan) — I refer the Minister for Youth Affairs to Labor’s 10 commitments to young Victorians contained within the Youth Pledge that was made by the then opposition before the last state election. At that time an important commitment was given by Labor to establish in its first term of government 2000 public sector traineeships for young people. To date the government has secured only 650 places in the public sector for young Victorians — that is, less than one-third of its commitment. Given the disturbing trend of jobs leaving Victoria for other states, will the minister tell young Victorians exactly when the government intends to fulfil its commitment of 2000 jobs and indicate his support as youth minister for an increase in the 2000 jobs target to compensate for the flight of jobs from Victoria over the past 12 months?

Hon. J. M. MADDEN (Minister for Youth Affairs) — Although the media may have focused on issues relating to some industries moving to other parts of the country, no doubt members of the opposition would also appreciate not only the significant rise in growth in the state in contrast to growth in other states, but also the significant increase in job numbers in this state. Although there has been some transition of jobs across state barriers, the government has been able to — —

Honourable members interjecting.

The PRESIDENT — Order! The minister is not being helped by people to his right and to his left. I ask honourable members to allow the minister to complete his answer.

Hon. J. M. MADDEN — As I was saying, employment is rising and unemployment is at a 10-year low in this state. Export growth is up and population migration to the state continues. The government has already implemented a third of the traineeships previously mentioned. No doubt honourable members would appreciate that the government is only one year into its term so it still has plenty of time to ensure that job growth continues along with the profound upward turn in the Victorian economy. The government has been proactive in providing for job growth and opportunities for young people and in growth across the entire state. That once again proves, as we continue to highlight — —

Honourable members interjecting.

Hon. J. M. MADDEN — If members of the opposition care to listen they might pick up some points rather than continuing to interject as they like to do, even when reality is striking them in the face. Growth continues and the government is continuing its commitment to young people. It has established the Office for Youth and is continuing its endeavours in relation to youth employment. The government is continuing the profound upward shift in terms of Victoria's economy. Once again — —

Honourable members interjecting.

Hon. J. M. MADDEN — As I have pointed out on a number of occasions, you were bullies in government and you are bullies now. You will always be bullies. You still do not appreciate that the public did not want you because you are bullies.

Hon. A. P. Olexander — On a point of order, Mr President, the minister has decided in response to my specific question that he will debate the issue and taunt the opposition about a previous term in government. That was not the intent of the question and I ask you to call him to order. I submit that he is debating the issue and should be answering the question.

Honourable members interjecting.

The PRESIDENT — Order! The house is particularly unruly today. I think it must be the warm weather. I invite the minister to wind up his answer and the house will move on to the final question, which is also for him.

Hon. J. M. MADDEN — Mr Olexander interjects to ask when will we deliver. I will point out how the government has delivered. Total employment in October was 81 500 higher than a year earlier. Unemployment was — —

Honourable members interjecting.

The PRESIDENT — Order! The house is getting nowhere with this question. I suggest the minister puts the figure on the record. I will ask for the final question — that is, unless the minister can finish up very quickly.

Hon. J. M. MADDEN — I would like to finish. The government's commitment to young people and jobs is reinforced by the continued growth in the state, the continued commitment to youth employment and the continued increase in traineeships.

Sport: volunteers

Hon. G. D. ROMANES (Melbourne) — Will the Minister for Sport and Recreation inform the house of the steps being taken to recognise the important role of volunteers in sport and recreation for Victoria?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Last Friday I had the good fortune of attending a unique evening in Boort. The function was organised by the Loddon shire. The shire normally would have a mayoral ball at this time of year but instead it decided to host an evening in recognition of the contribution of volunteers in the sport and recreation community.

It was a magnificent event for a number of reasons. It stands as a model of what local communities can do to reinforce the significance to their communities of the volunteer population, particularly in relation to sport. The shire invited people to nominate volunteers for the awards, with one finalist short-listed from each of the six ridings. The semifinalists were recognised with a plaque, and the overall winner received a silver plate and pewter set.

Although the event was not a gala event, it was significant because it reinforced to the community the role of volunteers. It gave them significant recognition. It was not really a competitive event, but nominating a winner reinforced the role of volunteers and meant that one person in particular was a significant role model.

Over 150 people attended the great night at the Boort Park Sports Club. Everyone enjoyed the evening. Finalists were involved from a range of sports, including football, cricket, netball and golf. They ranged from club presidents to junior sports coaches and some had served their respective organisations for as long as 25 years.

I was extremely proud to be involved in that event. It was significant that the volunteers were particularly humble. They were nominated because their peers believed they should be nominated, and it was fantastic to see the smiles on the faces of their peers who had nominated them. It warmed everybody's hearts, particularly the volunteers who were the recipients.

Without those volunteers Victoria would be much poorer as a community, particularly the rural and regional sporting organisations that particularly need volunteers. Volunteers often drive many miles to get to where they need to be. It shows that the social capital within the community is grossly underestimated and is particularly weighted towards the voluntary contribution of the people involved in sports clubs.

That evening provides a model for many communities to recognise their volunteers in respective sports, particularly next year, which is the International Year for Volunteers. Local government could use that function as a model. The Loddon shire should be congratulated on its initiatives in recognising the vital role of volunteers.

PETROLEUM PRODUCTS (TERMINAL GATE PRICING) BILL

Second reading

Hon. G. D. ROMANES (Melbourne) — I move:

That this bill be now read a second time.

Background

The government has endorsed the key principles behind the bill, which are to increase pricing transparency and reduce metropolitan/regional price differentials. While fuel pricing is clearly a commonwealth responsibility, the Victorian government has said that it wants to react responsibly and constructively to the bill placed before Parliament by the member for Mildura, Mr Russell Savage.

This approach is in marked contrast to the attitude of the commonwealth government, which despite its responsibility for fuel pricing, has ignored loud public complaints from motorists and key organisations such as the RACV that prices are outrageously high. The commonwealth has refused to meet its promise that the new taxation system would not increase fuel prices, while hypocritically pocketing millions of dollars in windfall revenue. Despite a reported record budget surplus, the commonwealth government has also refused to waive next February's automatic CPI increase on fuel which will add up to a further 3 cents onto existing fuel prices.

Despite supporting the principles behind the original bill, the government has said that it believes that there were a number of significant deficiencies in the original bill achieving its objectives. It is therefore pleasing to note that a number of house amendments were proposed by Mr Savage and passed by the Legislative Assembly. These amendments were developed after consultation with the government and key industry players including BP, Shell, Mobil, Caltex, independent distributors including Liberty Oil, ACCC, RACV and VACC. The bill is not a panacea to high fuel costs, or the differential between metropolitan and rural prices, but it is one small step in the right direction.

The government has said that it recognises that the purpose of the bill as amended is to respond to problems being experienced by small independent fuel distributors and retailers and rural consumers.

These problems include —

a lack of transparency in the component costs in wholesale pricing;

the view of independent distributors and retailers that the wholesale price at which they buy from the oil majors is often higher than the retail price at franchise outlets of the same company; and

that for some time the retail prices of fuel in country areas has been significantly higher than the average price in Melbourne. While higher distribution and retailing costs contribute to higher country prices, discounting cycles which drop retail prices, at times below wholesale prices, increase the magnitude of the gap between city and country prices.

The original bill also included provisions which would have required the temperature correction of fuel at the terminal. This is an important issue as distributors are currently paying for fuel which they are not actually able to sell to retailers as it shrinks in volume from the time it is obtained 'hot' at the terminal (at up to 50 degrees Celsius) and when it is delivered to retailers some time later. These provisions have been removed from the original bill so that temperature correction can

be pursued on a national basis through the meetings of trade measurement minister.

Key components of the bill

Definition of terminal gate price

The intention is to ensure that all suppliers use the same definition of the components of terminal gate price as the starting price for negotiations and contractual arrangements. This price is to be published as prescribed, enabling direct comparisons to be made between suppliers.

This arrangement will enable each terminal operator to set a terminal gate or base price with provision for additions or subtractions to the base price to be negotiated in the contract between the terminal operator and the reseller. This will allow different pricing structures for different categories of distributors and retailers. It will also allow both a spot market and a contract market to develop thereby providing independent distributors and retailers with options to negotiate, and better access to competitive prices.

The bill will ensure that the price at which fuel is supplied to distributors and retailers is based on the terminal gate price. By setting the relationship between the terminal gate price and the supply price the bill ensures that the terminal gate price is a competitive price.

Transparency

The bill will ensure that pricing is transparent by requiring that the terminal gate price be published and that other charges contributing to the final supply price be available on request or included on any invoice. Contractual information and information on a terminal operator's investment in a leased site would be confidential to the parties.

Enforceability

The bill contains powers to require the production of documents and answer questions to ensure compliance with the act. These powers will be vested in the Director of Consumer and Business Affairs. Normal inspector's powers in the Fair Trading Act 1999 will also apply to the operation of this bill. Penalties for non-compliance with the act are sufficiently high (up to 10 000 penalty units or $1 million) to encourage compliance with the bill's main provisions. The bill also enables regulations to be made in relation to matters such as record-keeping requirements and prescribing the means of publication of the terminal gate price. These regulations will be made after appropriate consultation with the key players.

This bill is a worthwhile start in tackling the problem of lack of transparency with potential to reduce fuel price differences between country and metropolitan areas.

I commend the bill to the house.

Hon. PHILIP DAVIS (Gippsland) — It had been my intention to remark on what an amazing and extraordinary level of cooperation and goodwill had been displayed on the part of all parties to facilitate the passage in contemporary times of a fairly unique piece of legislation. It is a long time since the house has seen a private member's bill introduced in the form this bill has been introduced, and it is worthy of note to remark upon that.

As I said, I had intended to say the bill's facilitation displays a great degree of goodwill and good spirit between parliamentarians. However, I am disappointed to have listened to the second-reading speech and discovered that, notwithstanding the goodwill generally displayed about facilitating the debate, the government has taken the opportunity to very much politicise its approach by attacking the federal government. In the context of this legislation achieving an outcome for Parliament and the intention flagged by the government generally — particularly in debate on the bill in the other place and in the discussions leading to the introduction of the bill here — I would not have thought that was an appropriate way of developing a second-reading speech. The government has not understood that goodwill means goodwill, and that is not a negotiable commodity. That action by the government prejudices the remarks I now intend to make.

It is probably useful to comment on the development of the legislation. The house should note that the bill is the third attempt to provide a petrol pricing regulatory instrument to Parliament, the first being the bill introduced in the other place by the honourable member for Mildura, Mr Savage, on 23 May last, entitled the Petroleum Products (Pricing) Bill. He decided not to proceed with the bill after it became obvious that his proposal was unworkable. Instead, on 5 September Mr Savage introduced a bill entitled the Petroleum Products (Terminal Gate Pricing) Bill. That bill comprising about three pages was amended by about five pages of detailed amendments. The bill transmitted from the other place to this house bears no resemblance to the proposals originally outlined by Mr Savage, nor does the intent of the bill. That is probably the most remarkable aspect of the legislation.

Mr Savage was widely quoted in the media on the basis of his press releases of 14 and 25 May, the first stating:

> The huge differences between petrol and gas prices in city and country areas should be reduced with a private member's bill to be introduced to Parliament by (the) member for Mildura, Russell Savage.
>
> Mr Savage said his 'cap the gap' legislation was intended to limit the differences in petrol and gas prices between Melbourne and regional Victoria.

On 25 May Mr Savage commented appropriately in his press release by paying tribute to both the government and the opposition for enabling that legislation to proceed to the first and second-reading stages. Mr Savage acknowledged that cooperation in the spirit in which it was always intended. I am disappointed with the government's partisanship in this matter.

The bill clearly does not now address the principal purpose for which Mr Savage set out to propose legislation, which was to deal with the price differential between rural communities and the city. I and the opposition unequivocally support the principle that, so far as is reasonable, there should be the least possible imposition of disadvantage to rural communities through higher than necessary petrol prices. We support that general proposition for city communities so that any legislative and regulatory arrangements that are entered into must ensure there is the maximum possible competition in the marketplace to exert the maximum possible leverage on all players, from refiners and importers through to the marketing chain to the retail level.

The question before the house is to resolve whether the legislation will achieve any beneficial outcome. This is not the first time Parliament has dealt with legislation on petroleum products. In 1981 it passed the bill that became the Fuel Prices Regulation Act, which contained provisions for the regulation of petrol prices. The act provided the power for the responsible minister to declare specific fuels and/or areas of the state in respect of any persons or body or association of persons. Section 7 of the act enabled the Prices Commissioner, subject to ministerial approval, to set maximum prices with respect to such declarations.

That act has not been invoked since 1984, when the commonwealth Prices Surveillance Authority commenced monitoring wholesale prices. It was when the Labor Party was last in government that that occurred, with the agreement of all states except Western Australia.

This is not a new debate on petrol pricing, but it will be an ongoing debate — one that the community and the Parliament will consider from time to time over the coming years. The reason it is so topical is the increasing price of domestic fuel of all descriptions. The fuel price mechanism is largely dependent upon the world parity pricing arrangements under which the Australian petroleum industry operates. As a consequence, two major factors have affected the price of crude oil, and petroleum production within Australia in recent times has been driving up those prices. One factor is the falling exchange rate of the Australian dollar so that it buys far less crude than it used to buy, which has influenced the domestic price, and the other is the uncontrollable factor of restriction in supply by the oil-producing countries that have deliberately set out to create a world shortage to drive up the barrel price of oil, which has had a knock-on effect on the Australian domestic situation.

Notwithstanding any policy or regulatory regime, if we are to stand in the world marketplace, as we do, it is inevitable and essential that we ensure that Australian producers have the greatest ability to optimise return on investment by developing their own petroleum resources. Under existing arrangements Australia is generally optimising production of petroleum product.

In an announcement earlier this year the Australian Bureau of Statistics recorded that in the March quarter of 2000 for the first time in eight years Australia became a net exporter of crude petroleum. That is an important pointer to the reality of how closely aligned and tied we are to world prices.

What does that mean in comparative terms? I shall use prices that were published on 17 September of this year, so they are not current as of today but they are the closest I could find. The comparison in Australian dollars is that the price of leaded petrol in Britain was $2.09; in Sweden, $1.84; in Belgium, $1.74; in Germany, $1.61; in Greece, $1.28; and in Australia, 97 cents.

Australia has the lowest prices within the Organisation for Economic Cooperation and Development notwithstanding the fact that prices have been increasing. Inevitably that will cause significant tension among consumers of petroleum products, because as with any commodity that we become used to buying, when there is a change in price we have to re-evaluate our use of the product. It affects people whether they reside in the city or the country. It is something that is currently unable to be controlled if we are to maintain an investment regime in Australia to maximise the use of our natural resources, namely, oil and gas, and to ensure there is appropriate investment to maximise yield on those products.

The real killer that we have to deal with is the price differential between locations. Even within the city there are significant differentials, but they are often for short periods because there is aggressive competition between major oil companies and between chains of retail sites, or site-specific competition where the target market is one that is price sensitive and therefore the retailer will try to drive a competitive market share by selling it at the lowest possible price.

Of course every outlet has a different mix of products and not every retail site is selling just fuel. For example, the traditional corner store is under pressure because of the evolution of convenience stores at petrol retailing sites. I have a great deal of sympathy for owners and operators of traditional corner stores, who are under a lot of pressure because of that competition. But that is the competitive market. That is what consumers choose to support and consequently we are seeing a change in the market.

The issue for country people is the price differential. When Mr Savage introduced his bill in the Legislative Assembly I did a survey to establish what was the base line, if you like, of the differential. Clearly it was not an objective survey, but it was based on contacts made from East Melbourne to Mallacoota.

Hon. W. R. Baxter — It is a fair sample, though.

Hon. PHILIP DAVIS — It is a representation, yes. I will quote some of the prices in cents per litre to give the house a perspective. On 23 May at the Mobil site in East Melbourne unleaded petrol was retailing at 82.09, autogas at 33.09 and diesel at 82.09. In contrast, at the Caltex site at Cann River unleaded petrol was retailing at 99.09, autogas at 54.09 and diesel at 98.09. They are fairly dramatic differences. Lest anyone think they were not typical, the Prahran East Mobil site was retailing unleaded petrol at 85.09, autogas at 36.09 and diesel at 82.09. There can be absolutely no doubt there is a real issue in the differential between city and country prices. Lest people think that cheap fuel cannot be bought in the country, I refer to the Caltex site at Nar Nar Goon in Gippsland, which all Gippslanders know retails the cheapest fuel — —

Hon. W. R. Baxter — You meet a lot of constituents there, Mr Davis.

Hon. PHILIP DAVIS — I do. Indeed, on many occasions I could survey my constituents by stopping at that Caltex site — and I am sorry that Parliament does not have a contract with Caltex. Local members visit many of our constituents by calling at the Caltex servo at Nar Nar Goon. The price there on 23 May was 83.09 for unleaded petrol, 32.3 for autogas and 79.9 for diesel. I have plenty of other figures but I will not quote them.

That simple comparison demonstrates there is a significant issue about which rural people are rightly very concerned. There is always the question of the underlying factors that contribute to the cause of the price differentials and there is absolutely no doubt that at the end of the day two principal factors will affect the retail margins. One will be the level of competition within the community where that market operates — that is, the degree of competition available to force a price effect; and the other, which is as critical, is the total volume of product that is able to be shifted, because the larger the volume the lower will be the impact of the overheads in providing the fuel to customers.

Having identified that there is a real concern among rural people about the city–country price differential, I point out that there is clearly also concern about the absolute price. As I have said, the matter is of concern to not just rural people but also city people because recently we have bumped through the psychological threshold of $1 per litre for fuel. That has triggered a high level of anxiety in the community. Therefore Parliament must consider whether it can deal with the issues.

Fuel prices have been the subject of many inquiries in the past. Some people say that in the past 20 years there have been 43 inquiries, others say there have been 48. I do not know how many inquiries there have been, but I know that it is possible to read endlessly on the subject of fuel prices, given that the issue has long been controversial and I suspect will remain so.

One of the problems with the issue is how the community expects members of Parliament to act and that members of Parliament react in a politically orthodox manner by seizing the moment and having a cheap shot. I may have to use an unparliamentary expression here, and I apologise if it is deemed so. I will quote from an article by Terry McCrann in the *Herald Sun* of 22 August entitled ‘Beattie oil attack utterly stupid’. It states:

> The biggest puzzle with petrol prices is why Queensland Premier Peter Beattie wants the whole of Australia to know that he’s a complete dickhead.

Excuse me, Mr Deputy President. He continues:

> My apologies for using the term, but it’s the only one that fully captures the full dimensions of his utter stupidity. Not simply that his ranting and raving that there ‘ought to be a law’ against rising petrol prices is founded on postgraduate

> level ignorance. But that he so determinedly seeks to project his stupidity outside the boundaries of his own state, and right across the nation.

In any event, the point that Terry McCrann was making is that as a result of the analysis of the petroleum industry over time and the understanding about the way the market operates, there are very small margins at all levels of the distribution chain, from import or production to retail. The net effect of Peter Beattie's proposals would have likely seen a significant increase in the retail price of fuel. We as parliamentarians have an obligation to be a little above the populist response on those issues to ensure that our words and actions are measured.

The first clause of the bill sets out its purpose — that is, to require the determination of terminal gate prices for petroleum products and for other purposes. That is not a new proposal. I am holding a document that was provided to me by the Victorian Automobile Chamber of Commerce (VACC) in 1993. It is amazing what you find in your files when you dig back!

Hon. M. R. Thomson — Were you on that committee?

Hon. PHILIP DAVIS — I am getting there. Under the heading 'Terminal gate pricing' it states:

> In recent years, the VACC has actively pursued a terminal gate pricing structure for its dealers because it believes it to be the most feasible and efficient way to ensure a fair petrol market. The current system consistently and periodically results in wholesale pricing chaos.

It continues:

> A terminal gate pricing system would provide one wholesale price available to all buyers at the refinery gate. This price would accurately reflect the cost of producing and storing the finished product plus a reasonable profit.

In any event in 1993 the VACC was obviously on the case. So, too, was the then coalition backbench committee. Although I would like to take a great deal of credit for the work of that committee, all I can say is that I was one of the 20 or 30 backbench country members who attended a meeting in March 1993. That meeting resolved to form a subcommittee to undertake further work. The members of the subcommittee were the Honourable David Evans, a former member of this house; Tony Plowman, the honourable member for Benambra in another place; Don Kilgour, the honourable member for Shepparton in another place, and the noteworthy and Honourable Graham Stoney, who is still a member of this house today. Those four representatives worked very diligently and produced a report in August 1993 for community consultation. The report dealt with the issue of petrol pricing in Victoria. The issue was alive in 1993 and it is still alive today seven or eight years on. It will continue to be a live issue for all politicians.

The first recommendation of the committee was that the marketing of petrol change from a rack pricing system to a terminal gate system. A consistent thread is emerging — that is, that Victoria should have a consistent approach to create transparency for everyone involved in the petroleum industry. There have been conceptual proposals about terminal gate pricing for many years.

Because I am conscious of the time available for debate, I now need to particularise. I will quickly go through some of the comments that have come to me as a consequence of the various consultations undertaken on the legislation. I have a letter dated 14 November from the Victorian Farmers Federation responding to my request for its reaction. The VFF view is summarised, and part of it states:

> The original proposal for terminal gate pricing arising from David Evans's committee —

that is, Mr Stoney's committee —

> for terminal gate pricing was to force competition between oil companies at the terminal gate rather than on Punt Road or any of the other metropolitan sites where demand for petrol at an individual service station is very price elastic.

That is an interesting summary of the work Mr Stoney et al pursued. The conclusion to the letter states:

> The new section 6 enables oil companies to set prices for individual service stations using discount and rebates as they currently do. The bill does little more than legitimise the current practice.
>
> I do not believe the bill in its current form will do anything to improve the unreasonable disparity between country and city fuel prices. I doubt it will make the situation worse, but it will not improve it.

In summary the Victorian Farmers Federation (VFF) response sets out what is generally being articulated on balance. Although I would have to say a range of views exists, I would like to reflect on some of them. Firstly, the opposition received correspondence from and met with and had telephone discussions with the independent Petroleum Marketers Association Australia. The PMAA clearly sees this as a step forward and is strongly supportive. It believes transparency will evolve as a result of the provisions of the bill, notwithstanding that it is disappointed that the bill does not go as far as it would have preferred.

I should note that Arthur Nestor, president of the PMAA, has made strong representations on its behalf to the opposition. In particular, I note that he has for some time been pursuing the Honourable Bill Forwood, the spokesman for rural and regional development and small business, on this matter.

Mr Forwood and I note that Mr Arthur Nestor has conducted a strong and consistent campaign in pursuing the issue. He is clearly concerned that if the bill is not passed his business will not survive because only through the transparency offered in the provisions of the bill will he be able to purchase fuel competitively.

The Victorian Automobile Chamber of Commerce supports the bill although it has concerns about some drafting issues. BP Australia supports the process and believes it is consistent with its present marketing strategy. It holds itself out as a promoter of terminal gate pricing and argues and articulates the case for terminal gate pricing. The oil majors are at the point of establishing a terminal gate pricing regime without legislation, but failing that they argue that the legislation is the next best option. However, even BP has concerns about some of the detailed drafting and is concerned about the ability to refuse supply. For example, it is concerned about health and safety issues and driver and vehicle accreditation regarding load delivery. There may be instances where a refiner may not want to supply a particular tanker because of the inability of that tanker to guarantee the safety of the site or the delivery of the load. A number of oil majors have raised the issue of scheduling. If the requirement is to supply on a first-come, first-served basis the scheduling of fuel deliveries will be difficult. I look forward to the Minister for Small Business clarifying some of those matters.

It is evident refiners and importers will have problems if they have no discretion about the way they schedule deliveries and are obliged to provide the fuel on a first-come, first-served basis without regard for the ordinary arrangements of supplying regular customers scheduled into the program. Notwithstanding that, the bill provides for a declared price to be fixed for 24 hours. Clearly that will have an effect on the market opportunity and relationships between the terminal operator and the purchaser. There will be days when the price will be higher than some retailers or distributors would like to pay for the fuel, so they may take delivery on another day when the price is different. The government should clarify how it will administer the provisions.

Robin Weatherald from Euroa has contacted me on several occasions and is keen for the legislation to proceed, although he has concerns about some of its details and would prefer some amendment be made to it. Not everyone is happy, which goes to show the difficulty of the task facing Parliament.

The Royal Automobile Club of Victoria is equivocal, and it would have been more helpful for the opposition had it bet on one horse instead of a couple. I have had several discussions with the RACV on the issue: on one hand it says that the bill will not work, while on the other it says it is concerned, on the basis of some speculation, that LPG may be removed from the bill. The RACV expresses some dismay at that happening, and I assume it therefore supports the bill. I am greatly disappointed with the RACV. It is the leading motoring organisation in Victoria, if not Australia, and it has been absolutely equivocal on the legislation. I have been seeking a clear expression of its views to assist the opposition and Parliament and the best I can get is wishy-washy comments that will not be reduced to writing. The RACV should think about who it is representing. This is probably the most significant matter before Parliament in several years in which the RACV as an industry advocate has had a direct stake, yet it is unable to identify its position.

The Australian Institute of Petroleum is unable to identify its position because its members cannot make up their minds. I am more sympathetic with the position of the institute because it is unable to get unity of purpose within the industry. It says, ‘We cannot support the legislation because we don’t think it is appropriate to legislate where the market is working’, which indicates it believes the market is working, but then it says it wants the bill to be amended. It is not sure what it wants to do. It has a difficulty, and I appreciate how sensitive the matter is for its constituency.

The Victorian Employers Chamber of Commerce and Industry seeks further examination of the bill and believes it would be better if it were held over for some time to provide effective examination of the provisions. VECCI says the bill is improved by the amendments moved in the other place.

I sought advice from the Australian Consumers Association and it said it would be interesting to see what would happen when the bill is passed by Parliament and implemented.

The Australian Consumers Association does not believe consumers will get cheaper fuel as a result of the bill. Its view is that it will have no net effect on consumers. It comes down to the issue of whether the primary beneficiaries of the legislation will be those who are in the business of selling fuel at one level or

another and there will be no net effect on consumers. It is an issue we need to be aware of.

Issues have been raised with me in recent days. Yesterday I received a letter from the Australian Liquefied Petroleum Gas Association which raises concerns about the impact of the legislation with regard to petroleum gas and the liquefied petroleum gas (LPG) industry. The association believes there has not been proper consideration of that impact and that the amendments moved in the Assembly were late and introduced hastily. It believes there has been little consultation with the industry, makes the point that there is a risk to investment in Victoria and is particularly concerned about the effects of the bill. The letter states:

> Victoria's supplies of LPG are declining. The north of the state is now often supplied with LPG imported into Sydney. The bill may well become a disincentive for investment in further LPG extraction in Victoria, which usually occurs whenever new gas fields are developed. In fact, the bill takes LPG pricing 'back to the 80s' when gate prices were set by federal government intervention — this system was terminated for a free market system with complete government and industry support with one result being a large increase in refinery production.

A number of oil companies have raised issues with me. I turn to deal particularly with the concerns of BHP Petroleum. I have received correspondence from and had meetings with representatives of the company, and it has raised concerns about the uncertainty of the application of the bill to its circumstances. Clearly BHP Petroleum is involved in the production and wholesaling of LPG, which involves developing production in Bass Strait and then on-selling to customers — a process that may be caught up in the bill unintentionally or intentionally. Certainly it is an issue of reasonable concern for a major producer of LPG in the state.

BHP Petroleum raises the issue, as did the previous correspondent, of interstate distortions. It is unreasonable to have state legislation that does not fit within a national context. If Victoria is going it alone on this matter how will that affect trade from other states and investment in Victoria? The company is concerned about the administrative costs and burdens, and not unreasonably so when given the potential impact of the legislation. There are also unknown consequences because there has been insufficient time to consider any federal implications.

I conclude by saying that I have received representations from Shell, Caltex and Mobil about concerns with the particularities of the bill and its effect on their ability to conduct business in a competitive environment. There is concern that at the end of the day there will be a net adverse affect on consumers because there will be a restraint on competition imposed by a level of regulatory interference. Those are the issues I raise for the government to address in the debate. There is no doubt that Parliament is concerned with the effect increasing fuel prices have on the community and is keen to ensure there is an open and transparent market arrangement. The question as to whether the legislation will assist or impede that process has not yet been answered.

Given that the government has taken ownership of the bill, that it drove the amendments in the Legislative Assembly, with the Treasurer leading the debate on amending the legislation, that a government backbencher introduced the bill into the house and that clearly the government will have responsibility for implementing it, I should be pleased to hear from the government how it will address some of the concerns raised. I indicate that the opposition does not intend to delay passage of the bill.

Hon. W. R. BAXTER (North Eastern) — I feel more uncomfortable in the debate today than I have ever felt in all the debates I have been involved in during more than 20 years in this place. I feel uncomfortable because as a parliamentarian, rather than as a member of a political party, I do not believe I am honouring my commitment and responsibility to this place by being party to putting on the statute book of Victoria legislation which in my own heart I know is deficient, which is probably unworkable and which will add a cost burden to the economy at large, especially through petrol prices.

I feel uncomfortable because I believe both sides have a view that the bill is not worth while. However, because of the popularism that has become so much a feature of the political systems of Western democracies over the past 20 years and because a member who by a quirk of the electoral process happens to exercise some political leverage over the government of the day wants to go on a grandstanding exercise, from a political point of view no-one feels able to be seen to be opposing the bill. Therefore honourable members are left in the very unfortunate and uncomfortable — for me at least, and I believe others — position of not opposing legislation in which they have precious little faith and which they think should probably not be on the statute book.

That is not to say that petrol pricing is not a huge issue. I commend the Honourable Philip Davis on his contribution. He has taken the house through how important petrol pricing is for all Victorians, especially country Victorians.

I share Mr Philip Davis's dismay about the way the second-reading speech was couched, particularly the opening three or four paragraphs. This private members bill is being debated through the goodwill of all sides. The government has introduced the bill to this place on behalf of an Independent member in another place, and has taken over ownership of the bill because it is the father of the amendments inserted in the other place. It is outrageous that it should use the second-reading speech in such a political way to harangue another government. It seems to be an unfortunate trend that the government's second-reading speeches are becoming political documents. In this instance it does the government no credit at all and is in fact a discourtesy to the house.

Petrol pricing is a major issue for country people because they rely on motor vehicles more than their city compatriots do. They do not have access to public transport, and have huge distances to cover. They have to get goods in, which involves a freight component of which fuel is a major portion, and they have to get their products out to market. They use petrol for travelling to social and educational activities. The cost of petrol is a major component of the household budget and a major input cost for country businesses, whether agricultural or other types of businesses.

It is worth observing, as Mr Philip Davis did in some of the comparisons he made in his contribution to the debate, why we have had such a spike in petrol prices. I quote from an article by Kenneth Davidson in the *Age* of 6 November. Kenneth Davidson is not usually a commentator with whom I have much to agree on, but on this occasion he writes about some factual information of which we might take note. He says that there are two reasons for the current spike in petrol prices:

> The price of oil is set in US dollars. The Australian import parity price has risen from $US10 a barrel in January 1999 to $US36 a barrel now. But, thanks to a 30 per cent fall in the value of the $A, the price per barrel in Australian dollars has soared from $13.70 to $69.20.
>
> In 20 months, the international price of a barrel of oil has increased two and a half times. But because of the decline in the $A, the price of a barrel of oil has increased fivefold in Australia.

They are significant figures to keep in mind. It is probably an indication of the competition in the marketplace that petrol prices have not risen higher. If one looks at those figures one sees that obviously the percentage petrol price increases in Australia have not been of that magnitude, but that is the background to the significantly high price at the moment.

While everyone can complain about petrol prices that seem to be higher, and indeed are currently high, what is most galling for country people is the differential between city and country prices. I know this is what the honourable member for Mildura in another place is endeavouring to address. To that extent I do not criticise him because there has been widespread concern about that differential. It has generally been put down by many people as the transport difference. Often the difference between what you might pay for a litre of petrol in Nicholson Street, Carlton and in Mildura or Bairnsdale is 12 cents, 13 cents and 14 cents.

As Mr Philip Davis has already said, there are more components to it than that. The so-called Evans committee, which was so ably chaired by a former member for North Eastern Province, Mr David Evans, and whose members included Mr Stoney, a member for Central Highlands Province, Mr Plowman, the honourable member for Benambra, and Mr Kilgour, the honourable member for Shepparton, in another place, found that many other aspects come into that differential. It might well be because of the lower volume in country outlets — the fact that they get smaller drops because they are not selling so much and therefore they get less each time, which involves an added cost. Country outlets do not have the ability to cross-subsidise petrol sales by shop sales as has happened in the past 10 years in Melbourne where the large outlets are selling all manner of things and are clearly using that fairly high profit centre to subsidise and discount fuel prices on the apron.

Some country service stations still offer driveway service, and there is a cost involved in that. Some still give credit to their local customers. I do not think that happens much in the suburbs, but it does in the country, and again a cost is involved. There are many reasons for the differential in petrol prices between the country and the city, but that does not mean it is not a matter of concern and that it should not be looked at closely.

The Evans committee played a number of useful roles. It put the spotlight brightly on the situation and certainly made the oil companies and the distributors look out and be aware that they were under close scrutiny. It led to the abolition of the notorious Laidley agreement which had been made with the Transport Workers Union and which was an impediment to competition. There is no doubt there has been some narrowing of the differential in prices between the city and country. It goes up and down a bit, but in the past six months or so we have seen probably the narrowest differential for the past decade.

What did we really get? Mr Savage came riding in on his populist white charger. The first bill he introduced was meant to attack the problem from the retailing position. That caused concern in my area and, I am sure, in many other parts of country Victoria — —

Hon. R. A. Best — And his own.

Hon. W. R. BAXTER — I think you are right, Mr Best, including his own part of the state. The bill caused an outbreak of concern because clearly it would have meant that many businesses would go belly up and that many country towns would lose their petrol retailers entirely. It is difficult to understand why Mr Savage, representing as he does the electorate of Mildura, which includes small locations such as Walpeup, Murrayville and Hopetoun, did not consult with people before introducing the bill, because if he had he would have learnt about the problems it would cause. It is almost as if he did not get out of Deakin Avenue in Mildura and assumed everything would be okay. The minute some of his smaller retailers got to learn about it, they pointed out to him what it would mean. Mr Savage humbly withdrew that bill. He then introduced another bill called the Petroleum Products (Terminal Gate Pricing) Bill.

I had some concerns about the bill because I did not believe it addressed the commercial realities. The honourable member was simply playing the populist card again. Petrol pricing was an issue that was raised wherever one went, and he wanted to be seen doing something about it. As parliamentarians we have a greater responsibility to the communities we represent to do something more rigorous than just wanting to be seen to be doing something about it.

Rushing in legislation simply because there are some pressures out there is of no use if we know in our own hearts it will not work. That is why, following the Evans committee report in 1993 and for the life of the former coalition government, we did not see any legislation. Despite intense consideration, no-one could work out what sort of legislation the state of Victoria could bring in — bearing in mind that fuel pricing is really a national issue — to beneficially address the problem. All we could see was that extra costs would be added to the chain and the result would be the reverse of what we were trying to achieve.

I reject any suggestion made by Mr Savage and others that the former government sat on its hands. That was clearly not the case. A great deal of work was done, but a workable and practical solution, one that we could put on the statute book with the confidence that it would deliver beneficial results, was not identified. Similarly, I do not believe Mr Savage identified it in the bill he introduced in another place.

Clearly the government did not think he had identified a solution either. It found itself in a logjam. It found itself relying on Mr Savage for his support to keep it in office. It found itself in difficulty with the oil companies, and clearly it could not be a party to putting on the statute book legislation that would be totally unworkable.

Obviously, a fair bit of work had been done behind the scenes. The government also concluded that Mr Savage's original bill was going to push up prices in the city, and that was hardly going to be conducive to the government's electoral prospects. Clearly the government set about undermining or changing Mr Savage's legislation.

Hon. R. A. Best — Gutting.

Hon. W. R. BAXTER — Perhaps, as Mr Best says, the government was gutting the legislation. I will come in a moment to exactly how it has been gutted.

The debate in the other place makes fairly pathetic reading. A bill was introduced in the other place by the honourable member for Mildura with a very brief second-reading excursion that scarcely covered any details of the provisions of the bill. Then a range of amendments were proposed and the bill came up for debate. The amendments were moved by the honourable member for Mildura but they were basically put before the committee by the Treasurer.

As I said, the debate makes pathetic reading. Mr Savage was clearly not across the amendments. He did not understand what the government was on about. Running the debate was left to the Treasurer. Why? Clearly the government needed to gut the bill, as Mr Best described it.

The government needed to get the bill into a form that it could live with. What did it do? It convinced Mr Savage, one way or another — I do not know whether it simply conned him or whether it offered him some inducement — —

Hon. M. R. Thomson — You might like to think about that.

Hon. R. A. Best — You know what it is; it is just the price the ALP has to pay for his services.

Hon. W. R. BAXTER — Perhaps that was the situation, I do not know. For example, reference was made to fuel temperature and I am sure everyone would

agree that is a bit of a problem. However, Mr Savage agreed to drop that out of the bill entirely.

Hon. E. G. Stoney — Gone!

Hon. W. R. BAXTER — It has gone, on some sort of promise that it will be taken up at a national level. Mr Savage gave in on that very easily indeed.

However, the gutting of the bill is not the most important issue. I take the house to both the original bill introduced by the honourable member for Mildura in another place and the one that finally emerged from the other place after the Treasurer took over the running of it. The original bill introduced by Mr Savage provided in clause 5(4) under the heading 'Determination of terminal gate price':

> The terminal gate price determined under subsection (1) for a declared class of petroleum products must include any discounts, rebates and price support provided by the declared supplier for the sale or supply of that class of petroleum products.

Those aspects of the original bill concerned a lot of people, and country people in particular. They thought they could not buy fuel because someone else was buying it and getting rebates, discounts, under-the-table deals and the like. Those people were quite happy for those things to be taken into account, because they thought it would have given them a more level playing field and that everyone would be supplied from the same tap and that the same issues would be taken into consideration. People were quite attracted to clause 5(4) of the original bill.

What happened after the Treasurer got to the original bill? The following subclause appeared:

> (8) The terminal gate price must not include any amount representing all or any of the following —
>
> (a) a discount;
>
> (b) a rebate;
>
> (c) the cost of transport services …

The bill that was sent from the Assembly to this chamber provides the direct opposite of the very things that Mr Savage wanted to have taken into account so people would know and understand them.

Hon. K. M. Smith interjected.

Hon. W. R. BAXTER — Yes. Mr Savage accepted it either because he does not understand what he has done or because some other arrangements have been made; I do not know which.

That is a total reversal of the intent of the bill and it is contrary to what he was setting out to do in the first instance. An explanation needs to be given by the government or Mr Savage about why he accepted a complete turnaround in what I consider to be the main provision of the bill. There has to be a reason for that turnaround and I look forward to hearing it before long. Clause 5 contains a direct negative of what was in the original clause 5, and the house deserves an explanation. It certainly did not get one in the second-reading speech.

The bill will have no beneficial effect at all and it may have a deleterious effect in the sense that it may cause administrative costs. The Honourable Philip Davis also referred to that aspect. If rules and regulations are introduced, by definition some cost will be involved. I do not know to what extent — the cost may be fairly minor — but there will be an added cost burden. I do not think the bill will bring the price down, but it might have some marginal benefit for transparency by enabling people to see how the price is being computed. There may be some value and benefit in that; I do not know. However, the people filling up their cars at the Ouyen Shell garage are not going to think it is much of a benefit to know how the price has been worked out if it has not resulted in cheaper petrol prices at Ouyen.

The government does not come out of this process with any credit, either. The Minister for Small Business has referred many times to her fuel price monitoring initiatives. A lot of questions without notice have been asked about that, and a document landed on honourable members' desks in the last week or so. It provides a lot of statistical evidence. However, I do not think there is anything in it that honourable members did not know before. It put the information into coloured graphs and it looks all right. It supplies a bit of background information and I will be able to use it at a few meetings around my electorate when I am talking about the issue. But what has it achieved? Absolutely nothing!

What else has happened? The Premier went to the Premiers Conference last week and made a great song and dance about what the federal government ought to be doing about fuel excise. Without getting into that argument one way or the other, I ask: what is the Premier doing about it with the resources he has? If he is so concerned about the price of petrol in Victoria, he has plenty of capacity to take some action. He has a very large budget surplus. He is getting the GST revenue that is flowing through to the state and he is very concerned about the GST effect on petrol prices — so he says. Given that he is getting the revenue, let him give some of it back to the motorists.

If he were serious about the issue he could show his credentials and do something about the Transport Accident Commission premiums paid by motorists in this state. The TAC is generating — and has done for many years now — huge surpluses each year. Those surpluses have been used by governments of the day to, among other things, prop up budgets. If Mr Bracks were genuine in his concern about what motorists are currently paying for petrol, he could reduce TAC premiums by $50 a vehicle. On the average vehicle doing 15 000 kilometres a year that $50 a vehicle and the 3 cents a litre that Mr Bracks is talking about works out at about the same amount he is attacking the federal government over. Let him show his bona fides by making that modest reduction in TAC premiums, bearing in mind the TAC is generating surpluses of great magnitude.

I also emphasise that the National Party is adamant that it wants to keep maximum pressure on oil companies to keep them honest. It believes they have not always been as clean as they might have been and that at times they have been prepared to take advantage of market situations. The National Party also believes that at times the oil companies recover some of the discounts they provide in the city by pricing higher in the country where there is less competition. It will be keeping maximum pressure on them.

However, National Party members also want to deliver to the country something positive that can be seen, not something that is ephemeral and that is up in the headlines as 'Yes, we are doing this for you!'. At the end of the day words will not put a dollar more into anyone's pocket.

We believe we can act responsibly by improving the road system in country Victoria and by making the freight network and the entire infrastructure better. In that way we can deliver to country people much more than simply taking a populist stance and making out we are doing something when we know in our hearts it will not, at the end of the day, deliver one dollar to the people we represent.

There are far better ways to give country people an advantage and assistance than by misleading them and simply talking about something you cannot deliver, as is now demonstrated in the bill. As Mr Best said, the bill has been gutted — it is the reverse of what was originally introduced in another place. I will not oppose the bill, but I do not believe it will deliver what it claims to deliver.

Hon. M. R. THOMSON (Minister for Consumer Affairs) — In some ways it is a pity that the house has restricted time for debate on the bill because I could talk on it for about 24 hours. Since coming into this place as a minister I have spent a lot of time on the question of petrol pricing. The government has consistently said a national approach to fuel pricing is needed. The government supported the handover of the responsibility for fuel pricing to the federal government in 1984, and that was the correct way to respond to fuel issues.

The government wishes the federal government had a more cooperative approach on some of the issues rather than its head-in-the-sand approach. However, this government is also of the view that it should look to positive ways of supporting Victorians apart from that. One of those ways was to support the feasibility study into fuel cooperatives, and the government is looking forward to the outcome of that study.

When the Independent honourable member for Mildura in the other place, Mr Savage, introduced a bill on petrol pricing and terminal gate pricing, the government was given an opportunity to do more. The government was always prepared — it stated it publicly — to support the intent of the bill. However, the government had some problems with it. I understand the honourable member for Mildura was always happy to talk to anyone about his bill. I know from the government's discussions with him that he had been speaking extensively with the oil companies, the Royal Automobile Club of Victoria and the Victorian Automotive Chamber of Commerce. The government publicly auspiced a meeting inviting all those groups to sit around a table. It was a historic meeting at which a representative from the Australian Competition and Consumer Commission was also present.

As I said, the government had concerns about the original bill's format. It was concerned because it believed it might have been in breach of the Trade Practices Act and could have led to a legal battle. The government wanted to ensure that if it supported the legislation, it would be workable.

I will speak a little about what the bill does because honourable members have not spoken about that at all. The bill defines a terminal gate price. Until now the definition has been different for different companies. It will enable people to buy declared fuel at the terminal gate price. I will also clarify some of the issues raised by the Honourable Philip Davis about flexibility of supply.

A number of the issues from the correspondence arose prior to the amendments moved in relation to the issue of first come, first served. That provision is no longer in

the bill in its strictest form because of the problems it would have created at the terminal gate.

With the support of the honourable member for Mildura the government has come up with a more workable definition so that a declared supplier may refuse to supply petroleum products in specified circumstances — namely, where it has notified the director of a shortfall in supply that would hinder its ability to meet existing contract, and where the load is less than 35 000 litres. That is important because it goes into occupational health and safety areas and the question of the carriage of hazardous goods. It is unsafe or unlawful to supply the load and it is not the supplier's practice to supply that product at that time, which allows for refinery practices to be taken into account.

Hon. W. R. Baxter — It is a catch-all, let-out clause.

Hon. M. R. THOMSON — You have had your chance. There are already strict requirements on the posting of the terminal gate price. There are penalties if people fail to meet their obligations once the bill becomes an act.

The other issue raised concerned regulatory interference. The issue was raised by the Australian Competition and Consumer Commission and it has been dealt with by ensuring that there is a clear declaration of the make-up costs along the way. The bill, for the first time, builds in transparency that will enable people to go to a terminal gate, see a price that is clearly identified and where its constituents are well and truly known, and then any add-ons have to be declared beyond that.

So transport, for instance, would have to be declared as an add-on. There is a clear definition of a terminal gate price, and people will be able to purchase at that price. Therefore, if someone goes to a terminal gate with a tanker and says, 'I want the terminal gate price', he or she can get it at that terminal gate price.

That price will be a lot simpler and easier to understand than the current circumstance. Add-ons will have to be declared after that, and there will be an option as to whether people wish to add on additional components to the arrangements that they enter into with the refineries.

A few statements need to be put on the record to clarify the administration of the act. They are as follows. Contract for the supply of petroleum products entered into from 1 November will be impacted by the bill. Once the act commences, any contractual provision inconsistent with the act will be void. This provision is necessary because otherwise the aims of the bill may be frustrated by suppliers entering into long-term contracts on terms contrary to the bill, before it is proclaimed.

To ensure that the parties can enter into a contract that will not be impacted by the act, sufficient information should be provided to the parties to assist them to do so. Therefore, to ensure that everyone is on notice as to the nature of the orders in council that will be made regarding the declaration of petroleum products and of suppliers and the criteria for the determination of the landed international product price, it is the intention, firstly, that declared petroleum products will include unleaded and leaded motor spirit, as well as diesel and automotive liquefied petroleum gas.

If there are any outstanding implementation issues when the other petroleum products are declared, the declaration of automotive liquefied petroleum gas (LPG) will be postponed until those issues are resolved.

Hon. R. A. Best — Are you deleting it?

Hon. M. R. THOMSON — No, we are not deleting it. The second intention is that declared suppliers will include the four major oil companies BP, Mobil, Shell and Caltex, and any companies importing significant quantities of petroleum products through the Hastings import terminal for supply by wholesale to distributors or retailers. I ask the house to note that declared suppliers will not include producers of LPG.

The third intention is that the landed international product price for motor spirit and diesel will be composed of the relevant Singapore spot purchase prices as published by Platts Global Alert; tanker costs based on the Worldscale 100 shipping freight rate into Melbourne as adjusted monthly by the average freight rate assessment; and insurance charges and local wharfage charges as determined by the Melbourne Port Corporation. Automotive LPG will be composed of the monthly Saudi Arabian contract price for propane and/or butane and a premium to cover recognised international freight rates, reasonable international insurance and loss rates and local wharfage charges.

I ask the house to note that this statement differs from that made by the Treasurer in the Legislative Assembly in four respects. Firstly, the reference to 'super' has been replaced by a reference to 'leaded'; secondly, producers of LPG will not be declared; thirdly, it has been indicated there are issues relating to implementation arrangements with LPG that will be addressed before LPG is declared; and fourthly, the reference to 'Liberty Oil and Van Ommeren' has been

replaced by 'any companies importing significant quantities of petroleum products through the Hastings import terminal for supply by wholesale to distributors or retailers'.

The government has tried, as have all parties, to respond positively to the legislation introduced in the other place as a private member's bill. All parties have tried to be positive, contrary to the implication today by the Honourable Bill Baxter. The government recognises that many factors influence the price of fuel. I have said repeatedly in this house that fuel prices are being driven by international factors and the price Victorians pay because of import parity is affected by the value of the dollar. The government does not dispute that, nor does it dispute the fact that the new tax regime has an impact on the price of fuel to consumers and has a great impact on consumers in country Victoria because they are paying more for their fuel to start with.

I hope the legislation will bring transparency to what has been a confused marketplace, and down the line to the petrol bowser. The government hopes it may offer an opportunity for country motorists to achieve more reasonableness where outrageous prices are being charged in their areas.

The government has also demonstrated through its price monitoring report that it understands the complexities of fuel pricing arrangements for country Victoria and that it is not trying to run from the fact that there are issues about the sizes of service stations in country towns and about volumes through country towns. However, the government is clear that questions about differences in amounts charged between some country towns and metropolitan Melbourne remain unanswered, even when discounts are not necessarily applied in Melbourne. From the information gathered through the price monitor it implemented in April — primarily to deal with LPG but which was later extended to fuel prices generally — the government attempted to examine seriously what was happening with fuel prices throughout Victoria. It discovered that some of the disparity can be reasonably identified but that other aspects cannot. There must be transparency in the system.

I am pleased the Australian Competition and Consumer Commission (ACCC) has acknowledged that more transparency should be delivered by the act, that it should not impact on competition and that in some circumstances it may even enhance competition by giving people access, to terminal gate prices which they could not previously access. It would be better if the issue were addressed nationally. It is to the credit of the honourable member for Mildura that he saw that the temperature component of the bill needed to be withdrawn to allow that issue to be better addressed nationally, which is what is now happening. What is known as 'hot' fuel can be examined nationally at the same time.

The government hopes that the federal government will look sensibly at the LPG issue because it has refused on three occasions to examine the matter. No honourable member would believe the pricing mechanisms should not be examined, from the establishment of the import parity price against the Saudi Arabian price through to the retail price. The industry must gain the transparency it does not now have. I would welcome an opportunity to work with the federal government in an attempt to get transparency on LPG prices.

In trying to deal responsibly with the bill the government has sought discussions with affected parties and believes those discussions have been fruitful. It has had numerous discussions with the industry, including the Royal Automobile Club of Victoria.

Hon. Philip Davis — Were the discussions with RACV fruitful?

Hon. M. R. THOMSON — It was forthcoming in some aspects, yes, but it was interested in gaining tax relief on fuel prices.

Hon. Philip Davis — Stick with the bill.

Hon. M. R. THOMSON — You asked and I am telling you. I commend all those involved in the negotiations on the bill. Everybody with whom the government has dealt has tried to be constructive and positive. I acknowledge the contribution of my department and personal staff, particularly Del Stitt, who has worked tirelessly on behalf of the government to ensure it was prepared for the meeting held with the oil companies and the ACCC and others, to arrive at legislation that will ensure transparency and, I hope, access to a terminal gate price for those who have not been able to access it. The government supports the bill on that basis and hopes the federal government will take a more proactive role to ensure transparency in the price of LPG.

I am aware that there is a question of time and the likelihood that the Honourable Graeme Stoney will not contribute to the debate.

Hon. R. A. Best interjected.

Hon. M. R. THOMSON — The reason I single out Mr Stoney is because he was the first to raise the issue

with me in this place. I have no doubt about his genuine interest in the matter.

The government fully understands the plight of country motorists and how difficult it is for them given the distances they have to travel. They use more fuel than metropolitan motorists and because of that their businesses are affected as is their capacity to socialise, and in some instances their capacity to get to and from places to conduct their daily lives.

The legislation will go some way to ensuring an understanding of why there may be a differential between country and metropolitan prices. There should be an attempt to track the price of petrol so that people pay a fair price for their fuel, and in time a better solution may be found to the problem of the disparity between country and metropolitan areas. Primarily the federal government must meet its responsibility to not only Victorian country motorists but all Victorian motorists.

Hon. E. G. STONEY (Central Highlands) — I have followed with great interest the bill introduced by the honourable member for Mildura in the other place, Mr Savage. I had a productive conversation with him at the beginning of the sessional period. I was convinced that he had the highest motives in introducing the bill. I believe he has since discovered that fuel pricing is a complicated issue, as did the government when it began to dabble in the bill. The minister admitted as much when she said this is a complicated area.

It appears that when the government took over the bill from Mr Savage it gazumped him, and as Mr Baxter said, it gutted the bill. There is nothing much left of the original bill. The government did that without any real knowledge of how the industry works. It did it by the seat of its pants — on the run in the house as the bill was being debated.

Over the years many people have attempted to make fuel pricing more transparent and to understand how the industry and fuel pricing works. Mr Philip Davis was right when he said that the amended bill bears little resemblance to the original bill. The original bill attempted to reduce the margins between the country and the city as well as to reduce the price of fuel in country Victoria.

By the government's own admission during the debate in the other place and in the second-reading speech its focus has changed, but not for the better. During that debate the Treasurer openly admitted that the government does not believe the legislation will lead to lower prices or that it is a panacea for bridging the gap between city and country prices. That philosophy is reflected in the second-reading speech.

The government covered its tracks when it began to dabble in the bill, but one has to ask why it became involved. Why not let the bill introduced by the honourable member for Mildura pass on its own merits? It may be that the government was grandstanding to rural Victoria and was looking for an opportunity to take a cheap shot at the federal government, as it did again in the second-reading speech. It was in poor taste given that there is bipartisanship support for the bill.

The bill may be one small step but the way it has been handled has been a small step. For as long as I can remember fuel prices in country Victoria, and in Australia generally, have been an issue. Mr Davis compared fuel prices in Australia with those of other countries, and in comparison Australia is doing well on world parity. However, our long distances and other factors come into the equation.

When I was elected to Parliament fuel pricing was a big issue. As a result of the debate at that time a former member of this place, the Honourable David Evans, chaired the petrol pricing committee, of which I was a member and which tabled a report known as the Evans report. At that time there were variations of up to 15 cents a litre between prices in the city and in country towns. The report states:

> If there is a capacity to subsidise the price for some, there is a capacity to reduce the price for all.

The report further states:

> Petrol is distributed free throughout the metropolitan area and Geelong.
>
> Lack of volume in country markets is a significant reason for requiring a higher margin …

The report recommends:

> That the marketing of petrol change from a rack pricing system to a terminal gate system.

In the report the committee identified that:

> … the difference between the Melbourne metropolitan area and major country centres should then be no more than 2 to 3 cents per litre.

A number of interesting asides in the report are relevant. For example, it states:

> As a dealer explained to the committee, a lot of the discounting breaks out because of the 'hairy-chested' attitude of some middle-level oil company executives in the field.

The Honourable David Evans spoke often about the hairy-chested attitude of some of the younger oil executives. He said it was almost fun for them to see who could chase up petrol prices and then chase them down again, and there was much evidence to that effect. That will probably be the same again when oil prices settle down. The report also states:

> One oil industry executive told the committee that the Prices Surveillance Authority 'loves' discounting because it shows that there is competition in the marketplace.

Certainly Professor Fels is a strong supporter of discounting. It may help city motorists but it does not help country people.

Another set of facts shows that the cost of freight has been used as a reason for fuel being so expensive in country areas. It does not cost much to shift fuel: from Melbourne to Bairnsdale it is 1.8 cents per litre; from Melbourne to Echuca, 1.6 cents per litre; and from Melbourne to Wangaratta, 1.7 cents per litre — and that was before B-doubles were introduced, which have assisted with the freight component of fuel. It now costs only 0.09 cents per cubic litre to cart fuel to Euroa and only 0.06 cents per cubic litre to cart it to the metropolitan area and Geelong. That cost is absorbed by the companies, and has been for many years.

A most salient point identified by the committee was that Victoria cannot go it alone on this issue. The minister mentioned that today, and I agree with her. There must be complementary legislation in all states and cooperation from the federal government. That is the issue that highlights the fundamental flaw in the bill. With Victoria going it alone great confusion will be caused in the industry and in border towns. The matter should be approached on a national level.

In the interests of time, I will be brief. One of the interesting features of the original bill was its inclusion of consideration of the temperature of fuel, which has been alluded to today. Strong evidence is available that retailers are paying for fuel they do not receive. Mr Savage's original bill addressed that matter, requiring that temperatures be recorded on a load and then adjusted to 15 degrees Celsius.

I refer to a letter from Robin Weatherald of the Euroa BP-branded site. Mr Weatherald owns all his infrastructure. He is a very big mover of fuel, taking an average of two B-doubles of fuel a week at Euroa — so he is a big retail player in country Victoria. Mr Weatherald is most concerned about the amount of fuel he loses because of hot fuel. In a letter to me he relates how he loses that volume:

> Summertime temperature of deliveries has been over 50 degrees Celsius, winter fuel cools off quickly but we accept deliveries of 18 to 28 degrees Celsius as cool but there is little excuse for diesel at over 30 degrees Celsius. Currently I am experiencing a loss of 500 to 1000 litres per week. My annual loss is estimated to exceed 80 000 litres.

That is a lot of fuel to lose. Mr Weatherald goes on to ask for support for the original bill, which included reference to and assistance on the temperature of petroleum products. It is sad that the current bill does not address that matter. Paraphrasing Mr Savage's second-reading speech, he referred to the fact that the volume of fuel reduces as it cools, retailers are paying for fuel they do not receive, and that the original bill addressed that anomaly.

Now the government has removed all reference to that matter on the basis that it is to be pursued on a national basis. Mr Savage's initiatives should have stood — that is, the government could have pursued the matter on a national basis but left it in the bill.

As an interesting aside, Mr Weatherald explained to me how the system works. He told me that fuel companies and refineries work on a just-in-time system. The fuel is delivered at quite a high temperature straight from the cracker to the delivery bays. Of course, the laws of physics apply: after delivery the temperature drops and the product shrinks as it cools — and often the service station owner carries that cost.

As I said, it is very disappointing that the current bill does not address the issue. Victoria could have shown the way for the rest of Australia by retaining the provisions so that they could have been included in this most timely debate on the rest of the bill. The government expresses a faint hope in saying that the bill is a worthwhile start. I trust that the government is right but I fear that the bill will not make much difference. The government should not have interfered with the original Savage bill; it did so for its own promotion.

Hon. R. A. BEST (North Western) — I support the Petroleum Products (Terminal Gate Pricing) Bill, recognising that it addresses the toughest issue faced by honourable members during the 12 years I have been a member of Parliament. The expectations of country people have been raised enormously by the introduction of the bill. I welcome a bill in any form that has the potential to bring benefits to country Victorians if that is what the bill achieves.

I was most interested in the comments of the Minister for Consumer Affairs, who said she hopes the bill will bring transparency to the marketplace and may assist in attacking the outrageous fuel prices. She said she

understands the complexities of fuel prices in country Victoria. I am glad she does — because she would be one of the very few people who do!

My one concern is how the bill has been amended by the government. I am particularly concerned that while the original aims of the honourable member for Mildura were an attempt to remedy a very difficult problem, that bill has been gutted. I am disappointed that Mr Savage has been prepared to compromise his principles. His second-reading speech states:

> … I have been persuaded that the community wants lower prices, a more understandable pricing system and the removal of apparent anomalies.

That is fine; his attitude reflects community expectations. However, he has created the attitude across country Victoria that with the passage of his bill many of the problems confronted over previous years will be resolved.

Like most country members, I have received correspondence on the matter. The issue is the flavour of the month, having been widely and extensively promoted by the honourable member for Mildura as the panacea for all the problems associated with petrol pricing. Every time country members go to a function or visit a part of their electorates, they are asked 'Are you going to support the bill?'. In addition to that, following the passage of the original bill by the lower house, honourable members have heard a second-reading speech for a brand new bill that we have had no opportunity to scrutinise.

Hon. W. R. Baxter — A deficient second reading.

Hon. R. A. BEST — Yes, it was a deficient second reading. Again the pressure is on the Legislative Council to take the government and Mr Savage on trust on the second-reading speech and the bill that has been introduced.

If the government is sincere in its continued preaching of open and accountable government, why has it truncated this debate? Why am I going to share the last few moments of this debate, as I am prepared to do, with the Honourable Elaine Carbines — —

Hon. E. G. Stoney — And me!

Hon. R. A. BEST — And with Mr Stoney, as a mechanism for being able to put my views on the table? If the government was serious about the bill and about petrol pricing in country Victoria, it would have had an ongoing and open debate.

The National Party will support the passage of the bill. While we may not agree that it will meet all the objectives it set out to achieve, the fact is we will support it.

I am concerned that even though the bill has been passed through the lower house, Mr Savage has accepted its effectively being gutted. In an article in the *Herald and Weekly Times* of 8 November, the state Treasurer John Brumby is quoted as having told Parliament:

> … it would promote transparency and was a step in the right direction. But the government did not believe it would lead to lower prices or that it would bridge country–city pricing gaps …

If that is what Mr Brumby believes, why was the honourable member for Mildura so prepared to accept the amendments of the government? The 57 pages of debate that occurred in the lower house gave everybody the opportunity to see, in a very transparent way, the nature of the debate and who ran it. Unquestionably the honourable member for Mildura was prepared to compromise his principles from what was expressed in the original bill that he brought into Parliament by accepting the amendments that were agreed to by the government.

Mr Savage has let a lot of people down throughout country Victoria. He has been prepared to compromise his principles to an extent where people can rightly say, 'Mr Savage, this is not what you proposed; this is not what you led us to believe'.

Many times when the National Party was in coalition with the Liberal Party in the former government Mr Savage questioned the National Party about its principles and its representation of country Victoria. My statement to Mr Savage is now, 'We know what you are. This is more about the price that you can haggle with the ALP, to make sure it is prepared to pay for your services'.

It is also interesting to give people a history lesson to establish where Mr Bracks and Mr Brumby — the two architects who have said they support Mr Savage's bill — were during the 1980s and the 1990s when federal governments increased excise on fuel by 450 per cent between 1983 and 1993. Where were they? As we know, Mr Bracks was an adviser during the Cain–Kirner years, and Mr Brumby happened to be the federal member for Bendigo from 1983 to 1990.

Mr Brumby came into the other place advocating amendments to the bill despite the fact that during the 1980s he sat as a member of federal Parliament while

the federal Labor government increased excise on fuel from 6.155 cents to 34.185 cents a litre — a 28-cent-a litre increase: a 450 per cent increase.

We have no doubt about where the former federal member for Bendigo, now the Treasurer of this state, is coming from. But if honourable members think it was bad enough that during his time as federal member for Bendigo — a major regional centre in country Victoria — he was prepared to advocate further imposts on motorists, I remind them that in 1991 Mr Brumby advocated a 1-cent-a-litre fuel levy to provide funding for country roads. This proposal was howled down. In fact the press cuttings of the time said: 'Labor split by tax on petrol'. An article in the *Daily Telegraph* of 11 November 1990 says:

> A push by Labor backbenchers for a petrol tax increase last night threatened the Hawke government's unity in the run-up to the federal election.

Unfortunately, I do not have an enormous amount of time to go into the whole of the press coverage of that issue at the time, other than to say Mr Brumby is on the record clearly and unequivocally as being a supporter of proposals to tax country Victorians and Australians. He has again put his footprint fairly and squarely on this bill. The honourable member for Mildura has been absolutely and totally conned by the Treasurer of this state.

I also remind honourable members of the employment of the present Premier, Mr Bracks, during 1993. Where do you think he was employed? He was working as an adviser to Neil O'Keefe, the then parliamentary secretary to the federal Minister for Transport. Did we hear a whimper out of Mr O'Keefe or Mr Bracks about the increases to excise by the previous Labor government? Not a whimper! But now we have all the bleating and complaining as they make their way to Canberra to premiers conferences. It makes the Premier of this state an absolute hypocrite.

I had a number of things that I would have liked to put on the record. Unfortunately I cannot do so because the government is not prepared to extend the debate. One of the things I would like to put on the record is a response addressed to the Honourable Phil Davis which was sent to me by Ross Lake, an owner-operator at Mildura of TASCO Inland.

The second paragraph of the letter from Mr Lake dated 10 November states:

> I have been following Mr Savage's efforts at popularism for some time with respect to this issue, and have had some discussions with him regarding his efforts to interfere in the petroleum industry.
>
> It became very clear, very early on in the dialogue, that I was going to have great difficulty in penetrating his commercial naivety, his lack of industry knowledge, his ignorance of federal laws, both with respect to the Trade Practices Act and National Competition Policy and his entrenched cynicism and perception that any oil company's methods, motives and margins amount to suspicious behaviour.

Mr Lake resides in Mildura and he had difficulty with Mr Savage in the first instance. In commenting about the second-reading debate in the Legislative Assembly, he states:

> Honestly fellas, and with great respect to your collective and individual egos, having waded through the *Hansard* text (57 pages) and the now virtually unrecognisable and incomprehensible bill, I can only observe that it was like listening to a group of four-year-olds in a sand pit talking about sex. They know something is going on, but are unable to determine its nature or appreciate its significance.

That is as well put as any opinion I have ever heard regarding debate in the lower house.

I am disappointed that the honourable member for Mildura is prepared to compromise his principles. The National Party has said through Mr Baxter and me that it would love to do something about petrol pricing for country Victorians and improve the transparency associated with petrol prices, but the Treasurer has taken over carriage of the bill, which is clearly demonstrated in the second-reading speech. I remind honourable members that during the 1980s the Treasurer as a federal member of Parliament oversaw an increase of 450 per cent on excise fuel as well as proposing a 1-cent-a-litre excise on fuel for road users. It clearly demonstrates that the government is not serious about its approach to a reasonable and appropriate pricing regime in country Victoria.

The Treasurer is using the bill as a bucket in which he can put his greedy hands to get more money. Although I support the bill I do so with great disappointment because the bill has been gutted of its original intention.

Hon. E. C. CARBINES (Geelong) — I support the Petroleum Products (Terminal Gate Pricing) Bill, but I am disappointed in Mr Best because we had an agreement to share the remaining time available. He has used 15 minutes and I will have only 7 minutes in which to make my contribution.

Hon. W. R. Baxter — On a point of order, Mr Acting President, the honourable member's remark that an agreement was reached is unbecoming. The government has set the time limit on the debate, so the government can extend the time for debate on this measure.

The ACTING PRESIDENT (Hon. G. B. Ashman) — Order! There is no point of order. The issue may be the subject of debate.

Hon. E. C. CARBINES — The aim of the bill is to increase pricing transparency and reduce price differentials between metropolitan Melbourne and rural and regional Victoria. As a member representing the regional city of Geelong I am happy to support the intention of the bill introduced initially by the honourable member for Mildura in the other place.

Petrol pricing is a hot issue in rural and regional Victoria. It is raised with me on lots of occasions. It is a difficult and complex issue. It is clearly a commonwealth responsibility, but sadly the federal government has turned its back on Australian motorists and ignored their pleas to act on soaring fuel prices.

Before the introduction of the GST the federal government said the tax would have no effect on fuel prices, but clearly that is not the case. I have considerable information that I would have presented during this debate had I had time. An article by Tim Colebatch in the *Age* of 26 October demonstrates how the introduction of the GST has increased the price of petrol. The article lists a number of items that are more expensive since the introduction of the GST, and petrol is one of those items. In Geelong many people are upset about the price of fuel. Their concerns have been well documented in the *Geelong Advertiser*, which has highlighted the ramifications of the introduction of the tax on fuel prices. Geelong motorists are bearing the brunt of the increase in fuel prices.

I congratulate the Minister for Consumer Affairs on her initiative with the fuel price monitor, which clearly demonstrates to Victorians the effect the GST has had on fuel prices throughout the state. In Geelong unleaded petrol has increased from an average monthly price in June of 86.4 cents a litre to 93.9 cents a litre today.

Hon. W. R. Baxter — That is all the fault of the GST?

Hon. E. C. CARBINES — You had your go, Mr Baxter. LPG has risen from a June monthly average of 37 cents a litre to 50.9 cents a litre today, and the same has occurred with diesel and leaded petrol. Geelong motorists are really hurting. It is important that although the federal government is not prepared to act the Victorian government is responding constructively to this issue and is supporting the bill introduced by the honourable member for Mildura.

The bill will require the determination of terminal gate prices for petroleum products. That means there will be transparency of pricing because the terminal gate price will be published and other charges contributing to the final supply price will be available on request. In this way the bill will provide additional choice and competition for Victorian motorists. It is important to note that the bill provides severe penalties for non-compliance with its provisions.

In the absence of a concerted effort by the Howard government to address fuel pricing, I am pleased to support the bill, which is a small step in the right direction for Victorian motorists.

I commend the bill to the house.

Motion agreed to.

Read second time.

Third reading

Hon. G. D. ROMANES (Melbourne) — By leave, I move:

That this bill be now read a third time.

I thank those honourable members who have contributed to the debate — the Honourables Phil Davis, Bill Baxter, Graeme Stoney, Ron Best and Elaine Carbines, and the Minister for Small Business

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

PUBLIC LOTTERIES BILL

Committee

Resumed from 14 November; further discussion of clause 54.

Hon. R. M. HALLAM (Western) — When the committee was last discussing the bill I was making the point that there were two aspects of clause 54 in which the opposition parties had a very keen interest. I was explaining that the first went to the percentages that appear under that clause with regard to the Tattersalls consultation, and that the second part relates to the percentage to be applied to the new Australian Football League footy tipping competition. Although the committee decided to report progress on the basis of the hour of the day, I want to go back and briefly recap the first of those issues — that is, the impact of the

percentages in respect of a Tattersalls consultation, because a number of revelations have been brought to the committee as a result of our discussions on that issue.

We are now informed that the abolition of the 10-cent ticket levy represents a cost to the revenue stream enjoyed by the public purse of $10.29 million per year. We are advised that the reduction in revenue has been offset by a reduction in the commission or the margin enjoyed by Tattersalls, and that the government believes Tattersalls is unable to recover any of the costs associated with the bill in the currency of the licence. We are advised that the government is secure in that knowledge.

The reason that becomes essential to our concerns is that we want to demonstrate that notwithstanding the opportunity for Tattersalls to claw back some of the additional cost, it is our contention that when the government took the decision to remove the 10-cent ticket levy and made those grandiose claims to the public, what it was achieving was not a reduction in taxation but a shift in taxation away from the person who was purchasing the Tattersalls consultation ticket to the general taxpayer. It is now abundantly clear that the additional costs imposed on Tattersalls will be taken into account, at least when it comes to renegotiating the new licence, and we know that that has to be from 1 July next year. We know it will apply beyond 2004 if Tattersalls wins the licence beyond the period for which it now enjoys exclusivity.

My point is to demonstrate that while the government may trumpet the effect of the abolition of the 10-cent levy, the chart that was brought to the chamber demonstrates better than anything I could say that there will not be a shift in the revenue flow. In my view what goes around comes around, and when Tattersalls comes back to the table to negotiate the extension of the existing licence or the issue of a new licence, it will obviously take into account the fact that commission has been reduced and a new supervision charge has been imposed, the fact that it will be expected to incur the cost of any audit, and that it now faces the prospect of the minister cancelling the licence without reference to anyone else. That will be taken into account.

Through that process it will become a cost to the general community. Through the process of deceit that I have been keen to expose I suggest that what has happened is that the impact of the levy has been shifted from the purchaser of the ticket to the general Victorian community. I am delighted to see that the government now demonstrates that point.

I turn to the second component of the clause, and that is the percentages that relate to the new AFL footy tipping competition. I am pleased that the minister has reported to the committee on the distribution of the player loss, which we are now told is to be 40 per cent of turnover. We have now had confirmed that of the 40 per cent player loss the government will retain 67.5 per cent, the AFL will receive 7.5 per cent, and the operator will enjoy 25 per cent. If that is expressed in the old form of percentage of turnover we can see exactly what the comparisons are. The player will get a guaranteed return of 60 per cent, the government will receive 27 per cent, the AFL will receive 3 per cent, and the operator will be expected to survive on 10 per cent.

There are a number of questions that flow from that point. I turn to the question of why the variation between the GST and non-GST rates is different in the footy tipping competitions when compared with those in both the soccer football pool and the public lottery. The house was told that the reason for the difference in respect of the public lottery and the soccer football pool was to take account of the commission enjoyed by the agent, and that because the Australian Taxation Office had ruled that the commission had to be included in the purchase price for the purpose of determining the GST, we had to change the percentages. However, the extent of the change in the percentages shows us what the anticipated commission was. It was agreed to be 7.7 per cent.

When I look at the differences in percentages in the new AFL lottery I note that the variation is different. It suggests that the commission is different from that which is applied to the others. I ask the minister to explain to the committee why there is such a clear variation between the GST as opposed to non-GST components in each of the three competitions provided for in the clause.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — That was a fairly lengthy preamble. I ask Mr Hallam to repeat the last part of the question, which was probably the nub of what he is asking.

Hon. R. M. HALLAM (Western) — I appreciate the minister's caution, because it is quite complex. Clause 54 contains three different taxing percentages: one for the AFL footy tipping competition, one for the soccer football pools and one for other public lotteries. In each of those there are two rates specified, one to accommodate the circumstances where a GST is applicable and the other where it is not applicable. I want to know why there is a difference in the variation between those percentages across the three competitions.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I have been advised that in relation to the tax rates for the footy tipping — they differ from the other lotteries and soccer football pools — the government framed the distribution of the footy tipping to align the minimum return to players broadly to that of lotteries and to preserve a return to the state government similar to that foreshadowed in Labor's financial statement to provide an appropriate commercial margin for the operator and to ensure some streaming of revenue to the AFL. The other rates are comparable to the old turnover rates.

Hon. R. M. HALLAM (Western) — I am not trying to be difficult, but the minister has obviously misunderstood the thrust of my question. What I am trying to get to is why the variation for GST is different in respect of its application for each of the competitions.

We are told that the variation in respect of soccer pools and other public lotteries was to accommodate a GST based on an assumed commission of 7.7 per cent. What does that indicate the commission will be on the Australian Football League (AFL) footy competition, given that the variation of percentages is different?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that no commission rate to agents is estimated on the footy tipping model because it is up to the winning bidder to set.

Hon. R. M. HALLAM (Western) — If that is the case, perhaps the minister can explain why the percentages expressed in the bill do not reflect that.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the difference between the two rates for the footy tipping is just the GST adjustment without an estimation for commission.

Hon. R. M. HALLAM (Western) — I will not pursue it, but I suggest to the minister that that answer is wrong. I do not claim to be the font of all wisdom on this, but my quick calculation suggests that if we are to use the variation on the rates on the other two as the line there is therefore an assumed commission rate of about 6 per cent in respect of the footy tipping competition. If that is not the case, I suggest the government go back and examine the percentages because I think they are wrong. I am prepared to let that go through to the keeper.

Will the minister inform the committee if there are any strings attached to the AFL's share of 3 per cent of the turnover?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised it was government policy that the AFL should share in a percentage of that revenue, and that there were no strings attached to that.

Hon. R. M. HALLAM (Western) — At the time there was discussion about the fact of the AFL share, which is not disputed by the opposition, I thought there was also some discussion about there being direct benefits for country football. Are we to believe that that is not the case?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the government made it clear where the money will be spent from its revenue. There are no strings attached to the way the AFL spends its revenue; that will be determined by the AFL.

Hon. R. M. HALLAM (Western) — Will the minister advise where that sharing arrangement has been recorded or are we to simply take the announcement the minister now gives us at face value?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — When Mr Hallam refers to the 'sharing arrangement', does he mean the sharing arrangement of the government revenue and where it has been suggested it will be distributed, or is he talking about the AFL revenue or the arrangement between both parties? I am not sure of the direction of that question.

Hon. R. M. HALLAM (Western) — I can but take the minister back to his advice to the committee on the first day we sat, which seems to be a while ago and I am not surprised that we need to be reminded. It was the minister who reported to the chamber that the return to a player is a minimum of 60 per cent. Then he reported that the breakdown of the player loss is 25 per cent to the operator and 7.5 per cent to the AFL. Those were the percentages expressed in relation to the player loss. That was the first time opposition members had heard about those figures. I want to know whether there is some sort of formal document where those percentages are reported.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the player loss and tax rate are in the bill and that the AFL share was provided in the tender documents and will be a licence condition.

Hon. R. M. HALLAM (Western) — I am pleased to get that advice. I point out for the benefit of the minister, and future readers of *Hansard*, that there was no way for the members of the committee to know what was in the tender documents because they were not allowed to see them. I am delighted to have on the record the percentages.

However, I make the point in passing that the minister has reinforced yet again the concept that because the bill is about player return and taxes there is therefore no responsibility to talk about the share of the AFL and I would have thought the reverse was the case — that because the bill did not go to that issue directly there was therefore a responsibility on government to report the detail of the scheme. I am not persuaded by the minister's assertion that honourable members have no right to that information because it is meant to be a public lottery and we are being asked to give it our blessing.

There is a whole range of things that I am keen to determine. We are told that the public will be fully informed of the activities conducted under the licence. We were allegedly fully informed of the 10-cent ticket levy as well. I am not consoled by that at all. However, I am happy that it is now a matter of record that the specified share going to the AFL is a condition of the tender. That at least is comforting to the committee.

Hon. C. A. FURLETTI (Templestowe) — On the same point that the Honourable Roger Hallam was addressing, I refer to the statement made by the Minister for Sport and Recreation on 2 November when he said:

> The breakdown of the remaining player loss is as follows: the government tax of 67.5 per cent, including indirect GST revenue; 7.5 per cent to the AFL; and 25 per cent to the operator.

As I understand it, that is a 75 per cent take going to consolidated revenue and 25 per cent going to the operator. Have I understood that accurately?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the answer is no, because the payment to the AFL will not go through the consolidated fund.

Hon. C. A. FURLETTI (Templestowe) — I thank the minister. Given that answer, can the minister state where provision is made in the bill for the government to pay 7.5 per cent to the AFL?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the 7.5 per cent is not in the bill because it is not the government's revenue.

Hon. C. A. FURLETTI (Templestowe) — At the risk of sounding naive, can the minister tell me whose revenue it is?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that it is the AFL's revenue, and that that will be provided to it by the licensee.

Hon. C. A. FURLETTI (Templestowe) — Am I to understand that the way that will operate is that a condition of the licence to be imposed by the minister will be that the licensee pay 7.5 per cent to the AFL?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the answer is yes.

Hon. C. A. FURLETTI (Templestowe) — I thank the minister. Am I therefore entitled to reach the conclusion that the Minister for Gaming, given his powers to vary the conditions of licences, could also vary the percentage that the AFL gets and indeed determine whether the AFL or some other entity receives that 7.5 per cent?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that conceivably it could, but the government has no intention of doing that.

Hon. C. A. FURLETTI (Templestowe) — Conceivably it could, but the government at present has no intention of doing that; is that right? The minister does not have to answer that; I can tell by the look on his face that it is.

Can the minister say whether Tabcorp pays anything to the AFL? The minister is probably aware that the AFL logo appears on Tabcorp's Pick 7, Pick 8 and all that sort of thing; however, can the minister inform the committee whether Tabcorp currently pays anything to the AFL, and if so, how much?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Mr Furletti, I am advised that the government is not familiar with the commercial arrangements between Tabcorp and the AFL.

Hon. R. M. HALLAM (Western) — I reflect upon the advice given to us by the minister on the first occasion the committee met on the issue when he said that he was not prepared to discuss issues concerning the estimates of turnover, revenue and taxation at that time because the bidding process was under way and he was afraid that discussions in the chamber would prejudice the outcome.

I find that a very strange comment to make to the committee, given that the Labor Party in opposition had no such reticence and publicly canvassed its expectations for turnover from the AFL footy tipping competition. However, rather than embarrassing the minister over specific projections of income and so on I ask him whether the government is still relaxed about

the projected revenue that was announced prior to the election.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that they remain the best estimates.

Hon. R. M. HALLAM (Western) — I presumed that, and I hoped they were best estimates because they were made publicly available in the Labor Party's formal documentation of its election platform. I asked whether the minister still believes those projections to be realistic.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I have no advice to believe otherwise.

Hon. R. M. HALLAM (Western) — I am prepared to offer an opinion on those revenue projections: they are absolutely bizarre. Let the record show that the government has announced its expected yield from the AFL footy tipping competition to be $20.8 million over three years. My advice is that that is something like 10 or 20 times the yield currently enjoyed by Tabcorp from Footy Tip 8.

It is obvious to me that that is a very conservative comparison, given that Tabcorp is required by the terms of the current legislation to guarantee an 80 per cent player return. An alternative product is being promoted by the government with only a 60 per cent player return, and we are told that the government expects something like 10 or 20 times the revenue flow coming from Tabcorp. I simply make the point that there must be some mug punters out there.

I ask the minister what will happen if the product turns out to be a dud. Will Tattersalls receive an establishment fee and a chance to claw back — there is that word again — the development costs?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Again, Mr Hallam, I am advised that we still do not know who the operator will be in this instance, so to assume a particular operator is pre-empting the situation.

Hon. R. M. HALLAM (Western) — Once winning the licence, is it possible for any successful bidder to recover some of the establishment costs?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised in short that the answer is no, but it would be assumed that the successful bidder would have factored those requirements into the submission.

Hon. R. M. HALLAM (Western) — Do the sporting groups who have been promised some of the dedicated revenue stream from the footy tipping competition have any fall-back protection should the competition not reach expected revenue levels?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Again, the allocation of funds to those two particular sports is a matter to be determined by the government once those revenues are forthcoming and, again, in most instances those funds are top-up funds over and above what has already been committed to those particular sports.

Hon. R. M. HALLAM (Western) — Should the AFL expect to have any revenue guarantee built into the initial agreement?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Again, only in relation to a percentage, not a particular amount.

Hon. R. M. HALLAM (Western) — I want to move to the related issue of the involvement of Tabcorp — the same issue the Honourable Carlo Furletti broached a few moments ago. It seems to me to be absolutely crucial that Tabcorp currently enjoys a licence which covers, among other things, approved betting competitions. I have in front of me an extract from the prospectus issued at the time Tabcorp was floated, and I read directly from it:

> The wagering licence issued to Tabcorp is the sole licence —

I underscore the word 'sole' —

> to be issued under the act to conduct wagering and approved betting competitions in Victoria.

Further in the same paragraph:

> Approved betting competitions mean fixed odds or totalisator betting competitions on any event or contingency approved by the minister.

Does the minister still stand by the report he gave to the committee that the government does not believe there will be any material impact on any other existing licence?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — What was that document again? What was the context of the document?

Hon. R. M. HALLAM (Western) — During the currency of the committee debate on the bill, the minister gave a very clear view or opinion on behalf of the government, and confirmed that legal advice had been sought and gained, that it was the view of

government that it does not believe the passing of the bill will have any material impact on any other licence. That is what the committee has been told. I have now quoted to the committee what I think Tabcorp would be entitled to believe, based on the prospectus that was issued at the time that company was floated, and I note that it bears the endorsement of the then Treasurer of the state, so I presume there is no argument about the authenticity of the claim.

My point is that two fundamentally different positions are being put to the committee. On the one hand there is an endorsed claim by Tabcorp that it holds the sole licence and on the other the committee has been told that the passage of the bill and the authority to issue a new licence will not have any material impact on the other licence. I am simply asking whether the minister wants to review an answer he gave to the committee on a previous occasion.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the answer is no. The original licence must be read in its context and there could always be a move away from sole licenses.

Hon. R. M. HALLAM (Western) — I accept that, and I take that to be confirmation of the advice the government is offering the committee. I simply make an observation that Tabcorp paid almost $600 million for a gaming and wagering licence which was, to all intents and purposes, a sole licence for 18 years, and I quoted directly from the prospectus to demonstrate that at least Tabcorp believes it has some claim upon the competition now being accommodated in the legislation being considered. However, I take on board what the minister has said — that is, the government does not believe there is any material impact on any other licensee as a result of the passage of the bill.

I shall now deal with Labor's pre-election propaganda. It said, among other things, that:

> Labor will mainstream what already occurs in many workplaces. This will not represent additional gaming.

That is the marketing blurb on the national footy tipping competition. I understand why there would be some sensitivity about whether it represents additional gambling, given the Labor Party's stance on that issue when in opposition, but members are now being told that that will not affect Footy Tip 8 — that is, there will be no impact on that competition from the new one now being devised.

As it happens, I agree because not too many punters would walk away from a competition that promised 80 per cent return through a prize pool to use a competition that offered only 60 per cent return. But I am not persuaded that it will not be a case of additional gambling. Is the committee to believe that all investments in the competition are to be captured from the workplace competitions? The minister describes it as mainstream, but I describe it as piracy.

In any event, $20.8 million over three years is to be captured from the offices and workplaces where the competitions are to be conducted. If I do the sums based on the percentages provided by government I can assume an anticipated turnover of about $77 million over three years. On that basis, I would love to meet the person who did the projections!

If it is now deemed to be a public lottery rather than an approved betting competition, which is implicit in what the minister says, why would Tabcorp not have, at least arguably, some form of compensation from that situation and why would it not be entitled to conclude that this is the thin end of the wedge, that other competitions will be introduced through the passage of legislation but approved as public lotteries which would further intrude into what Tabcorp believes to be its exclusive realm? What can the minister offer by way of comfort to Tabcorp?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I can give Tabcorp no comfort, but again I refer to my previous statement that the original licence must be read in context. The public statement is that the move could be away from sole licences. I offer no comfort but implicit in those public statements is that there could be a move away from sole licences.

Hon. R. M. HALLAM (Western) — From where I come it is incongruous to describe a sports betting competition as a public lottery. There is no rationale for that other than, I suspect, the chance for the minister to argue that the competition is outside the realm of the licence already offered to Tabcorp. The minister may refute that — I would love him to do so — but I look for a sign from the government that that guise is not to be employed in the future to erode even further a licence that is already in place.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that it is not the government's present intention.

Hon. R. M. HALLAM (Western) — The minister spoiled it when he used the word 'present'.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — It is not the government's intention.

Hon. C. A. FURLETTI (Templestowe) — I refer the committee — —

Hon. J. M. Madden — On a point of order, Mr Chairman, and based on the comment you made earlier I note that a piece of paper was handed to the Honourable Carlo Furletti by a member from the other place. I ask Mr Furletti to clarify whether the question he intends to ask is a question supplied from a member of the other place or whether it is Mr Furletti's own question.

The CHAIRMAN — Order! On the point of order, I observed Mr Furletti and I warned him when he returned to the chamber. I believe I saw a discussion with two other colleagues, but I did not observe Mr Furletti picking up a piece of paper from the public gallery.

Hon. J. M. Madden — Further on the point of order, Mr Chairman, I ask Mr Furletti to say whether it is his own question, not one handed to him.

The CHAIRMAN — Order! There is no point of order.

Hon. C. A. FURLETTI — I had intended to submit to the committee that there was no point of order. That being the case, I presume the hours I spent with the shadow minister discussing the committee stage should also be struck out; sooner or later the minister may learn the rules of this place!

I refer to the earlier question that I asked, to which the minister responded but in all honesty, I forget his answer. I repeat it now. Does Tabcorp pay the Australian Football League (AFL) any and if so how much money at this point in time?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I take Mr Furletti back to my previous answer, which was that I am not aware of the commercial arrangements in that situation.

Hon. C. A. FURLETTI (Templestowe) — Nor would I expect the minister to have intimate details of the arrangements, but I would expect the government to be aware of the financial arrangements because as the minister will be aware, Tabcorp submits financial documents to the minister about its gaming activities, including the operation of the Pick 7 and 8 competition. If the minister does not know, his advisers should know. I am happy for the minister to take the question on notice and for him to respond later. Perhaps the minister could determine whether the advisers are aware of the answer.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that I cannot issue a guarantee and the information is not in front of me; nor are my advisers aware whether it is accessible. I can make requests of the minister in the other place so that if it is available, it could be made available to Mr Furletti.

Hon. C. A. FURLETTI (Templestowe) — I am happy to accept that undertaking. On the issue of the footy tipping competition, it is conceivable that the licensee may find it more economical, given what the Honourable Roger Hallam has put, to not promote and run the competition rather than running and promoting it. What provisions exist to prevent a licensee from simply warehousing the licence and what penalty would apply?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that one of the conditions of the licence would be not to have that situation arise.

Hon. C. A. Furletti — That they must operate?

Hon. J. M. MADDEN — That is right.

Hon. C. A. FURLETTI (Templestowe) — The minister earlier confirmed that a Department of Treasury and Finance model has been established for the footy tipping competition. Would that same model be adaptable to other sports if the competition were to expand to other sports?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the bill relates only to football tipping. That is the premise on which the modelling has been based.

Hon. C. A. FURLETTI (Templestowe) — I am not certain what the minister meant. Do I take it that the model applies only to the football tipping competition?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the model relates only to the AFL football tipping competition.

Clause agreed to; clauses 55 and 56 agreed to.

Clause 57

Hon. R. M. HALLAM (Western) — Clause 57 goes to the hypothecation of the tax earned by the various competitions. On my reading I believe it specifically excludes the hypothecation of the revenue stream from the AFL footy tipping competition. Why is that so?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the footy tipping revenues were not hypothecated to hospitals and charities funds as the state government policy intent is to use the money to fund sports and health programs outside the scope of the fund. The government does not consider it necessary to create new additional trust funds for these programs, as it has clearly and consistently articulated in its policy position on many occasions. The house amendments to the bill reinforce the government's commitment to use the funds for grassroots sports, health, women's sports and sports medicine programs.

Hon. R. M. HALLAM (Western) — I thank the minister for his explanation, but it does not answer my question. It reinforces the question mark that we are entitled to raise over the difference in the treatment. The revenue stream going to the hospitals and charities sector is directly hypothecated. That which is to now go to the sports sector is not hypothecated. If it is so important that part be hypothecated directly, why was the same rationale not applied to the new revenue coming from the new competition?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the government has decided to allocate football tipping funds to those programs via the budget process.

Hon. R. M. HALLAM (Western) — My point is that there is nothing to stop this becoming a hollow log. The government can tell us that it intends to dedicate the funds to a particular purpose, but given that it is now saying it is not prepared to directly hypothecate in advance, we are again being asked to take the government on face value. In the face of the policy decision taken by the government, will the minister undertake on behalf of the government at to least report separately on the revenue stream coming from the AFL footy tipping competition?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I would be happy to take that matter up with the Treasurer in relation to those comments.

Hon. R. M. HALLAM (Western) — That is a big call at the 11th hour of the committee stage. The government is again asking us to take it on face value and on trust. The reason we are in committee for a lengthy period is that in another aspect the government has deliberately camouflaged the true impact of the bill. Now in respect of the revenue flow from this brand-new competition we are being invited to accept the notion that the government is dedicated to ensuring that the particular sports sectors concerned will be recipients of the revenue. I am at a loss about what to do. I am tempted to suggest that progress be reported and invite the minister to seek clarification, but the committee has been through this process so many times that I am loath to do so.

I put the minister and the government on inquiry. I for one shall be following that issue like a hawk because the government has given a whole range of commitments on the revenue flow. I do not believe the projections — I think they are fairies-at-the-bottom-of-the-garden stuff.

I want to see that the sports groups that have been promised the revenue are protected to the extent that they have been invited to rely upon their new-found revenue. I shall let it go at that. Will the minister explain why part of the fourth draft of amendments that were circulated to me by the minister's adviser was omitted from the amendments introduced by the government in another place?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Will Mr Hallam restate the last part of the question?

Hon. R. M. HALLAM (Western) — By way of background, the minister's adviser was kind enough to supply me with a list of the amendments that the government proposed to introduce to this bill in the other place. It is headed 'Fourth draft'. The adviser took me into his confidence and I was pleased to be extended that confidence, but the actual amendments that appeared in the debate are slightly different from the ones that he gave me in advance. I ask whether the minister can explain why there was a difference in what was promised and what was eventually delivered.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the draft amendment provided to Mr Hallam contained a second proposed subclause to the clause that said:

> Nothing in sub-section (4) is to be taken as appropriating the consolidated fund.

These words did not appear in the final form of the amendment offered to, and passed by, the Legislative Assembly. The earlier draft contained this proposed subclause in an attempt to make it clear that the government was not making an appropriation, but the Clerk ruled that a Governor's message was still required, even with this wording, so the subclause no longer made sense and was therefore omitted.

Hon. R. M. HALLAM (Western) — I thank the minister for his explanation.

Hon. I. J. COVER (Geelong) — I know that earlier the minister made statements about where some of the funds derived from the footy tipping competition would be directed. Clause 57(4) states:

> It is the intention of the Parliament that amounts paid into the Consolidated Fund in respect of AFL footy tipping competitions be applied for the purposes of grass roots sports and for any one or more of the following purposes: health, women's sports and sports medicine.

The first purpose referred to is health. As everybody would know, health is probably the biggest area of government expenditure. I seek clarification from the minister whether that means that it includes only money going to the general health budget, such as hospitals and the like, or whether there are specific sporting applications under that health heading that are different from sports medicine.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the exact details are still to be determined but that it will have a sports focus, if that is of any assistance to Mr Cover.

Hon. I. J. COVER (Geelong) — I think the minister indicated earlier that areas such as women's sports and sports medicine will receive money from the competition revenue stream, over and above commitments that the government will make in those areas. I pointed out that health has multibillion dollar commitments from the government, so it is welcome in the sports areas.

The minister also mentioned that the Australian Football League will be able to use the amount it receives at its discretion for its programs. I refer to an interview on ABC radio on 5 August between the Minister for Gaming and me. I understand the Minister for Gaming was a last-minute replacement when the Minister for Sport and Recreation was unavailable to tackle the subject of the introduction of the football tipping competition. I was saddened that the minister was unable to keep the appointment because I would have enjoyed talking with him on the airwaves.

In discussing the footy tipping competition and the application of some of the revenue from it, the Minister for Gaming referred to the AFL benefiting from and applying the money to its development programs. Has the AFL given an indication that it expects to apply the money to that area?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I thank Mr Cover for the flattering remarks about the potential radio interview. I look forward to any future opportunity for us to meet over the airwaves.

Hon. I. J. Cover — I might get Mr Hallam to replace me!

Hon. J. M. MADDEN — I am advised there is no formal agreement, but certainly the AFL would be encouraged to consider using it for grassroots football development.

Hon. I. J. COVER (Geelong) — I refer to the purposes listed in subclause (4) — that is, health, women's sports and sports medicine. I appreciate from the minister's response on the health issue that the details have not been worked out as yet. Are those areas for the application of the revenue set in concrete for time immemorial, for 12 months or 2 or 3 years — that is, is there a time frame during which those areas will be the recipients of those benefits?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that on the basis of the proposal the funds will be allocated to those areas as those licences continue.

Hon. I. J. COVER (Geelong) — Will there be an opportunity in the future for the government to consider other areas to which it could apply the revenue it hopes to derive from the footy tipping competition?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Mr Cover will have noticed — and no doubt that is why he is asking those questions at this point in the committee stage — that each of those areas has a sports focus and therefore it would be expected that that will be maintained throughout the course of any licences issued.

Hon. I. J. COVER (Geelong) — But I suggest to the minister that women's sports and sports medicine are fairly specific. I thought that in the future there might be some opportunity for other areas of sporting endeavours or sports infrastructure to also benefit.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that any of those issues will probably be directed through normal budgetary processes.

Hon. I. J. COVER (Geelong) — Or indeed through the minister's office, because I am sure the minister will receive lobbying for many sports groups that might want to access the funds available from the competition.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — While there is a degree of broadness in each of those topics as identified in the proposed legislation, they are fairly specific and the intention is

that they will be considered as areas where top-up funds could be well utilised, which is why the bill has that wording.

Clause agreed to; clauses 58 to 60 agreed to.

Clause 61

Hon. R. M. HALLAM (Western) — Clause 61 goes to the requirement in respect of annual reporting. I read from the clause, which says that a licensee must prepare financial statements of the public lotteries conducted by the licensee during each financial year, and those statements must be prepared in a form approved by the minister. The minister must cause the audited financial statements to be laid before the house within seven days after the minister receives them. It then talks about the way in which that reporting process shall be implemented.

I seek from the minister a commitment on behalf of the government that there will be a report to Parliament each year based on the football tipping competition and that the report brought to the chamber shall reflect the football season rather than the financial year. I will then ask him about the timing of that. I am looking for a commitment from the government that Parliament will be able to observe at first hand the outcome of the AFL footy tipping competition. I am concerned that as structured now, the seasonal results might be confused to the extent that they will appear reported over two financial years.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the act requires operators of public lotteries to submit audited annual financial statements to government on a financial year basis. That is considered appropriate and comprehensive. Requiring the football tipping operator to provide accounts based around a football season does not necessarily provide any meaningful information on the operation or integrity of the licence. Therefore, as I previously mentioned, the operator would then submit audited annual financial statements to government on a financial year basis.

Hon. R. M. HALLAM (Western) — That is interesting, Mr Chairman. Here we are, very late in the committee process, being invited again to take an issue on face value by the government. This is a new competition based upon the AFL football season and the bill before the chamber gives the minister discretion as to the form in which the report can be prepared; yet the government is not willing to say that it will report faithfully on the basis of the seasonal competition and is going to seek the comfort of having a competition reported in two halves.

I appeal to the minister that if he is genuine in respect of this competition and if he really wants the committee to believe this is an open and accountable government that what I am putting is absolutely reasonable. Given that this is a new competition based upon the AFL season as we understand it, why would it be inappropriate for the government to report on the outcome of this competition at the end of that season?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I understand where Mr Hallam is coming from about reporting on a football seasonal basis. I will take that up with the minister and the Treasurer so that that might be the case — that is, that reporting may operate on a football seasonal basis.

Hon. R. M. HALLAM (Western) — All I am asking the minister to consider is that the report be prepared at the end of each calendar year as opposed to each financial year. I would expect, in the name of openness and transparency, that that report would come to the Parliament fairly quickly. It should be relatively simple to work out the results of the competition. There will be a number of members of this chamber who will be very interested in the outcome — I am one of them — so I appeal to the minister that if he wants this to be treated as a genuine attempt by government, I believe the request is absolutely reasonable.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Again, I appreciate the substance of the point Mr Hallam is making. I acknowledge for the sake of clarity that it may be appropriate to report at the end of a calendar year. I can only reiterate that I am happy to take that up with the Treasurer and the responsible minister in the other place to see if it is possible to have the tipping competition reported to the house in the manner that Mr Hallam has recommended.

Hon. R. M. HALLAM (Western) — Thank you for that.

Hon. R. A. BEST (North Western) — I support the thrust of Mr Hallam's point. I think the minister understands that transparent reporting gives everybody the chance to analyse the results and provides an opportunity for sporting clubs and organisations that have had commitments made to them as to what they can expect to make contingency plans for funding. That opportunity can be afforded to them if the results of the competition are known at the end of the calendar year or at the end of the season.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Following from my comment to Mr Hallam, I will take up the issue with the Treasurer

in the other place to see if it is possible to report on a calendar year basis so as to demonstrate the success of the proposal.

Hon. ANDREW BRIDESON (Waverley) — While on the subject of auditing, I seek clarification about whether the football season being talked about is the winter season or the summer competition. Is it a licence condition that the tipping competition runs for both competitions?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I acknowledge the point made by the honourable member about the length of the season. I am conscious of how long football seasons can be. I am conscious of how slow time can move on occasions. The exact details of the licence have not been determined, but I expect that to be the case as part of the tender process.

Clause agreed to; clauses 62 to 80 agreed to.

Clause 81

Hon. C. A. FURLETTI (Templestowe) — Clause 81(1) states:

> For the purpose of performing functions under this Act, the Authority or the Secretary may hold inquiries in public or in private.

Given the government's commitment and policy to open the forum for applications in the gaming area — without seeking to anticipate legislation that will come before this house; I refer to the Victorian Casino and Gaming Authority — why should there be a reversal of policy?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — This is not a policy reversal. Hearings will be open unless matters are more appropriately heard in camera.

Clause agreed to; clauses 82 to 89 agreed to.

Clause 90

Hon. C. A. FURLETTI (Templestowe) — I refer the minister to his previous answer when responding to Mr Hallam's line of inquiry regarding the arrangements the government has made with Tattersalls concerning the changes to its existing licence and, in particular, the minister's answer that Tattersalls was prepared to accept the changes and had, in fact, formally done so. I ask the minister whether Tattersalls was given the opportunity to refuse.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I ask Mr Furletti to repeat his question.

Hon. C. A. FURLETTI (Templestowe) — Given that the minister has indicated previously that Tattersalls has accepted the government's proposition to dramatically change, in the view of the opposition, its existing licence conditions, was Tattersalls given any opportunity to reject the proposal?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that clause 90 allows the minister to impose conditions of the following kinds on the promoter's licence: conditions to which the current licence issued under the Tattersall Consultations Act are subject; conditions that are the equivalent of any other requirements imposed on the promoter by or under the Tattersall Consultations Act and the regulations; conditions to ensure that adequate systems are in place for the conduct of consultations and soccer pools; and conditions for the carrying over of jackpot prize pools in respect of subscriptions accepted before the commencement date. Changes to tax, including the supervision charge, are not changes to the licence.

Hon. C. A. FURLETTI (Templestowe) — The line of inquiry conducted earlier in the committee was that Tattersalls had accommodated the government by accepting the changes to its licence conditions. I can go to the *Hansard* report, but the question I ask is whether Tattersalls was given an alternative to accepting the variations the government put to it.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised the answer is no.

Hon. C. A. FURLETTI (Templestowe) — Given that, I ask the minister to advise the committee of the form of Tattersalls' acceptance of the proposal put to it.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised it was an acknowledgment during briefings and discussions of the bill.

Hon. C. A. FURLETTI (Templestowe) — Was it in writing or oral?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised there is nothing in writing.

Clause agreed to.

Clause 91

Hon. C. A. FURLETTI (Templestowe) — I refer to the proposal in clause 91 regarding a further premium being paid by Tattersalls in respect of the licence it will acquire after 2004. Will the minister indicate on what basis the premium will be calculated?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that that would be on the value of the three-year extension.

Hon. C. A. FURLETTI (Templestowe) — I am sure that is the case, but the minister has done modelling and Treasury has done modelling, and I ask the minister to advise the committee what that modelling would indicate in the government's opinion that premium is worth?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that the government would not be keen to release those sorts of figures prior to entering into any negotiations with Tattersalls.

Hon. C. A. FURLETTI (Templestowe) — Is the minister willing to concede that those estimates exist?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I am advised that internally the department has formulated preliminary modelling — I reinforce that it is preliminary — but none of that advice has been given to ministers.

Clause agreed to.

Clause 92

Hon. C. A. FURLETTI (Templestowe) — I believe the query I had on that clause has been answered previously. I thank the minister for his cooperation.

Clause agreed to; clauses 93 to 103 agreed to.

Reported to house without amendments.

Report adopted.

Third reading

Hon. J. M. MADDEN (Minister for Sport and Recreation) — I move:

That this bill be now read a third time.

I thank honourable members for their contributions, particularly through the committee stage. I ask honourable members to forgive me if I do not name everyone involved in the committee stage because it has been a lengthy process over a substantial amount of time. I thank the Honourables Roger Hallam, Carlo Furletti, Andrew Brideson, Ian Cover and Andrew Olexander. I particularly thank the advisers for their consideration and patience in being subjected to the committee process.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

Sitting suspended 6.30 p.m. until 8.07 p.m.

MELBOURNE CITY LINK (MISCELLANEOUS AMENDMENTS) BILL

Second reading

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

That this bill be now read a second time.

As its title implies, this bill proposes a diverse set of amendments to the Melbourne City Link Act 1995. This is a machinery bill.

Some amendments establish machinery for transitional administrative arrangements. The bill also proposes changes to the privacy and toll collection provisions of the principal act. Other amendments correct defects or omissions in the principal act. The bill implements recommendations of the report of the audit review of government contracts for the repeal of redundant provisions. When Transurban completes construction works, many highly technical provisions of the principal act will be redundant and can be repealed.

If the bill has themes, they are efficient management, fair enforcement and the community's right to know.

The Melbourne City Link Authority was established in 1994 to coordinate the state's role in the City Link project. Its first main task was to select a consortium to undertake the project and to negotiate the terms of the concession. Since the City Link concession was awarded to Transurban in 1995, the authority has coordinated the state's involvement in the project and monitored engineering, urban design and technical aspects of the project. It has also managed commercial and legal matters relating to the project on behalf of the state. With the imminent completion of construction, the authority's role is nearing completion. It is necessary to make transitional arrangements.

The bill therefore provides the legal machinery to repeal the Melbourne City Link Authority Act 1994, to wind up the authority and to transfer its remaining functions to the state. This will occur on a date to be fixed. Ongoing state functions will be reassigned to the appropriate government departments. These functions will include carrying out the state's obligations under

the agreements, and ensuring that Transurban fulfils its own obligations.

I take this opportunity on behalf of the government to thank the members of the authority for their contribution. The state has been fortunate to have had the services of Mr John Laurie, a distinguished engineer, as chairman of the authority. I also wish to acknowledge the services of Mr Tony Darvall, Mr Barry Ireland, Ms Ann Keddie and Mr Alan Notley as board members.

The bill proposes several amendments to the tolling and tolling privacy provisions of the principal act.

Transurban is responsible for collecting tolls and detecting toll defaulters but does not have direct access to motor registration records. If Transurban detects a vehicle using a toll zone in breach of tolling requirements, Transurban can request the government enforcement agency to send a warning letter, an invoice or an infringement notice to the vehicle owner. Currently, first-time users receive warning letters.

In 1998, Parliament passed legislation repealing the provisions that enable Transurban to opt for warning letters or invoices instead of fines. If that legislation is not changed, the repeal will take effect at the end of this year, effectively leading to the fining of all toll defaulters, including first-time users, from 1 January 2001. This bill will retain the option for Transurban to request the state, with the state's consent, to issue warning notices until 1 July 2001. The option to send invoices instead of fines will be retained.

The principal act prohibits unauthorised use or disclosure of personal information from Transurban's records about tolling or about the use of City Link. Two changes to these laws are proposed.

First, the bill will authorise the tolling and traffic management systems to be used to detect breaches of laws governing the transport of dangerous goods. If, for example, Transurban detects a truck carrying dangerous goods through a tunnel illegally, Transurban could report this to the relevant enforcement agency.

Secondly, the bill will authorise police to use tolling information to investigate lost and stolen e-tags without keeping the full audit trails that the principal act requires for use of tolling information in serious criminal investigations.

The bill also makes several housekeeping amendments in relation to the legal machinery for tolling enforcement. The main one relates to the deadline for obtaining late day passes. Currently, late day passes may be purchased up to noon on the day following travel. The government and Transurban have held discussions about the possibility of extending that deadline, and the bill will enable regulations to extend the deadline.

Copies of the contracts for the City Link and Exhibition Street extension projects are already available for public inspection, as are copies of amending agreements and other variations. However, the documents are large and complex, and consolidations of the agreements are not published. This makes it difficult for the public to obtain accurate and up-to-date information on these agreements, which, among other things, prescribe what tolls Transurban may charge for the use of the roads.

Consistent with the government's commitment to provide better information on contractual arrangements, the bill will authorise publication of reprints of the agreements. These will be published in reprints of the principal act. The existing schedules, which contain the original versions of the agreements, will be repealed. The act already requires copies of amending deeds and variations to be made available for public inspection. The bill will also enable certified copies of these amendments and variations, and of the exhibits to the agreements, to be used as evidence in legal proceedings.

In the meantime, working consolidations of the agreements have been provided to the parliamentary library for the use of members, and the Melbourne City Link Authority is taking steps to place as much material as possible on its web site.

The audit review of government contracts reported to government in May. This report commented on the highly technical nature of much of the City Link legislation. The report recommended that, on completion of construction, provisions relating to the construction phase of the project should be repealed. The bill implements this recommendation and provides for the repeal of the provisions of the principal act that facilitate land acquisition and construction.

The bill will also facilitate the disposal or future administration of surplus project land. Most of the land that is not leased to Transurban will revert to its former status, such as railway or port land. In the case of Olympic Park, the bill will amend the Melbourne and Olympic Parks Act 1985 to return surplus project land to the control of the park trust.

Commencement of the various provisions of the bill will be fixed by proclamation, with any unproclaimed provisions coming into operation on 31 December

2002. Commencement dates will be fixed having regard to the need to finalise the disposal of surplus land and a few outstanding land compensation cases. The provisions relating to warning letters are an exception. These provisions will come into operation the day after royal assent to avoid this option expiring on 31 December this year.

Although largely a machinery measure to wind up the Melbourne City Link Authority and repeal redundant construction provisions, the bill makes a number of worthwhile improvements to City Link legislation. It will improve public access to information on City Link contracts. It will facilitate enforcement of dangerous goods transport laws. Importantly, it will retain the option to use invoices and extend the option to issue warning notices as alternatives to issuing fines.

I commend the bill to the house.

Debate adjourned on motion of Hon. G. B. ASHMAN (Koonung).

Debate adjourned until next day.

GAMING ACTS (GAMING MACHINE LEVY) BILL

Second reading

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

> That this bill be now read a second time.

During last year's election campaign the Labor Party committed itself to providing additional funding for drug and alcohol programs to be partly funded by a levy on the gaming operators. Honourable members will be aware of the significant social, family and personal costs that ensue from drug and alcohol abuse. In particular, honourable members will know about the tragic loss of life — of lives cut prematurely short — from drug overdoses that regrettably occur all too frequently in Victoria. There is an urgent and overwhelming need to deal with this blight on our community. The government will do its duty to minimise the enormous damage and harm caused by drug and alcohol abuse.

The drug and alcohol programs form part of an overall strategy designed to assist the community in improving its health outcomes. The drug and alcohol programs are community education programs aimed at alerting vulnerable members of the community about the risks of drug and alcohol abuse. The underlying principle of these programs is that educational programs to prevent drug and alcohol abuse is a much more cost-effective way of using resources than having to deal with the consequences of drug and alcohol abuse.

The government's election promise to raise additional funds from the gambling industry to deal with drug and alcohol abuse reflects the government's belief that the community should be able to share in the gains of the gaming operators resulting from their ownership of gaming machines, which they operate on an exclusive basis under licence from the government. The government recognises the importance of tackling the problem of drug and alcohol abuse and the money raised from the gaming machine levy will go towards the government's strategy of reducing drug and alcohol abuse. This will contribute to reducing the number of lives lost to drug and alcohol abuse each year, helping families and ensuring the safety of the community.

The precise nature of this Labor Party's election commitment in relation to the gaming machine levy was spelt out in *Labor's Financial Statement*, where it is stated that:

> Labor is proposing to restructure the tax on electronic gaming machines (EGMs) so that the gaming operators (Crown, Tattersalls and Tabcorp) make a small additional contribution to Victoria's health system. Labor is seeking to raise $10 million in revenue each year.

It was subsequently announced in the 2000–01 budget that:

> funding of $10 million will be raised through a flat rate levy on the owners of each of the 30 000 EGMs in Victoria — that is, Tabcorp, Tattersalls and Crown. The levy will be $333.33 per annum per machine commencing in financial year 2000–01. Equivalent spending of $10 million has been approved for allocation to drug and alcohol programs.

The purpose of this bill is to give legislative effect to Labor's election commitment and to the budget initiative. It is proposed to impose a levy of $333.33 per gaming machine on each of the gaming machines operated by the gaming operators — Tattersalls, Tabcorp and Crown — on 30 September each year. The levy will be payable in two equal instalments by 15 December and 15 June in each financial year. The gaming machine levy will be hypothecated by standing appropriation to the Hospitals and Charities Fund, and will be channelled for use in drug and alcohol programs. The bill contains a provision requiring the gaming operators to pay interest in the event of the late payment of the gaming machine levy.

I am convinced that the drug and alcohol programs, which will be partly funded by the gaming machine levy, will make a significant contribution to alleviating the problems associated with drug and alcohol abuse.

I commend the bill to the house

Debate adjourned for Hon. ANDREW BRIDESON (Waverley) on motion of Hon. G. B. Ashman.

Debate adjourned until next day.

PROJECT DEVELOPMENT AND CONSTRUCTION MANAGEMENT (AMENDMENT) BILL

Second reading

Debate resumed from 26 October; motion of Hon. J. M. MADDEN (Minister assisting the Minister for Planning).

Hon. P. A. KATSAMBANIS (Monash) — This is a simple and in many ways administrative bill that gives effect to a decision the government took at the end of last year to transfer the Office of Major Projects from the Department of Infrastructure to the Department of State and Regional Development.

Specifically, the bill vests certain powers in the secretary of the Department of State and Regional Development and makes him or her a body corporate for the purposes of the bill. Those powers are identical in almost every respect to the powers that the secretary of the Department of Infrastructure had when that department was responsible for the management and control of the Office of Major Projects.

It is the prerogative of the government to make these sorts of administrative decisions on where authorities and bodies lie in the administration of government, and the opposition has no concern with the administrative decision to transfer the functions of the Office of Major Projects from one department to another. For the purposes of government the decision was taken quite some time ago and the bill simply affirms what has been happening for some time. However, I find intriguing the reason for such a bill given the government's treatment since it has come into government of, firstly, the Office of Major Projects — —

Hon. B. C. Boardman — Is treatment the right word?

Hon. P. A. KATSAMBANIS — Treatment is the right word, and I am concerned about why the bill is needed at all. I have noticed there are no new major projects coming on stream. Major projects is an area where the government's inactivity, inaction and complete lack of vision and direction for Victoria are highlighted.

I notice that the government is pretty keen to badge and rebadge initiatives of the former Liberal–National Party government. I followed the various openings of the Melbourne Museum with great interest. The Premier attended at least three functions for the purposes of opening the museum, and I dare say there were probably more than three. Watching the Premier revel in opening what is certainly a wonderful new museum, and an impressive asset for the people of Victoria and for the cultural heritage of the state, I could not help thinking how hypocritical he looked, given the Labor Party's longstanding and intransigent opposition to the project when its members were sitting on the wrong side of the Treasury benches.

The people on the other side might laugh, but I do not think the people of Victoria will forget the images of the Premier basking in the reflected glory of a project that his party and he had taken so much trouble to criticise and lambast for years. I ask myself, 'Why do the Premier and the government do that?'. It is because they have no vision of their own. I notice that when I talked about the lack of major projects Mr McQuilten yelled out, 'Spencer Street railway station!'. Everyone knows that work on the redevelopment of the Spencer Street railway station precinct had started well before the change of government.

I notice the Leader of the Opposition walking into the chamber. He was one of the ministers who was instrumental not only in that development but in many other worthy developments, beginning with the Melbourne Exhibition Centre and going right through to the Melbourne Museum and the Spencer Street redevelopment project. The government is simply rebadging projects of the previous government to hide its ineptitude and the lack of vision, and to hide the fact that it is unable to attract new major projects and major investments to this state. So at a time when major projects are running out the question arises of why there is a need to worry about an Office of Major Projects at all, because there simply is nothing that needs to be managed.

The government could, of course, undertake some new initiatives. One example is the much-vaunted plenary hall at the Melbourne Exhibition Centre, which is certainly a much-needed facility. However the government has put it in the too-hard basket. This do-nothing government, this government that is grinding Victoria to a halt, is not prepared to make a decision to build a new plenary hall at the Melbourne Exhibition Centre, and is certainly not prepared to make other decisions about major projects in Melbourne and Victoria.

My other concern about the bill is the way the government has treated the Office of Major Projects since it came to power. No greater example is needed than the mess the government has created at Federation Square. What was to be a showpiece project for Victoria has turned into another stalled building site and another political football, highlighting that the government not only has no vision and no drive for Victoria but is prepared to sacrifice the hard work and the good name of honest, public servants in its pursuit of a purely ideological and dogmatic agenda that has nothing to do with good government and providing new projects for this state. Federation Square is the prime example.

I have almost lost track of where construction is heading with the western shard of Federation Square because the government said, 'We don't want a shard'. Then it hired a group of eminent people — everybody knows who they were, among them the Honourable Evan Walker, a former minister of a Labor government — who reported that the western shard was not needed.

Then the government thought, 'We will need something there. What will it be? Will it be three-quarters or one-third of a shard?'. I have lost track of the size of the shard that will be constructed; I am told it will be a mini-western shard, which demonstrates the downsizing of the government's vision for Victoria. It decided to get rid of the shard, but then worked out it needed something in that spot.

Hon. M. A. Birrell — It is a compromise that nobody wants.

Hon. P. A. KATSAMBANIS — I am sure it is a compromise that nobody wants. I am sure it is an exercise the government did not want when it took over the project. The Bracks government is inclined to use major projects as a political football, but the government has not covered itself in glory.

Why should I go further than the example of Federation Square and the former head of the Office of Major Projects? The government is prepared to sacrifice the reputation of honest, hardworking public servants. The project manager, Damian Bonnice, resigned in protest at the government's handling of Federation Square. He was vilified in the media when the government and its agents selectively leaked and quoted information to media organisations. That is reprehensible and disgusting.

The government is prepared to shove aside good governance for its own short-term, political agenda and has highlighted that with its actions on Federation Square and on major projects in Victoria, particularly with the way it has hung out to dry and unfairly criticised the hardworking public servants in the Office of Major Projects when the government knows they are duty bound not to publicly defend themselves. That has been another shameful exercise in what is shaping up to be a whole series of shameful exercises that the government undertakes from time to time when it gets itself into a mess of its own making and looks for scapegoats to deflect criticism of it, its ministers or the Premier.

The government has been governing for more than a year. It no longer has the excuse that it is inexperienced or has not had the time to think about the direction in which it wants to take the state. From many perspectives the Agenda 21 program of the former government was a significant program for Victoria. It will leave a legacy for many years beyond the life of the program in growth, development and job creation, but most importantly it will leave a strong legacy of important cultural institutions that were built as a result of funding from the Agenda 21 program.

The vast majority of projects were managed by the Office of Major Projects. It proved it could handle big projects and fulfilled its charter. The office does four basic types of projects: the construction and renovation of public buildings; the redevelopment of surplus government property; engagement in novel projects that require government support or initiation; and acts as a facilitator of government sector development projects that require the coordination of government involvement on a whole-of-government basis to ensure large and often complex projects proceed for the benefit of Victorians.

But that assumes the state has projects and that Federation Square is not turned into a political witch-hunt against public servants. That also assumes Federation Square is not turned into some sort of industrial relations battlefield. Government members will probably say that Federation Square had many problems before the Bracks government came to power. It did have problems, but why was that so? It was because of the intransigence of the construction unions that were using the time-critical nature of the project. One should remember that Federation Square was meant to be a monument to Federation so it needed to be completed by May 2001.

The construction unions took the time-critical nature of the program and tried to turn it to their advantage to blackmail Victorians into accepting extremely onerous

provisions. That is no credit to the trade union leaders who led that charge.

Since the government has come to power industrial disputation has spread to other projects. All honourable members have heard about the ongoing industrial relations strife that has spilled over into physical violence and aggression at the National Gallery of Victoria site, which has also become a project embroiled in controversy, industrial disputation and is running way beyond its projected time line for completion. That is all because of the actions of the paymasters of the government — that is, the trade union movement — and its quite calculated actions in choosing time-critical projects to run significant industrial disputation.

It is no credit to the government that it did not solve the industrial disputes by saying to its friends in the trade union movement, 'This has gone beyond the pale. Let's sit down and negotiate a fair and reasonable outcome. Let's not turn this project into some sort of political football that you will continue to dispute forever and a day'. No, it acted as a cheer squad for the construction unions.

The Labor Party did that when in opposition to frustrate the building of Federation Square and now that it has been empowered with the office of government it has continued to do that for the benefit of its trade union mates at the expense of ordinary Victorians. The projects to which I have referred were commenced under the previous Liberal–National coalition government. I cannot talk about any Bracks government projects — because there are none.

The opposition has no major concern with the mechanical and administrative provisions in the bill. The government has chosen to move the Office of Major Projects from one department to another — that is its prerogative. The opposition could argue about what its best fit may be, but there is no need to worry about or discuss that now because the government has already made a decision and taken administrative steps to give effect to that decision.

However, the bill simply highlights the policy vision vacuum under which the government continues to operate. It has no plans or big picture; it has no projects. At the end of the day it is simply meandering along as a do-nothing government asleep at the wheel while Victoria, unfortunately, heads quickly back to the grim dark days of the Cain–Kirner regime and a rust-bucket state. If the Bracks government were serious about major projects, it would do more than move the Office of Major Projects from one department to another. It would look, firstly, at solving the serious industrial disputation in the existing projects, and secondly, at implementing a program of major projects similar to Agenda 21 that would be there for the benefit of Victorians. Instead, it continues to work for the benefit of its mates in the trade union movement.

Hon. KAYE DARVENIZA (Melbourne West) — I am pleased to have the opportunity to make a contribution to debate on the Project Development and Construction Management (Amendment) Bill, which has the support of both sides of the house. The bill will amend the Project Development and Construction Management Act and provides for the transfer of the Office of Major Projects from the Department of Infrastructure to the Department of State and Regional Development.

The Office of Major Projects comes within the responsibility of the Minister for Major Projects and Tourism, and the Office of Major Projects manages a number of large projects on behalf of the government on delegation from the secretary to the Department of Infrastructure.

The secretary to the Department of Infrastructure is a corporation under section 35 of the Project Development and Construction Management Act. The bill makes the Office of Major Projects accountable to the Minister for Major Projects and Tourism through the secretary to the Department of State and Regional Development.

The director and staff of the Office of Major Projects will be delegates of the secretary to the Department of State and Regional Development in the same way as they are now delegates to the secretary to the Department of Infrastructure.

The bill establishes the secretary to the Department of State and Regional Development as a body corporate and provides for its powers and functions to facilitate major projects. It is exactly the same system that currently operates under the Department of Infrastructure, and is dealt with in exactly the same sections of the act. The bill simply provides for those changes to take effect. It sets out a range of transitional arrangements that provide for the transfer of assets and liabilities relating to major projects from the secretary to the Department of Infrastructure to the secretary to the Department of State and Regional Development.

Put simply, the bill establishes a corporation, gives the new corporation the powers and functions it requires so it can undertake major construction projects, and moves

the assets and liabilities for major projects from one corporation to another.

The Bracks government is committed to major projects. We believe they are important to Victoria because they are about innovation, jobs and economic prosperity. This government, regardless of what the Honourable Peter Katsambanis has said, has committed around $2 billion to major projects, from Docklands to hospitals to law court redevelopments and high-speed rail links to regional Victoria, to name but a few.

A total of $8 billion of private and public development is earmarked or under way across the state. That provides enormous opportunities for all Victorians. We are determined that the benefits from major projects are shared by all Victorians.

Hon. K. M. Smith — You're not reading this, are you?

Hon. KAYE DARVENIZA — No, Mr Smith, I am not reading this. We want to see the benefits of major projects flow to all Victorians and ensure that businesses of all sizes have an opportunity to participate in major projects that the government has already embarked on and earmarked for the future.

The government has established a policy to maximise local content and give Australian industry a real opportunity to tender and be successful in gaining tenders to be considered for major projects. This opens up a whole range of opportunities for Australian industries to participate in major projects, not only in the metropolitan area but also in rural and regional Victoria. The policy of local content is good for all business, good for job creation and good for all Victorians.

The changes outlined in the bill will eliminate any perceived conflict of interest that may exist in the current arrangements that may arise from having the planning and major projects under the responsibility of the same department, the Department of Infrastructure.

The administrative changes as a result of the amendments to the bill will ensure that any perceived conflict of interest will not occur. It is important that one go through a proper rigorous planning process and that the day-to-day management decisions, the pressure to get moving on projects and to have particular projects finished are not caught up in the decision making. That is one of the positive results of the bill.

I take this opportunity to respond to a number of comments made by the Honourable Peter Katsambanis, in particular in relation to Federation Square. Members of the opposition are clearly attempting to rewrite history and trying to paint themselves as the great economic managers, although the Federation Square project was not well thought through before its construction. One has only to read what the Auditor-General said about the planning for Federation Square to realise that.

The government has had to make significant additional funds available to cope with the blow-out in the cost of Federation Square as a direct result of the opposition's poor planning, the way in which planning took place and in the way the project was set up and established.

The Bracks government cannot be blamed for the blow-out in the costs of Federation Square because those problems were clearly identified at the very beginning of the project. As I said, the Bracks government has had to put a considerable amount of money into the project to reinstate those parts the previous government secretly, in a very underhand way, took out in an attempt to manage the continued cost blow-out. Honourable members opposite know that the previous government sought to deceive the Victorian public in an attempt to hide the costs of the project.

I refer to some of the areas that were left out of the project.

Hon. K. M. Smith interjected.

Hon. KAYE DARVENIZA — Mr Smith might learn something if he listens, as the list includes a few things he might be interested in. The work of the integration of Federation Square with the Yarra River was left out of the costing of the project. The highlighting of Multimedia Victoria that was supposed to be above Federation Square was taken out of the project. The funding for the tourist information centre that was supposed to be established as part of the Federation Square project on the old platform of the Princes Bridge station was left out. Honourable members opposite know that those parts of the project were left out by the previous government and that it was done in a very secretive, underhand way.

In conclusion, I point out that the bill puts in place administrative arrangements that will result in the more streamlined management of major projects. I commend the bill to the house.

Hon. E. J. POWELL (North Eastern) — I am pleased on behalf of the National Party to put on record some points about the Project Development and Construction Management (Amendment) Bill. Firstly, the National Party does not oppose the bill.

A number of honourable members have already said this very small bill makes some consequential amendments. Clause 1 states that the main purpose of the bill is to amend the Project Development and Construction Management Act 1994, to establish the Secretary of the Department of State and Regional Development as a body corporate, to provide for its powers and functions, and for the transfer of certain matters to that organisation. In effect it simply provides for the transfer of the Office of Major Projects from the Department of Infrastructure to the Department of State and Regional Development, so it is a quite simple bill.

The current assets and liabilities of the Secretary of the Department of Infrastructure as a facilitating agency for certain major projects are also to be transferred to the Secretary of the Department of State and Regional Development. A further mechanism will be used to transfer certain designated projects from the Secretary of the Department of Infrastructure to the Secretary of the Department of State and Regional Development.

It is my understanding that the process of transfer that honourable members are debating could have been dealt with by administrative order, but for some reason the government has chosen to do it by legislation.

As has been discussed, the Office of Major Projects has an important role in dealing with the smooth running and management of large projects in Victoria. A number of members have put on record some of the large projects that have been overseen by people in that office. As Mr Katsambanis said, those public servants do a great job. They need very special skills. They deal with conflict and confrontation and they need mediation and organisational skills. Regardless of whether they are dealing with the unions and the construction industry or the private sector it is important that a project manager is in control of the whole project. People in the private sector clearly want projects done on time and on budget; they do not particularly like blow-outs.

Over the past 12 months, the government has had no major projects in country Victoria. A number have been talked of as being in the pipeline but all of them have been in Melbourne. So the election promise by the government to look after country Victoria has been ignored. As I said, Mr Katsambanis listed the major projects undertaken by the former government.

Hon. P. A. Katsambanis — Not all of them.

Hon. E. J. POWELL — But you did cover some of them. Some were in country Victoria but most have been in Melbourne. Some rural people are looking at the projects and the press releases and saying, ‘It’s all happening in Melbourne’ and asking ‘When is this government going to bring something into country Victoria?’.

To be fair, there are two on the drawing board, although they are not committed. The Honourable Kaye Darveniza mentioned one — that is, the fast train project in regional Victoria. It is interesting that it started off being an $80-million project and now it is an $810-million project, with about $500 million of that coming out of the public purse. Is that good use of public funds? The fast train project will save 20 to 30 minutes in trips from areas such as Ballarat, Bendigo, Geelong and the Latrobe Valley. While I do not want to be critical of anything happening in country Victoria, I wonder if spending $810 million is a good use of public money to just save travel time when many other projects could be undertaken in regional Victoria that would bring employment and a lot of confidence into country Victoria.

Another project on the drawing board that has not happened yet is the Snowy River project. The government has said it will return 21 per cent of environmental flows to the Snowy River over the next 10 years, and that in the longer term it will be 28 per cent. That will be at a cost of about $300 million. I put on the record that the National Party also supports the return of environmental flows to the Snowy River but has continually said and is on the record as saying that it must be achieved through savings.

The government has said that 7 per cent of the water will be found from the private sector, some will be found through savings and that it will buy water at a low price. I am not sure how it will do that because if it goes into the market there is a capacity for it to distort the market and increase the price of irrigation water. Minister Broad has said that a new enterprise will be set up with the capacity to borrow to buy water. I would like to know how much that enterprise will cost, what its full responsibilities will be and who will be on it, given that New South Wales, the commonwealth and South Australia are also making the decisions.

Why not make the Office of Major Projects the body to oversee the Snowy project? It would have access to advice from experts on water, experts on the environment, experts on agriculture, the irrigators and the catchment management authorities (CMAs). But as Mr Katsambanis said, perhaps the government has lost confidence in the Office of Major Projects. I think that is a shame because an entity comprised of a group of officers with a lot of skills that works predominantly with the private sector, the unions, the construction

sector and the public sector on conflict mediation could have looked at this issue and perhaps saved the government about $150 million.

Honourable members have been speaking of initiatives that have taken place in Melbourne. I put on the record that one of the biggest ever infrastructure projects in country Victoria was put in place under the former Liberal–National Party coalition government — that is, $410 million of major investment in country Victoria that allowed water and sewerage to go to 272 country towns right across the state that had populations of between 300 and 400 people. That encouraged businesses to expand and to attract other businesses. It also kept people in country Victoria. Many of those towns now have world health standard drinking water, as well as sewerage and waste water disposal. The waste water is vitally important to the fruit and food industries. The former government's $410 million investment created the biggest ever infrastructure project in country Victoria and generated $1.2 billion worth of infrastructure across the board. It has been great.

Under the former government, Business Victoria — now the Department of State and Regional Development — used to have meetings with local members of Parliament. In my case it was in Shepparton, Wangaratta and Wodonga. Business Victoria used to tell us what projects were in the pipeline and what were coming up. We were able to ask the department on behalf of constituents and organisations that had put submissions in for certain projects, 'Where is it at the moment? Is it going through?', and find out what would happen in the future. People in country areas knew exactly what was going on.

Under that system, at the beginning of the year an agenda was circulated of where we would meet with what is now part of the Department of State and Regional Development. However, this government suddenly cancelled the lot of them and we were given no reason why. Local members of Parliament now have no way of going to the departmental officers and saying, 'We have been asked by the Apex club or the Rotary club how their project is going', because the government has said, 'No, you do not speak to your local members of Parliament'. That has resulted in a huge breakdown in communication for us as local members. We would like to see that former system reinstated so that country people will know what projects are proceeding and be confident their projects are up and going.

As I said, this government cancelled those meetings without warning and without giving a reason. The local members were just given a memo saying that all those meetings had been cancelled. So much for the open and accountable government we were told we were going to have. When the Bracks government came in, it said it would be more consultative and would be out in the community letting us all know what was happening in government. In this instance that is not happening.

The Minister for Major Projects and Tourism in another place said in the debate on the bill that one of the first initiatives undertaken by the Department of State and Regional Development would be to set up an office of manufacturing and that the government was spending hundreds of millions of dollars on projects through the Office of Major Projects. The National Party thinks that is great news, but I would like to know how much is being spent in country Victoria and how much support country manufacturing industries in the north-east and across Victoria are getting. I would like to find out how much will go into country Victoria — how much support it will get.

When I refer to the country I do not necessarily mean Ballarat, Bendigo and Geelong. While those cities are in country areas, and I do not make any criticism of their receiving funds, I would like to assure the government that places such as Echuca, Wangaratta, Wodonga, Shepparton and many small towns are also in country areas.

In closing, National Party members, as I am sure do Liberal Party members representing country electorates, urge the government and the Office of Major Projects to start developing major projects in country Victoria, as was promised during the election.

Hon. B. C. BOARDMAN (Chelsea) — I honestly submit to the house that in the debate on this bill, particularly the contribution of the sole government speaker, there has been something wanting. An opportunity has been lost.

It could be assumed, quite naturally, that a bill designed to amend the Project Development and Construction Management Act of 1994 would be an ideal opportunity for the government to proclaim, laud, praise and talk up its wonderful major projects policy. It would be expected to be a wonderful and opportune time to outline the policy; talk about existing projects, giving an example of what stage they are at and saying how they fall into the overall policy and infrastructure planning in the state; and indicate what is going to occur in the future.

It is evident from the contribution of the sole government spokesperson that the government does not have a major projects policy. I give the Honourable Kaye Darveniza the benefit of the doubt. I am sure the department has distributed to all government members the standard briefing notes and said, 'We don't have much of a policy or many projects to talk about. We don't have anything in the pipeline that we can give glowing examples of, but talk about some supposed failings of the previous government, use clichés and emotional language and hopefully it will slip through as a quasi contribution to a non-existent major projects policy'.

The honourable member's contribution was a regurgitation of the speech made by the Minister for Major Projects and Tourism in the other place. The issue about rewriting history is recorded in the *Hansard* report of the other debate, about the Auditor-General's comments on the management of Federation Square, about the cost blow-out of Federation Square. The language used by Ms Darveniza was identical to the language used by the minister in the other place during the second-reading debate. There was also an extensive description of what was supposed to happen with the Tourism Information Centre and how many tourists would visit the centre. Ms Darveniza's comments were identical to the comments of the minister in the other place; they were even in chronological order.

The government had a major opportunity to talk up its major projects policy and to put it on the public record so those wanting to know where the state is going could follow the debate. It is disturbing that that did not occur. Although the bill is administrative in nature in that it is designed to improve the efficiency of the major projects and tourism portfolio by transferring the functions of major projects and some staff from the Department of Infrastructure to the Department of State and Regional Development, it also allows the Secretary of the Department of State and Regional Development to be incorporated as a body corporate so he can operate independently for the benefit of the state. That sounds laudable and may streamline and improve the efficiency and management of that portfolio, but in reality it does little more.

Under the former government the existing arrangements worked outstandingly well. Ms Darveniza referred to the fact that the Office of Major Projects being part of the Department of Infrastructure had worked well; she acknowledged the previous arrangements worked well. All honourable members have conceded that the major projects policy of the Kennett government was an outstanding success, so why go through with all these changes? It makes sense to keep the Office of Major Projects within the Department of Infrastructure. As constituted it has a responsibility to manage state government projects, assets and liabilities, provide policy guidelines and ensure infrastructure is representative of community needs. Major projects are no different. They are designed in response to government policy and community needs and attitudes. The administrative changes are primarily to facilitate a ministerial change — that is, by taking away the Office of Major Projects from the Department of Infrastructure and incorporating it within the Ministry of Tourism and Major Projects within the Department of State and Regional Development.

I acknowledge the contribution of my colleagues, Mr Katsambanis and Mrs Powell, who spoke about the number of promises and commitments the Labor Party made leading up to the last election that had not been delivered. That is a disturbing trend. The state is on the tip of an economic iceberg which is about to melt, and it will melt more quickly with the introduction of draconian and interfering industrial relations law and government policy that does not allow for the development of macro policy. The government does not think or act big or ensure that Victoria remains on the move. It wants Victoria to remain as the place to be, and that is how it wants it to stay.

Members should consider the contrast between the former government's Agenda 21 policy and the current situation. Not only was every project that was part of that policy delivered, but all were delivered without additional debt to the state. That is a significant achievement. Major infrastructure projects were introduced, developed and delivered without additional liability to the state. The former Kennett government policy was lauded not only nationally but internationally as a benchmark for good government. It was a catalyst for improving the economic prosperity of Victorian citizens by creating significant projects and providing infrastructure so that Melbourne and Victoria were renowned as ideal places in which to invest. The projects created an economic climate which instilled confidence in the state and provided significant advantages.

The government has had an opportunity to outline its major projects policy, but it has failed to do so. By way of interjection Mr McQuilten referred to the redevelopment of Spencer Street railway station. Like all honourable members, I welcome the announcement but I welcome it cautiously and hope it is not just an isolated example. I do not mind that the Kennett government provided the impetus for the project through the initiative of a number of ministers, but I am

conscious that it is a public sector investment and although there will be benefits to the community it will not improve Victoria's competitiveness nationally or internationally. That is a disturbing trend.

As I said in my opening comments, the government is teetering on the edge of becoming draconian, antiquated and hamstrung by union-dominated policy so that the potential for Victoria to remain as the nation's leading state returning consistently high growth rates is in jeopardy. The government will need to prove this simple administrative bill will improve efficiency and benefit state-run assets and public sector growth. Key criteria are not developed by lip-service or name changes but by committed, consistent and responsive economic management and an approach to major projects through policy implementation that will significantly benefit the community.

The opposition does not oppose the bill but it puts the government on notice that it must ensure Victoria does not lag behind, but maintains its impressive growth rate and the prosperity achieved in recent years. The Bracks government is basking in the prosperity because of the excellent economic situation it inherited from the former government. The opposition puts the government on notice that it must continue the momentum and ensure that Victoria's national standing is in no way jeopardised.

The opposition does not oppose the bill but it would appreciate the government informing opposition members and the community on what it believes is an adequate major projects policy.

Motion agreed to.

Read second time.

Third reading

Hon. J. M. MADDEN (Minister assisting the Minister for Planning) — By leave, I move:

That this bill be now read a third time.

I thank the Honourables Peter Katsambanis, Kaye Darveniza, Jeanette Powell and Cameron Boardman for their contributions to the debate.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

WRONGS (AMENDMENT) BILL

Second reading

Debate resumed from 26 October; motion of Hon. M. R. THOMSON (Minister for Small Business).

Hon. C. A. FURLETTI (Templestowe) — I am pleased to contribute to debate on the bill. It is a short but significant bill that deals with the effect of contributory negligence in claims based on breach of contract and tort. The bill amends section 26 of the Wrongs Act.

Historically, the Wrongs Act was not so named because it is inaccurate or is in error, but because it deals with a number of areas where wrongs, as in inequities or injustices, occurred or were contemplated. Part I of the Wrongs Act deals with defamatory words and libel. Part IA deals with the liability of publishers associated with defamation and libel. Part II deals with the proof of loss of service in actions of seduction being unnecessary, presumably because it was accepted that if seduction were to occur of a young woman providing service to her family or master, it followed that it was unjust that the onus of proof of loss was on the master.

Part IIA deals with occupiers' liability, which has become an area of increased litigation, as many honourable members are aware. Part III deals predominantly with claims by dependants in respect of a wrongful act or a neglect causing death of a provider to those dependants. Part IV deals with contribution to damage in instances, for example, of the ability of a defendant to join third parties who have contributed to the alleged cause of damage. Part IVA deals with the abolition of the doctrine of common employment, an area of employer–employee relations that was significant in the workers compensation area.

Part V deals with the contributory negligence of parties. Part VA deals with assessment of damages. Part VI deals with damage by aircraft and matter dropping out of aircraft.

Part VII deals with the abolition of liability in tort for maintenance or champerty. I admit to honourable members that I had to go to the dictionary to determine what a champerty was, and it was interesting to find that a champerty is:

> The action of assisting a party in a suit in which one is not naturally interested, with a view to receiving a share of the disputed property …

Hon. R. M. Hallam interjected.

Hon. C. A. FURLETTI — I am pleased to hear that Mr Hallam is fully au fait with the meaning of champerty.

Hon. R. M. Hallam interjected.

Hon. C. A. FURLETTI — Mr Hallam has a French background and I have an Italian one. Part VIII deals with animals straying onto highways.

The purpose of going through the Wrongs Act is to indicate to the house that the act is a conglomerate of various wrongs. It gathers together a number of wrongs and deals with them in a legislative context.

The bill addresses section 26 in part V, which deals with contributory negligence. My investigation indicates that contributory negligence was invented in 1808 as a defence to the action of nuisance. It became a complete defence to actions of tort in negligence. I apologise to the house if the debate becomes somewhat technical, but it is very much a technical area and it is quite convoluted. I beg the house's indulgence in allowing me to get into some legalese and detail because it is the only way to explain why the bill is before the house.

Mr President, with his background, would appreciate that at one stage contributory negligence was a complete defence to negligence actions, and it arose predominantly in cases of personal injury. If somebody contributed even minimally to the cause of his or her own injury, the perpetrator of the major cause of the act causing the injury was exonerated from any liability for damages.

That, of course, became an exceptionally significant factor in workers compensation where in almost every instance the worker could not avoid, even to some minimal extent, contributing to his or her own injuries. So it was perceived that that was a particular wrong and the workers compensation employer–employee relationship was rectified in time through the workers compensation legislation and the no-fault compensation system.

It was more general than that, however — for example, contributory negligence in motor car accidents. If a party was contributorily negligent, that was a complete defence to the defendant in an action. Section 26 of the Wrongs Act was introduced and provided for the apportionment of liability in actions of tort. From 1928, when the provision was introduced into the original Wrongs Act, if a party contributed to the cause of the damage then the quantum of damages was apportioned according to the proportion of contributory negligence found. That situation went on for many years. With the law, the economy and relationships becoming increasingly complex, it was not unusual, particularly in instances of employment and in professional investment advice and the like — that is, those professional service areas — for there to be an almost indivisible blend of claims arising based under tort in negligence and also, of course, under breach of contract.

Possibly the best example one could use is the retaining of a solicitor to provide legal advice. I refer to the case of *Astley v. Austrust Ltd*, which was decided last year in the High Court, a fairly typical case where a corporate client retained a solicitor to provide legal advice. That retainer constitutes a contract. The solicitor's advice proved to be inaccurate, or wrong, and the company was entitled to sue the legal firm on the basis of negligence in the advice with which it was provided. Of course, the company also had a claim in breach of contract so it became fairly standard in actions such as those to express the claim in both breach of contract and in negligence. In Australia a 1964 High Court case laid the position that it was appropriate for actions to be framed in that way. Over the past 30 or 40 years there have been divergent views in the various judgments that have been handed down as to whether it is possible to use the apportionment provisions of the Wrongs Act in cases where there was solely breach of contract.

A significant House of Lords case in England was influential in the establishment of law in that area in Australia and has also been taken into account. I refer to the case known as Vesta's case, which set the pattern. It was a similar but not identical case to that of Astley and was influential in decisions reached in the various jurisdictions throughout Australia.

The purpose of the bill arises as a result of the judgment of the High Court of Australia in *Astley v. Austrust Ltd* last year. In that case the High Court determined that the apportionment provisions in section 26 for liability for contributory negligence do not apply to cases wherein breach of contract applies. I could detail at length the judgment of the High Court; suffice it to say that the learned court in reaching its conclusions said in the majority judgment:

> In our opinion, the case law in this area is unsatisfactory. It displays substantial flaws of reasoning and is overall in a state of confusion.

I do not need to detail what the state of the law was in Australia when the case was eventually brought before the High Court.

The High Court dealt with a similar provision to section 26, similar enough for its decision to directly

affect the provisions of that section. Because of the definition of damage in section 25, which includes loss of life and personal injury; because of the definition of fault, which refers specifically to negligence or breach of duty that gives rise to a liability in tort; and because of the provisions of section 26(4) that cover a person who dies, partly as a result of his own fault and partly the fault of others, all those elements were interpreted by the High Court in terms of strict statutory interpretation as relating only to the claim which was based on tort. Therefore, the court found if there was a combined cause of action involving breach of contract and tort that were concurrent and co-extensive, the element that related to the breach of contract would not have the apportionment provisions applied.

After the result in the High Court, the position was that if the claim were found to be based on contract, even if there had been contributory negligence, there was no apportionment. For the sake of argument, if there had been 99 per cent contributory negligence, the claim would succeed without apportionment. As a result of that decision, a number of representations were made to the government and to the Standing Committee of Attorneys-General, which met and decided to produce template legislation, which is before us tonight, on the understanding that each of the various jurisdictions throughout Australia would introduce similar legislation.

I understand from the second-reading speech that the Law Institute of Victoria contributed to the drafting of the bill and approves it and that the Insurance Council of Australia was very anxious to ensure that the state of hiatus should be rectified as soon as possible. For that reason the Liberal opposition does not oppose the bill and, in fact, supports it.

I place on record — just to maintain the statistics — that the bill contains a section 85 provision. It also contains a retrospective provision, which is something the Liberal opposition does not normally accept. However, the purpose of retrospectivity in this case is to seek to minimise the effect of the Astley decision in the High Court, so little objection can be taken to it. Its purpose is to rectify the wrong that would otherwise arise if the decision of the High Court were to have full effect. It is important to note, however, that the bill will not affect any case in which the court has given a judgment or made a decision.

On the basis that the bill is an effort, as I said, to rectify a wrong, the Liberal Party supports it and wishes it swift passage.

Hon. D. G. HADDEN (Ballarat) — I support the Wrongs (Amendment) Bill. It is a significant piece of legislation, despite consisting of just eight clauses.

The Wrongs Act of 1958 contains provisions that deal with apportionment of damages where a plaintiff is held to be partly responsible for his or her own loss — that is, contributory negligence. The apportionment provisions in the Wrongs Act require a court to assess the blame of the parties and reduce the plaintiff's award of damages proportionally. If the plaintiff is found to be responsible for having contributed to his or her loss, the damages are reduced by the proportion found by the court.

The common law recognises that a person may owe an equivalent duty of care both in tort and in contract in a range of circumstances — for example, a relationship between an employer and an employee, and similarly various professional service relationships that involve concurrent liability for negligence in tort and breach of contract.

A decision was brought down by the High Court of Australia on 4 March 1999 in the case of *Astley v. Austrust Ltd*. That case concerned the South Australian equivalent of the Victorian Wrongs Act. Section 27A in the Wrongs Act of South Australia was equivalent to sections 25 and 26 of the Victorian legislation.

Before the High Court decision it had been generally accepted that apportionment provisions applied where there was a concurrent liability in tort and contract. The High Court strictly interpreted the words used in the South Australian act and brought down a decision that they were not applicable to actions in contract. That was a 4:1 decision in a majority judgment of Chief Justice Gleeson and Justices McHugh, Gummow and Hayne, with Justice Callinan the dissenting judge.

The High Court went through a history of the Wrongs Act in its decision and stated that:

> The defence of contributory negligence was available in an action for damages in tort; as will appear, it was not available as a defence in contract.

It strictly interpreted the definition of fault that appeared in section 27A(3) of the South Australian Wrongs Act. It also construed the effect of section 27A by saying that:

> In many cases, every argument in favour of a particular construction can be met with a plausible counter argument. But so far as issues of statutory construction go, on any fair reading of the apportionment legislation against the background of the mischief it was intended to remedy, it is

> clear to the point of near certainty that the legislation does not and was never intended to apply to contractual claims.

The High Court acknowledged that governments might want to amend the legislation in accordance with that important decision and said that:

> Perhaps the apportionment statute should be imposed on parties to a contract where damages are payable for breach of a contractual duty of care. If it should, and we express no view about it, it will have to be done by amendment to that legislation. If courts are to give effect to the will of the legislature, it is not possible to do so having regard to the terms of apportionment legislation, based on the United Kingdom legislation of 1945, and the evil that it was designed to remedy.

The High Court concluded that:

> … a construction applying the apportionment legislation to contract cases is contrary to the text, history and purpose of the legislation.

The March 1999 High Court decision in *Astley v. Austrust Ltd* had the effect that if a plaintiff could frame his or her claim solely in contract, the apportionment provisions of the Wrongs Act would not apply. That would mean that plaintiffs who were found to be guilty of contributory negligence would still be entitled to the full extent of the claim without any deduction for their own contribution to their loss. That is clearly unfair and inequitable. People who contribute to their own loss should from a commonsense point of view not be paid for that proportion of blame.

The Standing Committee of Attorneys-General agreed in July of this year to introduce complementary amendments to redress the effect of that important High Court decision. Consultation was undertaken with the Law Institute of Victoria, the Victorian Bar Council and a number of bodies including the Insurance Council of Australia and the Australian Medical Association. It was agreed in line with the High Court decision that the Wrongs Act should be amended accordingly.

Importantly, under clause 7 a section 85 statement is contained in proposed section 27 as it is the intention of proposed new section 26 to amend, alter or vary section 85 of the Constitution Act. The Scrutiny of Acts and Regulations Committee in its *Alert Digest* No. 9 of 2000 notes:

> … the clarifying nature of the amendments made by the bill in the sense that they state the law in Victoria as it was thought to exist prior to the High Court ruling in *Astley v. Austrust Ltd*.

The Scrutiny of Acts and Regulations Committee also notes that it is:

> … of the view that the proposed section 85 provision is appropriate and desirable in all the circumstances.

The committee noted the comments made in the second-reading speech on the necessity to limit the jurisdiction of the Supreme Court to ensure a fair outcome as a result of the High Court decision.

So that the High Court's decision is minimised the provisions will have a retrospective effect, and that retrospectivity is contained in clause 8, which inserts new section 28AA into the Wrongs Act to provide that the provisions will be retrospective except where a court has previously made a decision on the claim or the parties have previously agreed to settle the claim.

As Mr Furletti noted, retrospectivity is not something lawyers are generally inclined to agree to because it alters the ground rules for existing actions. However, in this case it is important to set the record straight in line with the High Court decision, and it is on that basis that that limited retrospectivity is included and introduced into the act.

The bill will achieve fairness in the apportionment of damages where blame or contributory negligence is a factor. It will restore the community's confidence in the state of the legal system so that a party will be held accountable and, having been found by a court to have contributed to his or her own loss, responsibility for the damage is apportioned.

As Mr John G. Fleming, that famous author of the *Law of Torts*, said in his eighth edition:

> A plaintiff is required to conform to the same standard of care as a defendant.

It is on that basis that I commend the bill to the house.

Hon. R. M. HALLAM (Western) — I am delighted to contribute to the debate and report that the National Party is absolutely relaxed about supporting the bill. The bill has but one single purpose, which is succinctly captured in clause 1, which states:

> The purpose of this Act is to amend the Wrongs Act 1958 with respect to the apportionment of damages in claims arising from breach of contract.

The bill is relatively simple, and it is on that basis that the National Party is happy to signify its support. I was going to offer some comments by way of background but in my research I became confused. I wanted to quote part 5 of the Wrongs Act. When I went to the Wrongs Act it was unclear whether it was part 5 or part V. When I read the table of provisions I learnt that the section I wanted was part 5. I went to the second-reading speech and saw it was written as part 5,

yet in the act itself it is part V. That was not very helpful.

When you get through all that, it states under the heading 'Liability for contributory negligence':

> (1) Where any person suffers damage as a result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but —

I underline the word 'but' —

> the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable, having regard to the claimant's share in the responsibility for the damage.

It is a very clear and logical circumstance — that is, a person should not be compensated for damage suffered to the extent that the person himself or herself has actually contributed to that damage. And there we have the concept of contributory negligence.

In other words, the courts shall take on board the extent to which a person claiming has contributed to the damage suffered and make an assessment as to the nature of that loss when awarding damages to the person claiming loss.

For instance, if a loss is established by a claimant in respect of negligence, that loss then becomes the notional damage and it is reduced by the extent of the contributory negligence; and the court thereby awards the balance only. I suggest to the chamber that that is fair, reasonable and pretty well understood.

It was presumed that that principle of contributory negligence would apply both to liability under a duty of care in respect of tort as well as a duty of care in respect of contract law. That has been a well-established presumption under the law of the land.

Indeed, no distinction has been drawn until this point on the circumstances a person might face relating to his or her duty of care both in tort and under contract. The principle of law involved is the presumption that duty of care should apply simultaneously and concurrently. Most commonly that combined duty of care was understood to apply in respect of contracts of employment.

Therefore, there is a relatively relaxed and understood position in the eyes of the law. However, along came the High Court in *Astley v. Austrust Ltd.* It said, 'No, you are wrong. The Wrongs Act is not applicable to contract law'. Admittedly that case related to the South Australian Wrongs Act, but we now have authoritative interpretation which honourable members know will apply to the legislation of Victoria. The bottom line is that if a plaintiff is able to frame a case under contract law, no set-off shall apply for contributory negligence.

Therefore the plaintiff in that case gets 100 per cent of the assessed damages, irrespective of whether that person contributed to the damages suffered. Honourable members would all understand, I hope, and agree that that is not fair, and it was not intended by the original legislators.

The litigants in this case might crow as a result of their win but in that context there is no Santa Claus. If in fact greater damages are awarded as a direct result of this change in assumptions that will be reflected in the insurance premiums, and everybody in the community will pay as a result. The bottom line is that somebody has to pay the piper.

I read the case of *Astley v. Austrust Ltd*. It runs to many pages, but I did actually read it. I have some sympathy for the learned judges in determining that case, because Austrust, in this instance, engaged Astley as a solicitor to give the firm advice on precisely the issue that led to the grant of damages.

The action was based on the extent to which the losses beyond the value of the trust for which that company had become trustee would fall upon the company taking over. The question was whether the company, having accepted the role of trustee, should have accepted that office without excluding personal liability beyond the value of the trust. That debate led to the High Court case I cited.

The company was unhappy because it said to the solicitor, 'Hang on, we engaged you to give us advice on precisely the issue you now say is the subject of our contributory negligence'. That was the background to the case. The solicitor said the company should have protected itself to the extent that it could limit the damages as the circumstances unfolded. In any event, the High Court said contributory negligence should not apply under contract law.

Consequently, a clearly inequitable situation applied. Under the circumstances established by that High Court challenge the bottom line is that a party that can successfully sue for damages under contract law has no set-off in respect of contributory negligence.

That led to the Standing Committee of Attorneys-General resolving to address the deficiency, which had been anticipated by the learned judges in the High Court in the delivery of their judgment. I highlight but one of the several quotes to which I could refer. I

refer the house to page 157 of the judgment. In the dicta of that case the court states:

> However, the respondent sued in contract as well as in tort. It —

that is, the respondent —

> was entitled to recover for the whole of the damage that it suffered because damages awarded pursuant to a claim in contract cannot be reduced by reason of conduct that constitutes contributory negligence for the purposes of the Wrongs Act. The history, text and purpose of the Wrongs Act make it clear that that act was not intended to apply to claims for breach of contract.

The judgment talks about the argument that evolved in the case. In any event, it is clear that the message from the High Court was that Victoria needed to carefully look at its legislation insofar as its assumption applied to the Wrongs Act and its application on issues of contract.

The bill is designed to fix that situation. Where a breach of contract occurs the person who suffers damage must do everything possible to minimise the loss to receive 100 per cent damages, and a failure to do so may now constitute contributory negligence and therefore result in a reduced award of damages based on the degree of fault. The National Party says that is a rational shift in the law and worthy of support.

The only complication that then arises is the date of effect of that change. The National Party thought carefully about the provisions of the bill and the extent to which they were outlined in the second-reading speech. The minister acknowledges it is a difficult question because it has to be determined whether the bill should operate retrospectively. The house knows that is a sensitive issue in the eyes of legislators. The government sought the views of the legal profession on the issue. That profession supports the form of clause 8, which deals with the way the changes shall be introduced. The second-reading speech states:

> Clause 8 provides that the clarifying amendments made in clauses 4, 5 and 6 apply to wrongs that occurred prior to the commencement of this bill. However —

the following is important —

> the new provisions will not apply where a court has given judgment in a matter or where the parties themselves have agreed to settle a matter …

The National Party applauds that determination at law because that quarantines so far as possible the effect of the High Court's decision about the application of the Wrongs Act on a claim under contract law. The National Party says an anomaly is established by the High Court's decision, which, it agrees with the government, needs to be addressed by various jurisdictions. On that basis, the National Party supports the bill.

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

Bells rung.

Members having assembled in chamber:

The DEPUTY PRESIDENT — Order! I am of the opinion that the bill requires to be passed by an absolute majority of the whole of the number of the house. In order that I may ascertain whether the required majority has been obtained, I ask honourable members supporting the question to stand where they are.

Required number of members having risen:

Motion agreed to by absolute majority.

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

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 Carlo Furletti, Dianne Hadden and Roger Hallam for their timely and succinct contributions to the debate.

The DEPUTY PRESIDENT — Order! In order that I may ascertain whether the required majority has been obtained, I ask honourable members supporting the question to again stand in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

Remaining stages

Passed remaining stages.

HERITAGE (AMENDMENT) BILL

Second reading

Debate resumed from 26 October; motion of Hon. J. M. MADDEN (Minister assisting the Minister for Planning).

Hon. P. A. KATSAMBANIS (Monash) — The bill largely makes administrative and procedural changes to the Heritage Act. In the second-reading speech the minister strongly implied that the changes are a direct result of recommendations made in a national competition policy review of the Heritage Act. Although it is true that an independent national competition policy review was conducted into the Heritage Act during 1999 and this year, it is probably fairer to say that the changes, rather than being a direct result of that review and its recommendations, were stimulated by the review.

The review committee recommended that practice notes be prepared and used by the Heritage Council when making determinations under the bill. The government's response to the review and its recommendations was to accept those practice notes. I am uncertain what happened. The government does not spell it out in the second-reading speech. However, I assume that by introducing the bill the government has subsequently determined that rather than having practice notes it will introduce the changes recommended by the review of the Heritage Act. I welcome clarification during the debate if the practice notes procedure has been dispensed with and replaced by direct amendments to the bill because in such cases, particularly in areas such as controversial heritage cases, it is important that legislation is in place for clarity and is not overshadowed by a series of practice notes and directions.

There are examples, particularly in the federal sphere. The Income Tax Assessment Act has largely become an enabling document and taxation rulings have largely replaced legislative provisions with administrative provisions. If the responsible minister can clarify that the practice notes procedure has been abandoned and replaced by legislative amendments I and every member in the chamber would welcome it.

The bill is strong on the heritage protection and preservation that the previous government established through the Heritage Act in 1995. It goes to the credit of the former Minister for Planning, the Honourable member for Pakenham in the other place, that the state has such a regime of heritage protection. That legacy left by the honourable member for Pakenham will stand the Victorian community in good stead for the future. It will ensure that important cultural assets are preserved through the operation of the Heritage Act.

The Heritage Act deals with the listing of premises and items that are on the Victorian heritage register, objects that are deemed to be of considerable heritage significance to the state as a whole. We should not confuse the regime introduced by the bill with a completely separate regime that provides heritage protection of structures, premises and items that are deemed to be of local heritage significance. That is done by separate planning scheme amendments established under the Planning and Environment Act.

It is clear in my dealings with the public of Victoria that the majority of controversies that come under the heading of heritage protection are not controversies directly related to the Heritage Act that is being amended. It is the myriad local heritage protection schemes, heritage overlays and the urban conservation overlays that come under the Planning and Environment Act to preserve heritage at a local level that cause local community angst. There is no easy solution. The bill does not affect it, but it is something on which honourable members should comment when talking about heritage protection. It is not only the Heritage Act and the amending bill that provide heritage protection in this state but also the Planning and Environment Act.

There has been significant consternation in the Monash Province about the process undertaken for listing premises, properties and other items on the local heritage registers and providing heritage overlays, urban conservation overlays and the like. There are, as often happens in these cases, two distinct groups — those who believe there should be significant heritage preservation and those who are opposed to it for various reasons. One of the reasons that is often cited is the lack of depth and quality of the process that determines a particular heritage listing.

It is not the concept of heritage preservation that is often brought into question but the specific issues relating to a particular order or classification and the fact that research was not carried out properly. A group in my local area called the Stonnington Democratic Group has highlighted significant failings and other anomalies in the local heritage studies that placed buildings built in the past 12 to 18 months on the heritage register.

Victoria probably has a fair way to go when it comes to local heritage protection. In relation to this bill and the principal act, the past five years have proved that although there has been debate on various properties

and listings, in the main the public of Victoria has accepted that there are a number of premises and items, including such things as shipwrecks, that rightly should be preserved as significant cultural icons for future generations as well as current generations to enjoy.

The bill with its administrative changes ensures that — as the national competition policy review recommended — the act is transparent and the processes under it are efficient in dealing with heritage issues. Most of the changes are administrative and procedural, but one that is not allows the director of the Heritage Council to consider the impact of permanent proposals on the heritage significance of neighbourhood properties when the director is deciding on an application relating to a property listed under the Heritage Act or a permit to do something for which a permit is required. It extends the range of considerations that are taken into account beyond the subject property to which any permit relates to look at the heritage significance of neighbourhood properties and how they will be affected by any changes.

Another provision allows inspectors to enter registered places where those registered places are a residence to search for evidence of the commission of an offence. I have received representations that it is unfair and unreasonable. As a matter of public policy, any time inspectors are empowered to enter a residence we must ensure that appropriate safeguards are put in place. On balance, under the provisions of the bill, inspectors have to apply for search warrants to enter residences, which affords significant protection for the occupiers and owners of those residences and also ensures that inspectors cannot go on fishing expeditions. They can only inspect for the items that are permitted to be inspected under the search warrant.

The process of applying for and producing a search warrant when entering premises, particularly residential premises, is well accepted in our law and it is to be hoped will provide significant protection for people the subject of such inspections under the proposed system.

As I said, in all the bill has been introduced in response to and through the stimulus of the national competition policy review. It enhances and builds on the heritage provisions introduced by the previous government. It will ensure that the Victorian public can continue to have confidence that the procedures of the Heritage Council will result in fair and equitable outcomes and in the protection of valuable pieces of our history and culture for future generations to enjoy.

Hon. G. D. ROMANES (Melbourne) — I am pleased to speak on the Heritage (Amendment) Bill, which is a very important measure dealing with the state's heritage. Its purpose is to improve transparency in the administrative decision making of the executive director of Heritage Victoria and the Heritage Council and to improve the efficiency and effectiveness of the Heritage Act by other minor and technical amendments.

As the previous speaker said, many of the changes made by the bill arise from the findings of the national competition policy review undertaken in 1999–2000. The review confirmed the soundness of Victoria's current heritage legislation and concluded that it provides net benefits to the state. After investigation of alternative legislative frameworks for heritage, the review concluded also that there was no preferred alternative to the Victorian framework that the government should look to for further improvement. However, it recommended that further action should be taken to bolster certainty and confidence in the administration of the Heritage Act.

Some of the changes proposed by the bill will make improvements, among them the clear statement of the decisions available to the executive director of heritage regarding registrations and an extension of matters to be considered when making recommendations.

Clause 3 substitutes a proposed new section 32 and provides for the equal treatment by the executive director of Heritage Victoria and the Heritage Council of the right to include or not include a place or object in the heritage register, after due consideration.

Clauses 4 and 5 address the need for a statement to be provided to affected parties. Clause 4 amends section 34 of the principal act and clause 5 inserts proposed new section 34A. Together they provide that a statement must be given to the owner and nominator of a place or object and to the relevant municipal council whenever the executive director makes a recommendation to the Heritage Council, whether the recommendation is to include or not include a place or object in the heritage register.

That statement must include the terms of and reasons for the recommendation and an assessment of the cultural heritage significance of the place or object. The statement must also advise the time frame for decision making on the recommendation, which is 60 days from publication of the recommendation under section 35. The statement must also advise the relevant parties that they may make a submission to the Heritage Council and even request a hearing and must provide information about procedures for submissions to the Heritage Council and the decision-making process. The

time frames in the bill are designed to provide clarity and through that to give certainty to the understanding of the community about the decision-making processes.

Those provisions are very important because, as the previous speaker said, often the community can be divided on the protection of heritage and the impact that may have on an individual property or a neighbourhood and therefore transparent decision making is very important. The processes set out in the bill enable representation to be made by parties affected by the proposed recommendations and decisions of the Heritage Council.

All honourable members know that many parties may wish to disagree with the executive director of Heritage Victoria, even with regard to a recommendation that a place or object not be included in the heritage register. The fact that equal treatment is being given in the bill to recommendations to include or not to include places and objects in the heritage register highlights the changes in views and attitudes that have taken place in the community over the past decade. I have had first-hand experience of the growth in understanding of the importance of heritage and the education of the community about the role heritage can play in the cultural and economic life of Victoria.

When I was first elected to Brunswick council in 1991 it was in the process of completing the Brunswick conservation study, which was a fairly exhaustive study of important heritage properties and precincts in that municipality. There were many months of consultation on proposed heritage controls. Those were not draconian or heavily prescriptive controls but were designed to make sure there would be provision for the council to ensure full consideration of the effects on Brunswick's heritage of a permit application, whether for renovations or demolition, and to allow the local government of the area to decide what should be retained and what might be allowed to change over a period.

Heritage was very controversial in 1991 and there was a lot of community debate about and many objections to the proposed heritage controls that the council was seeking from the state government of the time. Those objections were dealt with by consultation and discussion, and sometimes achieved agreement. They were also dealt with through the panel process. In a few instances the council withdrew recommendations that could not garner community support. One of them was for a public housing area in respect of which the community was not prepared to support a particular recommendation for heritage controls at the time.

Although in 1991 the issues were very controversial, when I returned to the Moreland council in 1996 I could see that the amalgamated council, which brought together the former cities of Brunswick, Coburg and part of the former Broadmeadows, was reaping the benefit of the political pain, particularly that suffered by the Brunswick council in 1992 when the final decisions were made on the heritage scheme. Brunswick had demolition controls in place, and although the Coburg area also had a heritage scheme in place it did not have demolition controls. Over the past five years or so Brunswick has enjoyed a degree of protection for its heritage areas not enjoyed by other parts of the municipality because of the wave of inappropriate development that has swept through various areas in that time.

Honourable members can compare that situation with the controversies that have raged in other municipalities and are still raging currently. In Bayside debate is still taking place about whether to have voluntary heritage controls or municipal controls. The lack of leadership on decision making in those areas has led to the loss recently of a very important house in Church Street, Brighton, which was of great significance to people in the community.

There have been great changes in attitudes on the issue of heritage controls. and the bill will serve to support the growing desire of the community to protect its heritage.

I will refer to other important elements of the bill. Clause 14 of the bill amends section 73 of the principal act. It provides for further matters to be taken into account by the executive director of heritage when determining an application for a permit. In particular proposed subsection (1A) provides that the executive director may consider the extent to which the application would affect the cultural heritage significance of any adjacent or neighbouring property which is subject to a heritage requirement. I believe it is an important step forward that prospective changes to heritage properties be considered within the context of the neighbourhood and community heritage that exists.

Clause 11 substitutes proposed new section 42, which provides for decisions of the Heritage Council in relation to all recommendations of the executive director of Heritage Victoria. Proposed new section 42(1)(d) provides that in a situation where the Heritage Council refuses to register a place it may refer the recommendation and submissions to the relevant planning authority for consideration for an amendment to a planning scheme or for other steps to be taken

under the Planning and Environment Act of 1987 or by other means to protect a place or an object.

In considering that provision I am drawn to think about something that happened last night after I left Parliament and went home. I read a letter from a constituent, Ms Laurin Ford of David Street, Brunswick, who did a lot of work last year investigating the history of the property next door to her at 42 David Street. Ms Ford discovered through her research that 42 David Street is the home of one of the first manses in the area and she felt it was of particular significance. She sought to have the property placed on the heritage register and nominated it to the Heritage Council. The council resolved that the house was a place of local significance but decided not to register it with the historic register because it saw it more as a place of local significance rather than of state significance.

The council referred the property to the relevant planning authority in June this year. In this case that planning authority was Moreland City Council. Ms Ford wrote to me because she was concerned that at the end of September no action had been taken to carry out further heritage assessment. However, on investigation I found that a heritage assessment is currently under way and that a further investigation is being made of the significance of the property and as to whether it should be registered on the local planning scheme.

The important factor is that in the past few days an application has been made to the council for two double-storey residences on the site. Ms Ford feared that the worst may happen because currently no controls are in place. She feared that the building with its important links and cultural significance would be lost to the community.

The power of the Heritage Council to refer nominations on to another planning authority raises the issue of the relationship between the state and the local heritage systems. Mr Katsambanis remarked that most of the heritage decisions will ultimately be made at the local level because only a small proportion of places or objects of significance will make it to the Victorian heritage register. Perhaps there is a need for further consideration in the future of a requirement for a response to such a referral within a time frame that will provide quick and effective protection of such heritage assets.

The bill provides many other improvements to the heritage system. Among them is an obligation on owners of places on the heritage register, to give clear directions for notification regarding proposed demolition and time frames for notifying the executive director of Heritage Victoria. Clause 20 inserts proposed sections 150A to 150D, which give powers to inspectors to search a place or a residence for evidence where an inspector has reasonable grounds to believe that a breach of the act has occurred.

Other issues were raised in the second-reading debate in the Legislative Assembly, one of which was demolition by neglect, which was raised by the National Trust in Geelong. It said that in many cases the demolition of historic buildings occurred because they were left to deteriorate and suffer through neglect, and that eventually demolition became inevitable. The government has undertaken consultations on the issue. Those consultations are ongoing and honourable members should expect some attention to be paid to the matter in the future.

The honourable member for Wimmera in the other place raised a concern that country Victoria was not represented on the Heritage Council. I understand that two council members and one alternate council member are from country Victoria — from Buninyong, Warrnambool and Port Fairy. One country member is the deputy chairman of the council. I wanted to put that on the record and correct the misunderstanding of the honourable member for Wimmera in the other place.

The bill tidies up and improves the administration of the Heritage Act and complements the Planning and Environment Act. It fits within the government's commitment on the preservation of heritage. I direct the attention of the house to the heritage strategy released by the government earlier this year, which provides a vision for heritage and sets out a five-year time frame. It stresses that partnerships must be put in place to give effect to the objectives and commitments of the strategy.

The Bracks government recognises that heritage is not just about big, iconic public buildings but is also about a lot of things that are valued in the community, such as shipwrecks, industrial buildings and other parts of the cultural history of the state and its communities. Whatever can be done to strengthen the legislation that governs decisions about what the community decides to keep and what it allows to go in the passage of time is important. I commend the bill to the house and wish it a speedy passage.

Hon. E. J. POWELL (North Eastern) — I am pleased to contribute to the debate on the Heritage (Amendment) Bill and indicate that the National Party does not oppose it. The bill makes a number of

amendments to the Heritage Act but its main purpose is to improve the transparency in the decision making of the executive director and the Heritage Council in relation to whether or not an object or place is to be included in the heritage register. It makes a number of other amendments to improve the efficiency and effectiveness of the act.

The Heritage Act was introduced in 1995 by the former Kennett government and was designed to consolidate Victoria's heritage provisions in one act. That process was clear, simple and open to the community. The act was amended in 1997 to correct a number of technical matters, but it was recognised then that the act streamlined heritage issues and made them clearer.

As stated in the second-reading speech, the bill is introduced in response to an independent national competition policy review of the Heritage Act carried out by Freehill Hollingdale and Page during 1999–2000. The former government can feel very proud of the findings of that review. It confirmed the soundness of the current heritage legislation and stated that the act conferred net benefits on the community.

The review looked at many other heritage protection models and said it could find no preferred model over the one Victoria had put forward. The Victorian model is one of the best. The review identified a number of actions that could be implemented to reinforce certainty and confidence in the system. That is important because heritage protection is something we should all strive towards.

I thank Wendy Clancy, the liaison officer from the office of the Minister for Planning, for organising a briefing with the honourable member for Wimmera in the other place and me. Sometimes it is difficult for National Party members to obtain briefings from government departments because we live so far away. The honourable member for Wimmera lives 3½ hours away and I live 2½ hours away. It is difficult for us to get to Melbourne at the same time. I thank Wendy Clancy for working within our time constraints and making sure we had a good briefing. Mike McIntyre, the manager of policy and strategic development at Heritage Victoria, attended the meeting and went through the bill in great detail.

The Honourable Glenyys Romanes said there were country people on the Heritage Council. She is right; there are three members on the council. I made inquiries at the briefing and was told that they were not certain how many country members were on the council, but there were alternate members on it. We were not sure whether they attended every meeting or attended just sometimes. The council sent me a copy of the annual report, and three country members are making decisions and providing strong input. So the comment was correct and it is pleasing to see there are three country members on the Heritage Council. I have been informed that they are good contributors to the council.

Many of the clauses in the bill deal with procedural and technical amendments. A number of clauses deal with time lines, which is important. I have spoken to councils and organisations that deal with the Heritage Council. They are pleased that time lines have been specifically dealt with because previously people were frustrated by some of the delays.

Clause 5 inserts a new section in the bill which provides that:

> If the Executive Director recommends to the Heritage Council that a place or object should not be included in the Heritage Register, the Executive Director must give a statement in accordance with this section to —
>
> (a) the owner of the place or object; and
>
> (b) the nominator of the place or object; and
>
> (c) the relevant municipal council.

The statement must be in writing and must set out the terms and conditions of the recommendation and an assessment of the cultural heritage significance of the place or object. The statement must advise the owner or nominator that the Heritage Council will make a decision on the recommendation after 60 days from the date of publication of the recommendation. The owner may make a submission to the Heritage Council within that 60-day period and request a hearing.

Clause 6 provides that any recommendation of the executive director in relation to a nomination must be published in a newspaper that is circulated in the area in which the nominated place or object is located. That is very important because it gives people in the community a chance to look at what is going to go before the register and to have some input into what they consider to be of local or state significance about that object or building.

As the Honourable Glenyys Romanes said, it is important for councils to get involved and to have closer liaison with local municipal councils and the Heritage Council. At a local level there are often many conflicts between councils, and it is important that there be close liaison with the Heritage Council. A number of amendments in the bill stipulate that there will be a closer involvement between councils and the Heritage Council because if something is not going to be

accepted as being of state significance it can be referred to as being of local significance.

Clause 11 deals with that issue. It provides that if the Heritage Council refuses to register a place or item it may refer the recommendation to the relevant planning authority, which is usually the municipal council. The council can then decide to put it on its planning scheme or under the Planning Environment Act to protect that object or place.

Clause 15 amends section 84 of the principal act to provide that:

> … a responsible authority, having first obtained the written consent of the Executive Director, may, by instrument, sub-delegate to an officer of the responsible authority any of the Executive Director's functions under this Division which have been delegated to the authority.

It is an important inclusion because the amendment means that instead of the council as a whole making a decision, where the matter is of a minor or insignificant nature the council can delegate functions to an appropriately qualified and skilled officer with the consent of the executive director. This should reduce time lines within councils and relieve the frustrations that communities often deal with when they are being held up because a council is too busy to consider a heritage listing, or it gets bound up with some of the obligations councils have. It means that now councils can nominate somebody else with the required skills and expertise, and that person can consent to or disallow the application.

The bill also improves service delivery to the public because it means that submissions and nominations for buildings and objects and so forth are not going to be left on a planning director's table. Usually heritage places need to be listed fairly quickly.

The former coalition government went to the last election with a policy on its commitment to Victoria's heritage protection. There was a commitment to continue to direct resources and energy into the development of local government as a critical player in the delivery of heritage protection throughout the state. The former government, through Heritage Victoria, contributed $500 000 over 12 months for the municipal heritage studies and a further $250 000 to support the employment of heritage advisers throughout Victoria. The policy also stated that beginning in 1999–2000 a further $15 million was to be committed to fund a broader public heritage program over three years. This program was to make funds available to councils for their own heritage asset management program. Councils have been able to use those types of funds to complete their heritage asset management program, and many councils in North Eastern Province have completed their asset management programs.

When I was reading through the Heritage Council's annual report for 2000 I found to my interest that a number of the north-eastern councils had received funds. The City of Greater Shepparton had received $15 000 in funds from Heritage Victoria for stage 1 of the preparation of an initial study on the environmental history of the city. Shepparton has a unique environmental history because of immigration there. It has a huge multicultural population and has grown on the back of irrigation. Much of Victoria's food, fibre and fruits are produced with the use of irrigation, and before irrigation was implemented the land would have been used mainly for sheep and wheat. Because of irrigation the Goulburn Valley is now known as the food bowl of Australia, and it is proud to have that heritage. Agriculture has also contributed greatly.

The council is now looking forward and has applied to the Heritage Council for $25 000 for stage 2 of the project. Council has agreed to contribute $20 000. That sum will enable the council to identify the assets and put them on to a heritage listing to compile a heritage overlay. I hope the Heritage Council will support that funding for the City of Greater Shepparton.

Shepparton has also supported another funding program under the public heritage program for Dhurringile Prison, which is one of four similar mansions in Australia. They are listed on the state heritage register because they are of state significance. Dhurringile is a minimum security prison and funds are needed to undertake restoration works on the building. I look forward to receiving support from the Heritage Council for funding for the restoration of that magnificent building.

The Alpine Shire Council received $5000 from the council. The Campaspe Shire Council received $8000 to support a heritage adviser. As I said, the former government put in a lot of money to support heritage advisers to give councils experience at a local level. The heritage adviser can give property owners and commercial tenants advice about heritage area overlays and so forth. In Campaspe shire there are already heritage overlay areas in Echuca, Rochester and Rushworth. The heritage officer gives advice to council officers in connection with planning scheme applications and other heritage matters.

As many honourable members know, Echuca has a rich heritage and cultural history. It has undertaken a unique initiative at the moment in that it has received funding

from Heritage Victoria to put plaques on historic buildings. The plaques indicate how old the building is, who the original owners were and who lived there. One can take a heritage walk through Echuca and look at some of the old buildings, find out how old they are and who used to live there.

When I was a commissioner of the Campaspe shire not all people were happy to go onto the heritage listing. A number of people whose homes were to be listed locally on the heritage history overlay objected because they thought they would not be able to afford some of the restoration works. If they wanted to restore a window it had to be done in the original style. If they wanted to paint the outside of a house the paint had to be of a specific colour. Some people were not happy to be put on those listings. However, when we told them they could get grants from Heritage Victoria to complement or supplement the works they were more than happy to be listed and said they felt proud to have their houses on the listings.

The Indigo Shire Council received $7500 to assist with the employment of a heritage adviser. It has completed its heritage study and has identified about 2000 sites. The Indigo shire contains the wonderful historic gold rush towns of Beechworth, Rutherglen, Yackandandah and Chiltern. Over two years $100 000 has been received as part of the public heritage program to restore the Queen Victoria Gardens in Beechworth back to their original glory, involving the restoration of some of the exotic trees that are on the state listings. The locals tell me that Beechworth was the first seat of government in Victoria and that gold was discovered there in 1852. They also say it was really 1848. There is some dispute about when gold was found in Beechworth.

The second-reading speech discusses the state heritage strategy launched by the Minister for Planning on 26 May at Parliament House. This strategy was initiated by the former coalition government, and comments by the chair of the Heritage Council, Catherine Heggen, attest to that. In part her report states:

> I must also recognise the support of the former minister, the Honourable Robert Maclellan MLA, who originally endorsed the exercise to develop this strategy and supported it throughout. I believe, therefore, that we can honestly say that this document has bipartisan political endorsement and its strategic direction should continue to be given wide political support.

This is a bipartisan report because the former government put it in train.

The bill makes a number of amendments to the powers and obligations of inspectors. It provides for an inspector to apply to a magistrate for a search warrant in relation to a registered place that is also a residence. That is a unique example where a building is registered but people also live there. Before getting a warrant, the inspector must have a prima facie reason for the inspection and must specify the reason. The warrant must be acted on within seven days, and there is a confidentiality section in the provision that specifies the limits and requirements on the use of the information that is gained by inspectors in the exercise of their powers. Therefore, the information gained on entry into homes or houses or from different sites is not able to be used other than in the course of the law as provided for under the principal act.

Clause 17 inserts proposed section 118A(2), which provides that:

> The Executive Director may grant a permit to any person for the use of an historic shipwreck relic for the purposes of study, conservation or exhibition.

In a press release the Minister for Planning in another place, John Thwaites, said 697 ships had been wrecked off the Victorian coastline but the location of only a quarter of those is known. Part of the Victorian shipwreck strategy released recently is a five-year plan to find as many wrecks as possible.

A unique experience will be the government's stated objective of putting details of shipwrecks on the Internet. I fully endorse that proposal and hope the government fulfils its promise. At the moment the only people who can view shipwrecks are people who can dive down to the wrecks. If the images are put onto the Internet, people who are housebound or disabled or who cannot dive for whatever reason will be able, through this new technology, to view the shipwrecks and go through them section by section to see the important parts of the ships.

In researching the bill I spoke to a number of councils and also to Oliver Moles, the regional planning manager of CMM Fisher Stewart, a reputable planning firm in the north-east. He said the bill makes good sense and looks after the rights of everyone. He said if works being carried out on one building would impact on the heritage aspect of another, the works would need to be looked at to make sure they were not detrimental to the building next door.

It is important that we identify, document and protect our unique heritage for following generations to enjoy. I commend the bill to the house.

Hon. N. B. LUCAS (Eumemmerring) — Victoria has a proud legacy in its buildings and places of historic

interest. The Heritage Act, which was passed in 1995, set out to ensure the preservation of a wide range of worthwhile objects and places. As a longstanding member of the National Trust, having joined that body in 1967, I am pleased to speak briefly on the bill. It is not my intention to go through the clauses of the bill. I will concentrate on just a couple of issues.

I note in the second-reading speech the comment:

> Demolition by neglect is a practice whereby a property is allowed to deteriorate to the point that it has to be demolished.

All honourable members have seen that happen in many places. The facts are — and this is also, to be fair, mentioned in the second-reading speech — that the act only allows action to prevent demolition by neglect occurring in relation to places that have been registered under the act. The act provides for repair orders. Where they are not complied with it allows works to be done at the expense of the owner.

I have no problem with that. However, I wish to raise the places of historic interest that are not registered under the Heritage Act. I refer to properties in my electorate that the council says are properties of local historic interest and value, and they have been included in a document. However, the council has no teeth to do anything meaningful to ensure they continue to be preserved unless the owner comes forward.

I cite a recent case where a person purchased a property that had an old building on the land. When the owner went to the council to seek some advice the council said, 'If you want to build a house on that property you have to preserve the old building, and this is what you have to do'. The council provided a long list of requirements, including the repair of a slate roof, the removal of a concreted verandah to be replaced with a wooden verandah, and a number of other requirements. The requirements were costed out by the person who had bought the property — for all the right reasons — and to bring it up to scratch in accordance with what the council wanted would have cost a lot of money. The owner is now finding it difficult.

The concept of caveat emptor is important. Anyone who purchases a property that has an old building or object of historic interest on it has to be aware and take account of the potential to incur considerable costs to maintain it. If the building or object is registered under the Heritage Act the purchaser could be up for a lot of money. As I found out recently, even if the building is merely covered by a heritage overlay imposed by the local council, again the purchaser might be up for a lot of money.

Sometimes people, for all the best reasons, buy properties because they are interested in history but then find they are up for a lot of money to maintain them. A person who has a registered property and needs funding can seek support under sections 140 to 144 of the Heritage Act. Those sections provide for loans, remission of rates, deferral of rates and special assistance generally. However, a person who does not have a registered property but a property of local historical interest may well have a problem. That property may come under a local council that has a strong interest in heritage — it is good that it does — and the owner may well be up for a lot of money.

That is currently a real conundrum, and I put it to the Minister assisting the Minister for Planning — I am not sure what the minister assisting does in the planning area; he has not admitted to that yet — that he might take back to the Minister for Planning as his first job under the portfolio the concern I am expressing about people who have historic properties recognised under local planning schemes by local responsible authorities and who end up in financial difficulties that are in some cases insurmountable.

I do not pretend to know what the answer is. However, parties of all persuasions should consider the issue because if we are genuine in believing that historic properties and places are worth preserving — I certainly am, and I am sure members on both sides of the house share that view — we have to come up with a solution to this continuing problem.

I will mention another problem that occurred in Endeavour Hills. A family came to own an old house and found that the cost of repairing it in accordance with the local council's requirements became so unbelievably expensive that family members were at their wits end. That problem was resolved because the state government purchased the property so that the house could be preserved. However, the government cannot keep doing that. There is not a bottomless pit of money to be used to preserve everything. The state of Victoria has that conundrum, and simple solutions will not always be available.

There is a difference between owning a property and suddenly finding that the local council has placed a historic overlay on it and acquiring a property knowing before you buy it that it has historic significance. However, in both cases of locally historic properties the owner would face potential financial problems, and those problems should be addressed.

It is all very well to say, 'This is what we are doing with properties of state significance'. The opposition is

not opposing the proposals in the bill that enhance the work that has already been done in a largely bipartisan way in relation to that. However, I believe we should now start addressing the issue of properties of local historic significance.

I recently met some people with a property of local historic significance. They are up for a lot of money to meet the requirements of the responsible authority. I have seen responsible authorities with all the best intentions getting consultants who have knowledge of and expertise in historic properties to come along and provide a list of everything of historic worth in the municipality. It could be argued that those lists are too long or too short. I wonder whether in some cases the lists are too long and whether the effects of that are too far reaching.

Another example of a heritage property is Waverley Park. I imagine the Minister assisting the Minister for Planning would have hoped I would mention that. An article on page 2 of the *Dandenong Examiner* of 5 September states:

> I predict the AFL will do nothing with Waverley Park, apart from continuing to strip the place of its fixtures and fittings, leaving a grotesque concrete shell on Wellington Road.
>
> There will be no application to demolish the place, no applications to change the place.
>
> The grass and weeds will grow, the vermin will arrive, the graffiti will appear on the concrete; junkies and squatters will arrive in numbers; green algae will choke the irrigation dam. There will be fires, ODs, and the police will be called there all the time.

The heritage listing of AFL park has been argued in a court, but it is a fact that it has been listed. What are we going to do with it now? Who is going to visit it? What worthwhile use is going to be made of the place? A sensible and practical attitude needs to be taken to heritage. Whether AFL park should be included is an interesting point, and honourable members should debate that more when we have a bit more time. I would be pleased to enter that debate, but I will not extend the time tonight by talking about it.

To finish my short contribution — I would like to go a lot longer but I appreciate the time constraints — the situation that people who own historic properties of local significance find themselves in has to be improved, particularly when the historic overlay or significance of properties is not recognised or listed by the responsible authority until after they have been purchased. People in that situation certainly have a problem.

As a longstanding member of the National Trust I can say that historic properties are wonderful places that are worth preserving. Now that properties of state significance are to be controlled as a result of the passage of the bill the government has to go the next step to ensure that properties of local historic significance receive some consideration.

Hon. J. W. G. ROSS (Higinbotham) — I am pleased to speak on the bill and indicate that the opposition will not oppose it. The bill proposes a number of amendments that have arisen from two reports. The first was a national competition policy review of the Heritage Act 1995, undertaken by Freehill Hollingdale and Page, and the second was the subsequent response of the government to the findings of that report. Although those reports spoke in terms of practice notes, subsequent sequences of events evolved through a fairly tortuous process into the provisions contained in the bill.

The review of the Heritage Act examined a number of alternative approaches to Heritage Act protection and found that, by and large, there was no better alternative to the existing Victorian model. However, it did not preclude the wisdom of undertaking some finetuning of that act. This bill is essentially about finetuning the previous government's legislation, and for that reason the opposition will not oppose the bill.

The Heritage Act was promulgated by the previous government, and the entire review process has almost completely endorsed the legislative foresight of the previous Minister for Planning in the other place, Robert Maclellan. I hasten to add that the Heritage Act operates in an entirely different domain from local government, which derives its power by way of planning schemes under the Planning and Environment Act. Within my electorate that process has been subject to vacillation and confusion and should not cloud the role of the Heritage Council.

I would have to say that the confusion was in no small measure caused by the precipitous intervention of the current Minister for Planning in the other place when he intervened in the City of Bayside to reverse the local council's policy on voluntary heritage overlays.

By way of background I advise the house that the Bayside council last July indicated its intention to support voluntary heritage protection for 316 bayside properties, 22 precincts and a total of 50 landscapes and trees in the bayside area. However, the minister took the view that the voluntary system of listings would not work and initiated his unilateral action, which in my view completely negated the government's stated

position that local government would be predominant in heritage policy development.

It is a great disappointment to me that the minister saw fit to take action in that way. Just as the City of Bayside was coming to grips with its dual responsibilities to local residents and heritage protection the autocratic hand of the government descended to thwart a genuinely local attempt to evolve a realistic and sensitive approach to heritage policy development by the local council.

In so doing the minister has simply confirmed that all the statements of the government extolling the pre-eminence of local government in respect of heritage issues in the heat of the last state election was nothing more than a sham. Of course the minister's actions have subsequently had a knock-on effect and generated what I regard as some arrogance on the part of the Bayside council. In particular I was concerned on 23 October last that the council had now ridden roughshod over the interests of local residents by moving to invoke compulsory heritage controls over another 27 properties. This was done without even the courtesy of notifying the owners of those properties of the inevitable impact on their property values.

One of the most consistent complaints I receive from constituents in my electorate office in respect of those issues is that home ownership is often an essential component of retirement and lifestyle planning. Such plans can of course simply be thrown out the window by the imposition of unexpected and vicarious heritage controls. In other words, I urge all municipalities to exercise the power delegated to them on heritage issues responsibly and with maximum sensitivity consistent with balancing the rights and aspirations of local residents against the legitimate protection needed for the built environment.

However, the bill is an entirely different kettle of fish and relates to some minor reforms of the administrative provisions of the principal act and the day-to-day workings of the Heritage Council.

I am pleased to say there is a number of significant buildings on the heritage register in my electorate, and I seek the leave of the house to incorporate the list, which is not extensive, into *Hansard*. I have consulted with Hansard.

Leave granted; list as follows:

Item Name	Address
Former Congregational Church	17 Black Street, Brighton
Black Rock House	30–36 Ebden Avenue, Black Rock
St Andrews School House	38 Church Street, Brighton
Brighton Beach Railway Station	Beach Road, Brighton Beach
Middle Brighton Railway Station Complex	Church Street, Middle Brighton
St James Church and Presbytery	73 North Road, Gardenvale
Brighton Municipal Offices	15 Boxshall Street, Brighton
Chevy Chase	203 Were Street, Brighton
Concrete House	4 Ray Street, Beaumaris
Kiora	81 South Road, Brighton
Billilla	26 Halifax Street, Brighton
Brighton City War Memorial	Bayside City
Kamesburgh–Anzac Hostel Garden	North Road
Kamesburgh	74–104 North Road, Brighton
Spurling House	38 Black Street, Brighton
Nicholson Pipe Organ	St Patricks Church, Cnr Rogers Street and Childers Street, Mentone
Christ Church	387–405 Old Dandenong Road and Corner Centre Dandenong Road, Dingley Village
Moorabbin Rail	Kingston City
Wurlitzer Theatre Organ	Town Hall, 977 Nepean Highway, Moorabbin

Source: Victorian Heritage Register Web Site

Hon. J. W. G. ROSS — Any reasonable person with any sense of history would celebrate the presence of such objects and buildings on the Victorian heritage register. That is an entirely different matter to the controversy that has surrounded the intervention by the Minister for Planning in local government proposals for heritage overlays on buildings and localities of lesser significance.

In particular, and in stark contrast to the recent action of the Bayside council, the legislation revises the rules of procedure for the Heritage Council on the notice required to be given to owners and local councils on matters such as proposed heritage listings.

Special consideration will be given to owners affected while a nomination is pending, and provisions are included to take account of the impact of heritage listings on neighbouring properties. The bill also provides for more effective publication of the decisions of the Heritage Council.

There are also a number of provisions enabling inspectors to obtain search warrants to enter registered premises to obtain evidence of compliance with the Heritage Act, and there are complementary

confidentiality provisions to ensure that there is no impact on the privacy of the occupants or custodians of the state's heritage.

The bill also makes provision for liturgical exemptions to enable churches to make changes to heritage buildings to fulfil the requirements of their liturgy.

One of the more significant provisions relates to the power given to the executive director of the Heritage Council to use historic shipwrecks and shipwreck relics and archaeological artefacts. As a bayside member I am particularly aware of the more than 600 shipwrecks known to have occurred along the Victorian coastline, many of which occurred within Port Phillip Bay.

I would also like to make particular reference to the historic relic, HMVS *Cerberus* which, prior to Federation, was the flagship of the Victorian navy. That ship was scuttled in 1929 to provide a breakwater adjacent to the Black Rock pier. The wreck is not technically a shipwreck, nevertheless the vessel is included on the Heritage Council register and is an important item of heritage within my electorate.

Cerberus was one of the most important naval vessels, and her design was a prototype from which all modern battleships evolved. It was the first ironclad monitor and as well as being driven by steam was armed with four huge cannons mounted on revolving turrets. It was designed after the prototype of USS *Monitor*, which was the armoured battleship that fought in the American civil war. I make particular reference to *Cerberus* in reference to the concept of demolition by neglect that is included in the bill.

That vessel is now being subjected to the daily vicissitudes of salt water, the wind and wave action. Unless something is done quickly to stabilise and preserve the *Cerberus* it will need to be demolished because of public safety considerations.

Accordingly, I urge the government to give consideration to the future of the vessel, which is of international maritime significance. I cast that request in the mould of the concept provided by the government of demolition by neglect. That vital heritage asset will certainly experience an early demise unless quick action is taken to save it.

The bill is an endorsement of the relevance and structure of the Heritage Act as promulgated by the previous government. On that basis, the opposition will not oppose the bill.

Motion agreed to.

Read second time.

Third reading

Hon. J. M. MADDEN (Minister assisting the Minister for Planning) — By leave, I move:

That this bill be now read a third time.

I thank honourable members who have contributed to the debate — namely, the Honourables Peter Katsambanis, Glenyys Romanes, Jeanette Powell, Neil Lucas and John Ross.

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

DOMESTIC (FERAL AND NUISANCE) ANIMALS (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

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

MAGISTRATES' COURT (COMMITTAL PROCEEDINGS) BILL

Introduction and first reading

Received from Assembly.

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

STATUTE LAW REVISION BILL

Second reading

Debate resumed from 2 November; motion of Hon. M. M. GOULD (Minister for Industrial Relations).

Hon. C. A. FURLETTI (Templestowe) — The opposition supports the bill, which affects a number of amendments and repeals acts. The law in Australia is derived from two principal sources. The first is common law, which has evolved through the centuries and is the law that is determined and interpreted by the courts. It is based on the doctrine of precedent or stare decisis, which means that the law and decisions of the

courts are used as building blocks upon which to move forward in the evolution and creation of the laws by which society is controlled.

The ratio decidendi of a case forms the core or fundamental reason for a decision of a court to be maintained. As the house will be aware, in all decisions there are peripheral matters — matters that are not fundamental to but which relate and perhaps are pertinent to the central or core issue in a case. Often judges are obliged to comment on those peripheral matters, and those comments are known as obiter dictum. Those elements of the system of judgments given in superior courts are the foundation stone for the creation of common law.

The second source of law is the legislature of the states and territories. As legislators for Victoria honourable members generate new laws and are the caretakers of the laws written by our predecessors.

The development of change in common law is a lengthy and costly process. It relies on the judicial system and the taking of action in the courts in appropriate matters where questions of law need to be determined. It can take a long time not only for matters to reach the courts but also for them to be processed through the courts.

The process of changing legislation is more rapid, albeit nevertheless lengthy in certain circumstances, and occurs in Parliament. The bill is a document that will bring about such change. It continues the process of legislative change by amending a series of acts that have played a role for a considerable time. The bill is housekeeping legislation. It is an omnibus bill that contains a number of different elements and corrects a number of typographical, grammatical and other errors in about 150 acts that are listed in schedule 1. Some of the amendments to the schedule 1 acts are retrospective. The opposition has little difficulty with that retrospectivity because it relates to the date of commencement of various items listed in the schedule.

The bill also repeals about 110 existing amending acts. Although the amendments to the relevant principal acts have taken place the amending acts are still on the record and need to be removed by being repealed as redundant legislation. I am assured by the advisers that the repeal of those amending acts will not affect the principal acts.

The bill also codifies orders made since 1998 under the Administrative Arrangements Act. Finally, the bill addresses ambiguities or omissions which have been detected in existing acts and which require correction. I am assured that the bill comes before the house at the request of parliamentary counsel. It is brief. It contains only four clauses and has two lengthy schedules that list about 160 acts. The opposition supports the bill and wishes it a speedy passage.

Hon. S. M. NGUYEN (Melbourne West) — I support the Statute Law Revision Bill, which revises the statute law of Victoria, repeals a number of spent acts and spent provisions of acts, makes many minor amendments of a number of acts to correct grammatical, spelling errors and wrong references, corrects headings, updates references and meets the needs of the legal users.

It also codifies the machinery of government changes made since 1998. The last time such an act was passed was in 1998. It codified the administrative arrangement order made between 1983 and 1998. The Scrutiny of Acts and Regulations Committee report on the bill was tabled in the Parliament. Its role was:

> (b) to consider any bill introduced into a house of the Parliament and to report to the Parliament —
>
> (i) as to whether the bill by express words or otherwise repeals, alters or varies section 85 of the Constitution Act 1975, or raises an issue as to the jurisdiction of the Supreme Court.

It also considered the detailed changes that should be made so that people can easily understand the legislation. I commend the bill to the house.

Hon. W. R. BAXTER (North Eastern) — The Statute Law Revision Bill is important because it goes to the issue of keeping the statute book in an uncluttered state and therefore makes it much more readily understood by rank and file members of the community and members of Parliament who are not as learned as the Honourable Carlo Furletti. It is important that from time to time the statutes are cleansed in the way this bill envisages.

It must be immensely difficult for people working in the law to keep their records up to date and acts of Parliament annotated with all the amendments Parliament makes. It is much more difficult for members of the public when looking at acts of Parliament to know which one they should be looking at, whether an amending act has been incorporated and so on. If one is doing it every day of one's life one gets to know it, but if not I am sure it is exceedingly difficult.

I found it so, as did my electorate officers, because my office has been assiduous over the years in keeping the statute up to date. I no longer do so now that the acts

are available on the Internet. I have regard to the new technology. Prior to that an immense amount of time was spent in my office ensuring that the acts were kept up to date. I do not know, but I presume that mine may have been one of the offices that did that, but I found it a valuable resource.

I believe the way the acts on the table in this chamber and elsewhere in the building are kept up to date by the contractors who now have carriage of that task is also commendable. They are well done and relatively easy to follow. A housekeeping bill such as this, which will expunge from the record spent acts, those that have been rendered redundant and amending acts that have been incorporated in the principal acts, will go a long way towards making the search for a particular provision in an act more readily undertaken.

There is an element of retrospectivity in all this. Normally any bill with a whiff of retrospectivity would cause me some angst and concern. Honourable members can be confident in this case that any element of retrospectivity is simply coming about through the correction of errors that have been previously made, whether they be typographical, grammatical or instituting modern language, such as employee being rendered in the way it is normally spelt now with a double E at the end instead of the French acute accent that was customary some years ago. Also a veterinary surgeon is now referred to as a veterinary practitioner and so on.

In some cases conjunctions have been omitted or put in the wrong place. I am grateful for the Scrutiny of Acts and Regulations Committee, which has gone through all the provisions and schedules in the bill with a fine-tooth comb and made a judgment on each and every one of them and has given an assurance to the house that any element of retrospectivity in them is not a concern and that the normal freedoms of the people of Victoria are not in any way being impinged upon by the changes that have been made.

I observed that some of the errors being corrected by the amending bill reflect somewhat on all honourable members, because some are so obvious that we should have picked them up when we passed the original bills in the first place. Perhaps there is a lesson or a message for all honourable members that we should be more assiduous in double checking that the bills being debated are 100 per cent correct and not simply 99.9 per cent correct.

I have a great deal of respect for parliamentary counsel who do a tremendous job drafting legislation. At times they need and are required by the government of the day or by an individual member to engage in complex drafting under tight time constraints. I had a recent experience in the last week or two of having complex amendments drawn up which at the end of the day I decided not to proceed with; nevertheless they were prepared.

I can understand how minor typographical, grammatical and spelling errors and the like creep in. They should be picked up by honourable members as we debate the bills, but obviously they are not always picked up. I do not attribute blame to anyone. Such legislation is important and should be regularly undertaken. I pay tribute to those who do the hard yards in ensuring that such bills can be presented to the house periodically to clean up, for want of a better word, the statutes of Victoria. It is an immense amount of hard slog, but a worthy task, and I am happy to support the bill.

Motion agreed to.

Read second time.

Remaining stages

Passed remaining stages.

ADJOURNMENT

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

That the house do now adjourn.

Housing: homeless strategy

Hon. ANDREA COOTE (Monash) — I raise a matter for the Minister for Small Business, who represents the Minister for Housing in the other place. In a letter I received on 12 October about housing issues and the Hollywood Private Hotel in St Kilda, the Minister for Housing said that she had initiated the Victorian homeless strategy and that:

> A comprehensive consultative process is ensuring that all levels of government, community and the welfare sector are engaged throughout the development and implementation phases of the strategy.

I am aware there has been a consultation process but as yet the participants have not been notified about the result or their input into the process. When will members of the consultative panel be advised of the results of their input and when will the Victorian homeless strategy be published?

Ballarat: stormwater damage

Hon. D. G. HADDEN (Ballarat) — I raise a matter for the attention of the Minister for Energy and Resources, who represents the Minister for Local Government in another place. I have been consulted by constituents who recently purchased a property at 6 Quinta Drive, Mount Clear, in Ballarat. They moved from Melbourne into their newly purchased home on 6 September last and since then they have been literally flooded out.

The problem is with the very heavy run-off, drainage or stormwater that flows over Geelong Road, across a farm property and dam at the rear of the houses in Quinta Drive, and into the houses. All the houses in Quinta Drive are similarly affected. During the past two months my constituents have been in touch with Ballarat City Council officers, asking for the serious flooding problem to be addressed, but without satisfaction. Their insurance assessor and plumber have visited the property and have described the house as literally floating on water. As a consequence, the garden and landscaping have been ruined and the paved outdoor areas are damaged beyond repair. To make matters worse, the water that is now flowing through their property appears to contain an oily substance.

Central Highlands Water has advised my constituents that stormwater is an issue for the local council, and that if the water is polluted it is a matter for the Environment Protection Authority. I ask the Minister for Local Government whether he will direct the problem to the attention of the Ballarat City Council for its urgent action.

Workcover: youth self-insurance

Hon. P. R. HALL (Gippsland) — I raise for the Leader of the Government in her capacity as the Minister assisting the Minister for Workcover, or as the representative of the Minister for Workcover in another place, a proposal to establish a self-insurance scheme for young workers.

The minister would agree that all parents make great personal and financial sacrifices to help their children make a start in life. In that regard I was approached by a constituent, Mrs Shirley Harvey of Nicholson, who suggested to me an initiative that would assist young people to gain entry to the work force. Experience has shown Mrs Harvey that a barrier to young people getting a job is the requirement for employers to take out workers compensation insurance for new employees, whether they be part-time or full-time employees. Mrs Harvey suggested that she and her husband would be prepared to take out personal workers compensation insurance for their children that might assist them in gaining employment. Shifting the cost of taking out private and personal workers compensation from the employer to the employee, or to the employee's parents, would remove that barrier and perhaps create a greater incentive for employers to take on young people.

Mrs Harvey suggested that the scheme could apply to only people under the age of 18 years. I ask the Minister for Workcover to give some consideration to introducing a scheme of that nature, particularly as it would do a lot to assist with the problem of youth unemployment.

Waverley Park

Hon. ANDREW BRIDESON (Waverley) — I raise an issue with the Minister for Sport and Recreation. The minister has previously indicated to the house that he has requested the Urban Land Corporation to provide advice on Waverley Park. How many times has the minister met with the ULC, and what have been the outcomes of those discussions?

Ethnic communities: problem gambling

Hon. S. M. NGUYEN (Melbourne West) — I raise a matter for the Minister for Small Business, who represents the Minister for Community Services in the other place. The minister will be well aware of the effects of gambling and the associated issues that problem gamblers face. The recently announced television, radio and print advertising blitz aimed at promoting help services is a positive step.

Problem gambling affects people in many communities. In the cities of Maribyrnong and Brimbank in my electorate, which has the highest number of gaming machines, the problem is prevalent among many communities from non-English-speaking backgrounds. I ask the minister to refer to the Minister for Community Services the possible use of bilingual operators for the gamblers help service.

Nuclear-powered warships

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — I direct a matter to the Minister for Industrial Relations, representing the Premier in the other place. It relates to an article that appeared on page 2 of today's *Australian* entitled 'Bracks naval snub angers US officials'. The article states:

> Victorian Premier Steve Bracks has snubbed one of the most senior US military officers to visit Australia.

> Admiral Dennis C. Blair, the Commander-in-Chief of the US Pacific Command, had requested an audience with the Premier in Melbourne today, where he begins a three-day Australian visit.
>
> Mr Bracks' office declined the request — a surprise decision that has angered US officials who see it as a diplomatic snub.
>
> Admiral Blair commands more than 300 000 troops … and is believed to be the most senior US military officer to visit Melbourne in a decade.
>
> …
>
> The usual protocol for senior US officers visiting Melbourne is that they make brief courtesy calls to the Premier and the Governor. Requests for these visits are usually passed on verbally.
>
> …
>
> Diplomatic and defence sources confirmed to the *Australian* that a request for a meeting was made — and denied.
>
> The snub has led to speculation that by refusing to meet the admiral, the Bracks government may be seeking to placate the socialist left, which was critical of the Premier's handling of the recent S11 protests.

Two issues arise from the incident. The first is that Victoria's reputation is tarnished when the head of government, the Premier — —

Honourable members interjecting.

The PRESIDENT— Order! The honourable member is entitled to raise the matter. He is not entitled to be drowned out. I ask honourable members to desist and let the honourable member continue.

Hon. G. K. RICH-PHILLIPS — Victoria's reputation is tarnished when the head of government, the Premier, treats a visiting dignitary with the contempt that is alleged by the *Australian* article. Secondly, such contempt puts at risk the substantial economic benefits that accrue to Melbourne and Victoria through the frequent visits of United States of America navy ships. I ask that the Premier ensures that in future he treats visiting dignitaries with the respect and courtesy they deserve.

Teachers: industrial agreement

Hon. R. M. HALLAM (Western) — I refer the Minister for Industrial Relations to the pay deal recently struck with Victorian teachers and more particularly to the extra 9 per cent over three years applicable to teachers promoted to the new category 'experienced teacher with responsibility'. Can the minister confirm that the government will fund those promotions up to a maximum of only 30 per cent of eligible teachers and that the cost of any promotions beyond that level will require schools to impose budgetary costs to other areas?

Industrial relations: reforms

Hon. G. B. ASHMAN (Koonung) — I direct my question to the Minister for Industrial Relations. A couple of weeks ago, in response to opposition questions, the minister tabled a report on the economic implications of the recommendations of the independent task force on industrial relations. The report was prepared by the National Institute of Economic and Industry Research.

In the report I note there is a disclaimer that broadly says the institute endeavours to provide reliable forecasts, believes the material is accurate, but will not be liable for any claim by any party acting on such information. That is a relatively standard disclaimer, but given that the minister is relying very heavily on the report and expecting industry and the business community to accept it, will she give an unqualified assurance to them that the forecasts and predicted outcomes are accurate and, if not, what parts of the report cannot be relied upon?

North Shore Primary School

Hon. E. C. CARBINES (Geelong) — I raise the matter of the North Shore Primary School for the Minister for Sport and Recreation to refer to the Minister for Education in the other place. North Shore Primary School, in my electorate of Geelong Province, is in an area of great economic and social disadvantage.

The grounds of the primary school have no distinct boundary. The school is situated on a large tract of land shared with the North Shore football club and the Norlane neighbourhood house. Because it has no perimeter fence, the school continually faces the problem of trespassers during the school day and is subject to regular vandalism and burglary outside school hours.

The school council has raised the issue with the honourable member for Geelong North in another place, Mr Loney, and me several times. Parents and staff are seeking the assistance of the government in this matter. Can the minister confirm a funding commitment to the school to provide for a security fence on its boundaries?

Taxis: wheelchair access

Hon. B. W. BISHOP (North Western) — My question is directed to the Minister for Small Business who represents the Minister for Community Services in the other place. The inquiry comes from Mrs Joy Clarke who lives at Irymple, just outside Mildura. Joy is the president of the Sunraysia Mallee Disabled

Persons Self Help Group and does an enormous amount of work for disabled people in the area.

A little while ago she had a weekend break in Melbourne and called for a wheelchair access taxi to go to the tennis centre. She was told it would be 10 minutes. The time stretched out to 15 minutes. Then the hotel rang again and was told it would be another 10 minutes. To cut the story short, the taxi arrived after 1 hour and 15 minutes.

She was told by the people at the hotel at which she was staying that that was not an isolated incident. While waiting for the taxi about eight wheelchair taxis went past with able-bodied people in them and 15 ordinary taxis were sitting at the taxi rank. She was cross about that. She believes people with disabilities should have priority for those taxis. It is not an isolated incident. She went to a disability conference and a lady did not turn up until much later because she experienced exactly the same problem. Later Mrs Clarke went to St Vincent's hospital and was told when ordering a taxi that people in wheelchairs can wait up to 3 hours. On behalf of my constituent and people with disabilities I ask that the system be examined and that something be done to right this injustice against the disabled in Victoria.

Urban Camp

Hon. W. I. SMITH (Silvan) — I raise for the attention of the Minister for Youth Affairs a matter concerning the Urban Camp Melbourne Cooperative Ltd. I note the interest the minister showed in responding to a question without notice today about the Victorian Young Farmers and rural people coming to the city. The Urban Camp Melbourne Cooperative wrote to all honourable members, and I visited the camp last week to see its work. I was unaware that the camp was situated in Parkville, but it obviously provides an extremely important service to rural kids and schools.

As background the camp has about 480 community user group members and approximately 370 state, Catholic and independent school members. Approximately 90 to 100 schools book their students into the camp each year. About 80 or 90 kids visit the camp and enjoy three or four days doing projects and looking around. Approximately 5000 visitors stay at the camp and experience Melbourne each year.

I understand the organiser of the camp wrote to the minister but is yet to receive a response. As the minister expressed such interest in rural kids in the city, I ask him when he will contact them and visit the camp.

Waverley Park

Hon. N. B. LUCAS (Eumemmerring) — I refer the Minister for Sport and Recreation to the statement he made on 9 May when he flagged the possibility of the Urban Land Corporation subdividing Waverley Park. At the same time he indicated that he had asked the corporation to look at creative solutions. On 31 October the minister said that information had been obtained from the corporation.

The minister has been at great pains to point out that the documents he obtained related to work undertaken by the corporation for the Kennett government, and I accept that. I have moved on. I now want to know whether the documents he received included plans for the subdivision of Waverley Park, plans regarding creative solutions or proposals he has not made the house aware of. Do the documents to which he referred include one or all of those issues?

Questions on notice: answers

Hon. D. McL. DAVIS (East Yarra) — I refer the Minister for Ports to question on notice 1195, in which I asked a series of questions about consultancy contracts over the past 12 months. In response to my question, the minister broke up her answer into two periods. I refer the minister to the period from 1 July to the present day. I asked the minister to provide information on consultancy contracts she had undertaken, authorised or in which the department was involved concerning ports issues and to provide that information across a longer period. Nonetheless, I direct my question to the period from 1 July onwards.

In the minister's answer she said that to provide the information from 1 July 2000 to the present date would require an unreasonable diversion of time and resources. Given that the number of consultancies for the whole department during the past year was 191 for those under $100 000 and less than would fill a page for those over $100 000, I do not believe it should be too difficult to provide that information.

Is the minister suggesting to the house that there are so many contracts that she is unable to tabulate that information in a reasonable way, or is she trying to avoid providing reasonable information?

Prisoners: accommodation

Hon. E. J. POWELL (North Eastern) — I direct a matter to the attention of the Minister for Sport and Recreation as the representative in this place of the Minister for Police and Emergency Services. Mr John Ellis, a constituent of mine, telephoned my office today

with concerns about his son Stephen, who has been given a three-month sentence at the Bendigo court and is being held for at least one month at the Bendigo police station.

Mr Ellis told me that the cells have no windows, there is no natural light and the inmates do not know if it is day or night. There is no exercise and five people are being held there. Last night a drunk was put in with his son. The drunk kicked doors and yelled all night and no-one got any sleep. A policeman told Mr Ellis, 'They start going crazy after a week of this'. If there is any fighting, time is added to the sentences of those involved. It is a stressful time. Mr Ellis is very worried about his son's mental state and is concerned that he will have a mental breakdown.

Mr Ellis says his son accepts that he has to do his sentence and does not expect motel-type accommodation. Stephen has a young family. He has a full-time job, has taken long-service leave to serve his sentence and hopes he can keep his job. Mr Ellis says his son should do the three-month sentence but without the added mental stress of being kept in what he believes are inhumane conditions. He asked whether the government is prepared to pay compensation if his son has a mental breakdown.

Stephen's wife lives in Tongala. They have three young children and she must travel 100 kilometres to see him for 15 minutes between the hours of 3.00 p.m. and 5.00 p.m. If the police are too busy they tell her to come back at another time. She has to make arrangements for the children while she is visiting the Bendigo police station. Because the family live 100 kilometres away it is difficult to provide Stephen with a change of clothes every day. In prison he would be provided with prison clothes. A policeman suggested to Mr Ellis that he contact his local member of Parliament, which he has done.

Stephen Ellis is not the only prisoner in this position. Complaints have been made about this situation happening at Wangaratta. I ask the minister if the government will take immediate action to provide adequate accommodation in prisons so that this situation can be fixed as soon as possible and people are not held in police cells for such long periods.

Liquor: licences

Hon. BILL FORWOOD (Templestowe) — I raise for the attention of the Minister for Small Business an issue that I raised with her on 24 October about whether a liquor licence would be issued for a venue at 195 King Street, Melbourne, which provides sexually explicit entertainment. I reminded the house at the time that there was on foot a Victorian Civil and Administrative Tribunal appeal. That appeal has subsequently been resolved. There was also the matter of whether a liquor licence would be issued, and if so what conditions would attach to it. In her response that night the minister said that she would follow up that issue and find out what had occurred, that she was interested in the director being informed and that she would like to be informed. Opposition members would also like to be informed.

My understanding is that as of yesterday afternoon the liquor licence had not been issued, although apparently all the required conditions have been fulfilled. Will the minister update the house on the progress on this issue?

Extractive industry: rehabilitation bond

Hon. PHILIP DAVIS (Gippsland) — I raise for the attention of the Minister for Energy and Resources a matter relating to the extractive industry. I have in my possession a letter from Mr Tony Mitchell, who is the director of Yarra Valley Quarries. Mr Mitchell is concerned about rehabilitation bonds. His letter states:

> We write to you direct, to voice our personal concerns with the current assessment system in regards to state government rehabilitation bonds within the extractive industry.
>
> The difficulty we have with the present evaluation of rehabilitation bonds are that there appears not to be a consistent formula when the Department of Natural Resources and Environment (NRE) assesses and then advises each quarry, sand or gravel pit of the actual dollar amount of their bond.

Mr Mitchell goes on to recite the difficulties that rehabilitation bonds pose for small businesses with limited equity and obviously a need to make financial arrangements with their appropriate institutions either by cash on deposit or a charge against the assets of the company. That poses a problem in maintaining appropriate levels of equity in their businesses. The letter continues:

> From our understanding, Victoria-wide there is in excess of $15 million held as retention or rehabilitation bonds, which is a vast amount of equity tied up in bond moneys.
>
> We further understand that NRE is currently re-assessing the overall amounts of moneys held as rehabilitation bonds and are considering increasing amounts across the board. As you would appreciate, this is creating serious concerns within the industry, as there does not appear to be any consistency with the assessment process. The current system of assessment by NRE, which no-one in the industry is privy to, appears totally unfair to all involved in the extractive industry.

Mr Mitchell concludes his letter by stating that there is a risk that the reassessment of bonds will force many

extractive businesses out of business and points out that the smaller businesses contribute up to 55 per cent of overall products in the industry.

I ask the minister to advise the house of the current status of any review of rehabilitation bonds and of the criteria that will be used by the department in that respect.

Responses

Hon. M. M. GOULD (Minister for Industrial Relations) — The Honourable Peter Hall raised a matter on behalf of one of his constituents, Shirley Harvey of Nicholson, who posed the possibility of a self-insurance scheme for young workers. I advise the member that I will refer that matter to the responsible minister in the normal manner.

The Honourable Gordon Rich-Phillips referred a matter to the Premier; I will pass that on.

The Honourable Roger Hallam referred to the new enterprise agreement with the teachers unions. The enterprise agreement contains a new classification structure for experienced teachers. That will open up a number of options for teachers, and the agreement will be funded through a budget supplementation and what is set out already in the forward estimates.

The Honourable Gerald Ashman referred to the economic impact study that the National Institute of Economic and Industrial Research undertook for the government in relation to the employment bill and the fact that the institute put in the usual standard caveats that such organisations do in economic modelling. I understand that the economic modelling was based on what impact the bill would have and not on something that could happen in the future, which would be inappropriate, and so the economic modelling was done on the impact of the legislation when implemented. The government, as did the previous government, supports the advice received from the institute, which is an organisation that is well respected within the community. The report sets out clearly what the institute believes to be the worst-case scenario, and the government is more than happy with its statements.

Hon. C. C. BROAD (Minister for Energy and Resources) — The Honourable Dianne Hadden requested that the Minister for Local Government draw the problems of one of her Ballarat constituents in relation to flooding to the attention of the Ballarat City Council for its action. I will refer the matter to the responsible minister.

The Honourable David Davis referred to an answer he has received on the matter of consultancies after 1 July. The honourable member will be aware that the answer he has received is a standard answer to the many questions from opposition members to ministers on the matter. In annual reports being tabled in Parliament the government has provided a great deal of information, in a number of instances in excess of what is required through that reporting. In relation to the excessive requests, which are not narrowed down in any way, the standard response is the one he has received.

Hon. D. McL. Davis — On a point of order, Mr President, my question specifically related to the period after the tabling of the annual report to 30 June. My question was on the period beyond that. The minister has not addressed that question at all.

The PRESIDENT — Order! The honourable member knows that on the adjournment debate, unlike question time, the minister's answer disposes of the issue raised by the honourable member. I have explained that to the house before. It is also in the guidelines.

Hon. M. A. Birrell — On a further point of order, Mr President, the minister was cut short by the honourable member's point of order and I ask you to see if the minister wants to complete her statement.

The PRESIDENT — Order! I presumed the honourable member had interrupted the minister. The minister may wish to add something to her answer.

Hon. C. C. BROAD — I was about to answer the next honourable member's question.

The PRESIDENT — Order! I do not uphold the point of order.

Hon. C. C. BROAD — The Honourable Philip Davis raised a matter in relation to rehabilitation bonds. This is a matter on which I have also received representations and I am well aware of it. The honourable member will be aware that the concerns and the work that is under way in reviewing rehabilitation bonds stem from changes made by the previous government that were not accompanied by additional resources to enable the department to implement those changes. It is a matter that I have under close consideration at the moment and I will further consider it when I receive advice from the department.

Hon. M. R. THOMSON (Minister for Small Business) — The Honourable Andrea Coote raised a matter for the Minister for Housing in response to a letter she received on 12 October which outlined the

Victorian homeless strategy and the consultative process. The honourable member wants some information on the outcomes of that consultative process and when the strategy will be announced. I will pass that on to the minister for her response to the honourable member.

The Honourable Sang Nguyen raised a matter for the Minister for Community Services concerning the problem gambling campaign that has just been launched as there is an issue in two municipalities, Maribyrnong and Brimbank. He also referred to having operators who are able to speak languages other than English on the telephone line and the service that is provided. I will pass that on to the minister for a direct response.

The Honourable Barry Bishop raised a matter also for the Minister for Community Services concerning his constituent Joy Clarke from Irymple about wheelchair access taxis and the length of time it is taking for them to arrive for those who need to use that particular service rather than just any taxi service. The honourable member asks the minister to investigate that matter. I will pass that on for her to do so and respond directly to the honourable member.

The Honourable Bill Forwood raised the matter of a sexually explicit venue at 195 King Street and asked for an update on whether the licence has been transferred. I understand that the licence transfer was agreed to on 18 October. Subject to confirmation, settlement of the sale of the business has occurred.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — The Honourable Andrew Brideson raised with me a matter regarding Waverley Park. As I have mentioned on a number of occasions, I have met with the Urban Land Corporation once to discuss options regarding the Waverley Park precinct. The honourable member will also appreciate and be aware that the site is heritage listed and that no doubt the Australian Football League is seriously considering future options in relation to it.

The Honourable Elaine Carbines raised with me the matter of land surrounding the North Shore Primary School and security fencing. I will refer that matter to the Minister for Education in the other place.

The Honourable Wendy Smith referred to the Urban Camp. I know from experience that the Urban Camp is a terrific camp that provides fabulous opportunities for young people of all ages, and school children in particular, to come to Melbourne and take in many of its great delights. That has been confirmed by honourable members alongside me — the Honourables John McQuilten and Elaine Carbines — who also endorse the role of the Urban Camp and what a significant facility it is. I have not sighted or been advised of any letter or invitation; however, I shall be very happy to visit the site in the future and look forward to doing so.

The Honourable Neil Lucas referred to Waverley Park documents presented to me by the Urban Land Corporation. Those documents simply related to the extent of land use within the Waverley Park precinct.

The Honourable Jeanette Powell referred to conditions in the Bendigo lockup. I will refer that to the Minister for Police and Emergency Services in the other place.

Motion agreed to.

House adjourned 12.18 a.m. (Thursday).